



AGENDA - REVISED

**CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
CITY AS SUCCESSOR AGENCY FOR THE
COMMUNITY REDEVELOPMENT AGENCY OF
THE CITY OF MORENO VALLEY
MORENO VALLEY HOUSING AUTHORITY
BOARD OF LIBRARY TRUSTEES**

October 17, 2017

REGULAR MEETING – 6:00 PM

City Council Study Sessions

Second Tuesday of each month – 6:00 p.m.

City Council Meetings

Special Presentations – 5:30 P.M.

First & Third Tuesday of each month – 6:00 p.m.

City Council Closed Session

Will be scheduled as needed at 4:30 p.m.

City Hall Council Chamber – 14177 Frederick Street

Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, in compliance with the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to Guy Pegan, ADA Coordinator, at 951.413.3120 at least 72 hours before the meeting. The 72-hour notification will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Victoria Baca, Mayor Pro Tem
David Marquez, Council Member

Dr. Yxstian A. Gutierrez, Mayor

Jeffrey J. Giba, Council Member
Ulises Cabrera, Council Member

AGENDA
CITY COUNCIL OF THE CITY OF MORENO VALLEY
October 17, 2017

CALL TO ORDER - 5:30 PM

SPECIAL PRESENTATIONS

1. Friends of the Moreno Valley Library Proclamation

2. Officer of the Second Quarter: Kenneth Hoon

3. Medic Squad 6 Presentation

REVISED AGENDA
JOINT MEETING OF THE
CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
CITY AS SUCCESSOR AGENCY FOR THE
COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF MORENO VALLEY
MORENO VALLEY HOUSING AUTHORITY
AND THE BOARD OF LIBRARY TRUSTEES

THE CITY COUNCIL RECEIVES A SEPARATE STIPEND FOR CSD MEETINGS

REGULAR MEETING – 6:00 PM
OCTOBER 17, 2017

CALL TO ORDER

Joint Meeting of the City Council, Community Services District, City as Successor Agency for the Community Redevelopment Agency, Housing Authority and the Board of Library Trustees - actions taken at the Joint Meeting are those of the Agency indicated on each Agenda item.

PLEDGE OF ALLEGIANCE

INVOCATION

Reverend Dr. Steven Overton, Moreno Valley Christian Chapel Foursquare Church

ROLL CALL

INTRODUCTIONS

PUBLIC COMMENTS ON MATTERS ON THE AGENDA WILL BE TAKEN UP AS THE ITEM IS CALLED FOR BUSINESS, BETWEEN STAFF'S REPORT AND CITY COUNCIL DELIBERATION (SPEAKER SLIPS MAY BE TURNED IN UNTIL THE ITEM IS CALLED FOR BUSINESS.)

PUBLIC COMMENTS ON ANY SUBJECT NOT ON THE AGENDA UNDER THE JURISDICTION OF THE CITY COUNCIL

Those wishing to speak should complete and submit a BLUE speaker slip to the Sergeant-at-Arms. There is a three-minute time limit per person. All remarks and questions shall be addressed to the presiding officer or to the City Council.

JOINT CONSENT CALENDARS (SECTIONS A-D)

All items listed under the Consent Calendars, Sections A, B, C, and D are considered to be routine and non-controversial, and may be enacted by one motion unless a member of the City Council, Community Services District, City as Successor Agency for the Community Redevelopment Agency, Housing Authority or the Board of Library Trustees requests that an item be removed for separate action. The motion to adopt the Consent Calendars is deemed to be a separate motion by each Agency and shall be so recorded by the City Clerk. Items withdrawn for report or discussion will be heard after public hearing items.

A. CONSENT CALENDAR-CITY COUNCIL

- A.1. ORDINANCES - READING BY TITLE ONLY - THE MOTION TO ADOPT AN ORDINANCE LISTED ON THE CONSENT CALENDAR INCLUDES WAIVER OF FULL READING OF THE ORDINANCE.

Recommendation: Waive reading of all Ordinances.

- A.2. MINUTES - CITY COUNCIL - STUDY SESSION - MAR 14, 2017 6:00 PM

Recommendation: Approve as submitted.

- A.3. MINUTES - CITY COUNCIL - SPECIAL MEETING - MAR 14, 2017 6:30 PM

Recommendation: Approve as submitted.

- A.4. MINUTES - CITY COUNCIL - STUDY SESSION - MAR 28, 2017 6:00 PM

Recommendation: Approve as submitted.

- A.5. MINUTES - CITY COUNCIL - SPECIAL MEETING - MAR 30, 2017 5:30 PM

Recommendation: Approve as submitted.

- A.6. MINUTES - CITY COUNCIL - STUDY SESSION - APR 11, 2017 6:00 PM

Recommendation: Approve as submitted.

- A.7. MINUTES - CITY COUNCIL - STUDY SESSION - JUN 13, 2017 6:00 PM

Recommendation: Approve as submitted.

- A.8. MINUTES - CITY COUNCIL - SPECIAL MEETING (CEREMONIAL SWEARING-IN) - JUN 16, 2017 4:00 PM

Recommendation: Approve as submitted.

A.9. LIST OF PERSONNEL CHANGES (Report of: Human Resources)

Recommendation:

Ratify the list of personnel changes as described.

A.10. PURSUANT TO A LANDOWNER PETITION, ANNEX THREE PARCELS INTO COMMUNITY FACILITIES DISTRICT NO. 2014-01 (MAINTENANCE SERVICES) - AS AMENDMENT NO. 24 (Report of: Public Works)

Recommendation:

1. Acting as the legislative body of Community Facilities District No. 2014-01 (Maintenance Services), adopt Resolution No. 2017-___, a Resolution of the City Council of the City of Moreno Valley, California, ordering the annexation of territory to City of Moreno Valley Community Facilities District No. 2014-01 (Maintenance Services) and approving the amended map for said District.

A.11. APPROVE PROFESSIONAL SERVICES AGREEMENT WITH LEIDOS ENGINEERING, LLC FOR AN ORGANIZATIONAL ASSESSMENT OF MORENO VALLEY UTILITY (Report of: Financial & Management Services)

Recommendations:

1. Approve the Professional Services Agreement with Leidos Engineering, LLC for an Organizational Assessment of Moreno Valley Utility.
2. Authorize the City Manager to execute the Agreement upon City Attorney review and approval.

A.12. APPROVAL OF POWER PURCHASE AGREEMENT FOR RENEWABLE RESOURCES BETWEEN THE CITY OF MORENO VALLEY (AS BUYER) AND SUSTAINABLE POWER GROUP, LLC (AS SELLER) (Report of: Financial & Management Services)

Recommendations:

1. Approve the Power Purchase Agreement for Renewable Resources between the City of Moreno Valley (as Buyer) and Sustainable Power Group, LLC (as Seller).
2. Authorize the City Manager to execute the Power Purchase Agreement upon review and approval by the City Attorney.

A.13. Historical Preservation Update (Report of: Financial & Management Services)

Recommendation:

1. Receive and file the background information on the City's historical assets of the fire engine and Red Cross building.
2. Approve the designated use and restriction of the City's Cultural Preservation Fund as set forth in the staff report.

A.14. Resolution Extending Ordinance 916 Banning all Commercial Cannabis Activity in the City (Report of: City Attorney)

Recommendation:

1. Staff recommends that the City Council adopt a Resolution extending the existing ban on commercial cannabis activity, till permanent regulations can be adopted.

B. CONSENT CALENDAR-COMMUNITY SERVICES DISTRICT

B.1. ORDINANCES - READING BY TITLE ONLY - THE MOTION TO ADOPT AN ORDINANCE LISTED ON THE CONSENT CALENDAR INCLUDES WAIVER OF FULL READING OF THE ORDINANCE.

Recommendation: Waive reading of all Ordinances.

B.2. MINUTES - SPECIAL MEETING OF MAR 14, 2017 (See A.2)

Recommendation: Approve as submitted.

B.3. MINUTES - STUDY SESSION MEETING OF MAR 14, 2017 (See A.3)

Recommendation: Approve as submitted.

B.4. MINUTES - STUDY SESSION MEETING OF MAR 28, 2017 (See A.4)

Recommendation: Approve as submitted.

B.5. MINUTES - SPECIAL MEETING OF MAR 30, 2017 (See A.5)

Recommendation: Approve as submitted.

B.6. MINUTES - SPECIAL MEETING OF APR 11, 2017 (See A.6)

Recommendation: Approve as submitted.

B.7. MINUTES - SPECIAL MEETING OF JUN 13, 2017 (See A.7)

Recommendation: Approve as submitted.

B.8. MINUTES - SPECIAL MEETING OF JUN 16, 2017 (See A.8)

Recommendation: Approve as submitted.

C. CONSENT CALENDAR - HOUSING AUTHORITY

C.1. ORDINANCES - READING BY TITLE ONLY - THE MOTION TO ADOPT AN ORDINANCE LISTED ON THE CONSENT CALENDAR INCLUDES WAIVER OF FULL READING OF THE ORDINANCE.

Recommendation: Waive reading of all Ordinances.

C.2. MINUTES - SPECIAL MEETING OF MAR 14, 2017 (See A.2)

Recommendation: Approve as submitted.

C.3. MINUTES - STUDY SESSION MEETING OF MAR 14, 2017 (See A.3)

Recommendation: Approve as submitted.

C.4. MINUTES - STUDY SESSION MEETING OF MAR 28, 2017 (See A.4)

Recommendation: Approve as submitted.

C.5. MINUTES - SPECIAL MEETING OF MAR 30, 2017 (See A.5)

Recommendation: Approve as submitted.

C.6. MINUTES - SPECIAL MEETING OF APR 11, 2017 (See A.6)

Recommendation: Approve as submitted.

C.7. MINUTES - SPECIAL MEETING OF JUN 13, 2017 (See A.7)

Recommendation: Approve as submitted.

C.8. MINUTES - SPECIAL MEETING OF JUN 16, 2017 (See A.8)

Recommendation: Approve as submitted.

D. CONSENT CALENDAR - BOARD OF LIBRARY TRUSTEES

- D.1. ORDINANCES - READING BY TITLE ONLY - THE MOTION TO ADOPT AN ORDINANCE LISTED ON THE CONSENT CALENDAR INCLUDES WAIVER OF FULL READING OF THE ORDINANCE.

Recommendation: Waive reading of all Ordinances.

- D.2. MINUTES - SPECIAL MEETING OF MAR 14, 2017 (See A.2)

Recommendation: Approve as submitted.

- D.3. MINUTES - STUDY SESSION MEETING OF MAR 14, 2017 (See A.3)

Recommendation: Approve as submitted.

- D.4. MINUTES - STUDY SESSION MEETING OF MAR 28, 2017 (See A.4)

Recommendation: Approve as submitted.

- D.5. MINUTES - SPECIAL MEETING OF MAR 30, 2017 (See A.5)

Recommendation: Approve as submitted.

- D.6. MINUTES - SPECIAL MEETING OF APR 11, 2017 (See A.6)

Recommendation: Approve as submitted.

- D.7. MINUTES - SPECIAL MEETING OF JUN 13, 2017 (See A.7)

Recommendation: Approve as submitted.

- D.8. MINUTES - SPECIAL MEETING OF JUN 16, 2017 (See A.8)

Recommendation: Approve as submitted.

E. PUBLIC HEARINGS

Questions or comments from the public on a Public Hearing matter are limited to five minutes per individual and must pertain to the subject under consideration.

Those wishing to speak should complete and submit a GOLDENROD speaker slip to the Sergeant-at-Arms.

E.1. PUBLIC HEARING FOR TWO NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM MAIL BALLOT PROCEEDINGS (Report of: Public Works)

Recommendations: That the City Council:

1. Conduct the Public Hearing and accept public testimony for the mail ballot proceedings for Moreno Valley Gateway and Brodiaea Industrial Center to approve the National Pollutant Discharge Elimination System (NPDES) maximum commercial/industrial regulatory rate to be applied to the property tax bill(s).
2. Direct the City Clerk to count the returned NPDES ballots.
3. Verify and accept the results of the mail ballot proceedings as maintained by the City Clerk on the Official Tally Sheet.
4. Receive and file the Official Tally Sheet with the City Clerk's office.
5. If approved, authorize and impose the NPDES maximum commercial/industrial regulatory rate to the Assessor's Parcel Numbers mentioned in this report.

F. ITEMS REMOVED FROM CONSENT CALENDARS FOR DISCUSSION OR SEPARATE ACTION

G. GENERAL BUSINESS

G.1. PROPOSED LEGISLATIVE ADVOCACY PLATFORM - 2018 (Report of: City Manager)

Recommendation:

1. Approve the proposed City Legislative Platform for 2018.

G.2. RESOLUTION AMENDING COUNCIL MEETING RULES OF PROCEDURE CONFLICT OF INTEREST SECTION 5.5.5 (Report of: City Attorney)

Recommendations: That the City Council:

Adopt A Resolution - which would delete subsections 5.5.5.4 (campaign contribution disclosure) and 5.5.5.5 (governmental entity employment disclosure) from the Rules of Procedure.

H. REPORTS

H.1. CITY COUNCIL REPORTS ON REGIONAL ACTIVITIES (Informational Oral Presentation - not for Council action)

March Joint Powers Commission (JPC)

Riverside County Habitat Conservation Agency (RCHCA)

Riverside County Transportation Commission (RCTC)

Riverside Transit Agency (RTA)

Western Riverside Council of Governments (WRCOG)

Western Riverside County Regional Conservation Authority (RCA)

School District/City Joint Task Force

Southern California Association of Governments (SCAG)

H.2. CITY MANAGER'S REPORT (Informational Oral Presentation - not for Council action)

H.3. CITY ATTORNEY'S REPORT (Informational Oral Presentation - not for Council action)

CLOSING COMMENTS AND/OR REPORTS OF THE CITY COUNCIL, COMMUNITY SERVICES DISTRICT, CITY AS SUCCESSOR AGENCY FOR THE COMMUNITY REDEVELOPMENT AGENCY, HOUSING AUTHORITY AND THE BOARD OF LIBRARY TRUSTEES.
ADJOURNMENT

PUBLIC INSPECTION

The contents of the agenda packet are available for public inspection on the City's website at www.moval.org and in the City Clerk's office at 14177 Frederick Street during normal business hours.

Any written information related to an open session agenda item that is known by the City to have been distributed to all or a majority of the City Council less than 72 hours prior to this meeting will be made available for public inspection on the City's website at www.moval.org and in the City Clerk's office at 14177 Frederick Street during normal business hours.

CERTIFICATION

I, Pat Jacquez-Nares, City Clerk of the City of Moreno Valley, California, certify that 72 hours prior to this Regular Meeting, the City Council Agenda was posted on the City's website at: www.moval.org and in the following three public places pursuant to City of Moreno Valley Resolution No. 2007-40:

City Hall, City of Moreno Valley
14177 Frederick Street

Moreno Valley Library
25480 Alessandro Boulevard

Moreno Valley Senior/Community Center
25075 Fir Avenue

Pat Jacquez-Nares, CMC & CERA
City Clerk

Date Posted: October 12, 2017

**MINUTES
CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
CITY AS SUCCESSOR AGENCY FOR THE
COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF MORENO VALLEY
MORENO VALLEY HOUSING AUTHORITY**

**STUDY SESSION – 6:00 PM
March 14, 2017**

CALL TO ORDER

The Joint Meeting of the City Council of the City of Moreno Valley, Moreno Valley Community Services District, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley, Moreno Valley Housing Authority and the Board of Library Trustees was called to order at 6:03 p.m. by Mayor Gutierrez in the Council Chamber located at 14177 Frederick Street, Moreno Valley, California.

Mayor Gutierrez announced that the City Council receives separate stipends for CSD meetings.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Frank Wright.

INVOCATION

Pastor Abel Cordero, Moreno Hills Seventh-Day Adventist Church

ROLL CALL

Council:	Dr. Yxstian A. Gutierrez	Mayor
	Victoria Baca	Mayor Pro Tem
	Jeffrey J. Giba	Council Member
	David Marquez	Council Member (arrived at 6:11 p.m.)

INTRODUCTIONS

Staff:	Michelle Dawson	City Manager
	Martin Koczanowicz	City Attorney
	Pat Jacquez-Nares	City Clerk
	Marshall Eyerman	Chief Financial Officer
	Thomas M. DeSantis	Assistant City Manager

Minutes Acceptance: Minutes of Mar 14, 2017 6:00 PM (CONSENT CALENDAR-CITY COUNCIL)

Joel Ontiveros
Abdul Ahmad

Police Chief
Fire Chief

PUBLIC COMMENTS ON MATTERS ON THE AGENDA UNDER THE JURISDICTION OF THE CITY COUNCIL

Mayor Gutierrez opened the public comments portion of the meeting for items listed on the agenda only, which were received from Rafael Brugueras, Jose Chavez, Jorge Quintero, Laura Banks, Tom Jerele, Sr., Louise Palomarez and Robert Perez.

A. SPECIAL ORDER OF BUSINESS

Item A.1 was heard after Item A.2.

- A.1. PUBLIC SAFETY BUDGET REVIEW (Report of: Financial & Management Services)

Chief Financial Officer Eyerman presented a PowerPoint presentation for the Public Safety Budget Review.

Item A.2 was taken out of order and heard before Item A-1

- A.2. IN DEPTH FISCAL REVIEW UPDATE (Report of: Financial & Management Services)

Peggy McBride provided a brief summary on the City's In Depth Fiscal Review.

- A.3. CITY COUNCIL COMMUNICATIONS

In response to Item A.1:

Mayor Gutierrez stated he was pleased with how the budget was divided into different areas.

The Chief Financial Officer Eyerman confirmed his attendance at the contract cities meeting to discuss public safety costs on March 29 with the Riverside County Sheriff. The initial indicators on the audit study would be discussed in April, but would not be a final result.

He also confirmed that staff had projected an eight percent increase in the current year budget. From the last two years budget, the City had a 7.46% increase from the county that was originally projected at ten percent. The cost savings have been programmed into the next two years budget. He also looked forward to the meeting on the 29th to determine what the actual percentage would be.

Fire Chief Ahmad confirmed that in addition to services already in place, through a triage process, they would be able to determine the level of emergency on a case by case basis. This process would allow us to make a decision on a two person squad (smaller truck) v. a three person engine company. This would help with response times and overall cost savings. Chief Financial Officer Eyerman added that the cost for a two person squad would be 1.1 to 1.2 million to operate, which included staffing.

In response to Item A.2:

Chief Financial Officer Eyerman confirmed that the issues had been examined following a review. Many of the issues mentioned in Ms. McBride's report were in the process of being completed or had already been completed. The recommendations have enhanced the overall operations.

ADJOURNMENT

There being no further business to come before the City Council, the Study Session was adjourned at 7:03 p.m.

Submitted by:

Pat Jacquez-Nares, CMC & CERA, City Clerk
 Secretary, Moreno Valley Community Services District
 Secretary, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley
 Secretary, Moreno Valley Housing Authority

Approved by:

Dr. Yxstian Gutierrez, Mayor
 President, Moreno Valley Community Services District
 Chairperson, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley
 Chairperson, Moreno Valley Housing Authority

**MINUTES
JOINT MEETING OF THE
CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
CITY AS SUCCESSOR AGENCY FOR THE
COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF MORENO VALLEY
MORENO VALLEY HOUSING AUTHORITY
BOARD OF LIBRARY TRUSTEES**

**SPECIAL MEETING – 6:30 PM
March 14, 2017**

CALL TO ORDER

The Joint Meeting of the City Council of the City of Moreno Valley, Moreno Valley Community Services District, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley, Moreno Valley Housing Authority and the Board of Library Trustees was called to order at 7:15 p.m. by Mayor Pro Tem Baca in the Council Chamber located at 14177 Frederick Street.

Mayor Pro Tem Baca announced that the City Council receives a separate stipend for CSD meetings.

ROLL CALL

Council:	Victoria Baca	Mayor Pro Tem
	Jeffrey J. Giba	Council Member
	David Marquez	Council Member

INTRODUCTIONS

Staff:	Martin Koczanowicz	City Attorney
	Pat Jacquez-Nares	City Clerk

PUBLIC COMMENTS ON MATTERS ON THE SPECIAL MEETING AGENDA UNDER THE JURISDICTION OF THE CITY COUNCIL

Sandra Murphy

1. Welcomed new Baliff, Kevin Brooks.
2. Supports Brian Lowell, David Lara-Tellez, Rafael Brugueras and Robert Harris.

Sean Fortine

1. Mayor Gutierrez' absence.
2. Copies of applications are not readable; not fully transparent.

Minutes Acceptance: Minutes of Mar 14, 2017 6:30 PM (CONSENT CALENDAR-CITY COUNCIL)

Tom Jerele, Sr.

1. Expressed his concern with the loss of deliberation and with this new way of appointing.
2. Alternates only get paid if they attend a meeting; they should get paid even if they do not attend, but the Planning Commissioners should get paid more.

Kathleen Dale

1. Thanked Council Member Marquez for the efforts made in getting the interviews put together.
2. Expressed her concern over the Ordinance approved at the last meeting.
3. Mayor Gutierrez not participating in these interviews.

Rafael Brugueras

1. The interviews today were established in 1946; the purpose of a Planning Commission is to promote safety, health and general welfare.
2. Planning Commission needs growth and change.

Louise Palomarez

1. Believed all of the candidates want the best for the City.

Lindsay Robinson

1. Thanked the Council for being here; expressed the importance of conducting these interviews.
2. Vote for the best possible and qualified candidates.

A. BUSINESSA.1. CITY COUNCIL INTERVIEWS OF PLANNING COMMISSION APPLICANTS
(Report of: City Clerk)**Recommendation:**

1. Interview Planning Commission Applicants.

Mayor Pro Tem Baca, Council Member Giba and Council Member Marquez presented their interview questions to each of the candidates; Ray Baker, Rafael Brugueras, Erlan Gonzalez, Glen Fitzgerald Jacobs and Brian Lowell.

The candidates listed here were not interviewed; Candidate Robert Harris (absent), Candidate Rebekah Vereen (left) and Candidate David Lara-Tellez (prior commitment).

Council Member Marquez left the dais at 8:13 p.m.

City Attorney Koczanowicz requested that Mayor Pro Tem Baca recess the meeting until Council Member Marquez returned to the dais.

Mayor Pro Tem Baca recessed the meeting at 8:14 p.m.

Council Member Marquez left the meeting at 8:17 p.m.

ADJOURNMENT

Mayor Pro Tem Baca adjourned the Special Meeting at 8:17 p.m. due to a Lack of Quorum.

Submitted by:

Pat Jacquez-Nares, CMC & CERA, City Clerk
 Secretary, Moreno Valley Community Services District
 Secretary, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley
 Secretary, Moreno Valley Housing Authority
 Secretary, Board of Library Trustees

Approved by:

Dr. Yxstian Gutierrez, Mayor
 President, Moreno Valley Community Services District
 Chairperson, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley
 Chairperson, Moreno Valley Housing Authority
 Chairperson, Board of Library Trustees

Please note: A Townhall meeting began at 8:17 p.m. with Mayor Pro Tem Baca and Council Member Giba present. They heard an additional response from Brian Lowell and addressed their interview questions to Lori Nickel and Carla Thornton.

The Townhall meeting was adjourned at 8:33 p.m.

**MINUTES
CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
CITY AS SUCCESSOR AGENCY FOR THE
COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF MORENO VALLEY
MORENO VALLEY HOUSING AUTHORITY**

**STUDY SESSION – 6:00 PM
March 28, 2017**

CALL TO ORDER

The Joint Meeting of the City Council of the City of Moreno Valley, Moreno Valley Community Services District, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley, Moreno Valley Housing Authority and the Board of Library Trustees was called to order at 6:03 p.m. by Mayor Gutierrez in the Council Chamber located at 14177 Frederick Street, Moreno Valley, California.

Mayor Gutierrez announced that the City Council receives a separate stipend for CSD meetings.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Rafael Brugueras.

INVOCATION

Norberto Perez, Man of Church (Oasis Church location on Alessandro)

ROLL CALL

Council:	Dr. Yxstian A. Gutierrez	Mayor
	Victoria Baca	Mayor Pro Tem
	David Marquez	Council Member
Absent:	Jeffrey J. Giba	Council Member

INTRODUCTIONS

Staff:	Michelle Dawson	City Manager
	Martin Koczanowicz	City Attorney
	Pat Jacquez-Nares	City Clerk
	Marshall Eyerman	Chief Financial Officer
	Ahmad Ansari	Public Works Director/City Engineer
	Joel Ontiveros	Police Chief

Minutes Acceptance: Minutes of Mar 28, 2017 6:00 PM (CONSENT CALENDAR-CITY COUNCIL)

Abdul Ahmad
Betsy Adams

Fire Chief
Interim Parks & Community Services
Director

Mike Lee
Allen Brock

Economic Development Director
Community Development Director

PUBLIC COMMENTS ON MATTERS ON THE AGENDA ONLY

Mayor Gutierrez opened the public comments portion of the meeting for items listed on the agenda only, which were received from Rafael Brugueras, Louise Palomarez and Robert Perez.

Public Works Director/CityEngineer Ansari explained the City's process and financing for flood control.

A. STUDY SESSION ITEMS

A.1. DISCUSS PROPOSED FUNDING LEVELS BY MAJOR PROGRAMS (Report of: Financial & Management Services)

Chief Financial Officer Eyerman presented a PowerPoint presentation for the Proposed Funding Levels by Major Programs which also included the Strategic Priorities adopted by City Council and announced the two Budget Townhall meetings were scheduled for Saturday, April 12, and Tuesday, April 15.

A.2. CITY COUNCIL REQUESTS AND COMMUNICATIONS

Questions from Council Member Marquez and Mayor Pro Tem Baca, included clarification on the Administrative Lieutenant, who currently reports directly to the Chief of Police; the Public Safety Contract Administrator would be a City employee reporting directly to the City Manager's office and would include both police and fire; there was encouragement to promote this new position within City Hall, which was acknowledged by City Manager Dawson.

Council Member Marquez inquired on the volunteers in Code Enforcement. City Manager Dawson deferred to the Community Development Director Brock, who stated the volunteers were currently at seven and depending on the volunteer program; the bodies could be increased by five. He added that the Emergency Operations Center, who maintains the volunteer program applications, currently had four to five applications on file waiting to be placed.

Mayor Gutierrez expressed the residents' concerns to have the library services expanded. He looked forward to the additional revenues coming from new hotels and economic development.

In addition Mayor Gutierrez stated the residents have overwhelmingly expressed they want the slurry seal program and the repairing of our roads. He mentioned the Gas Tax fluctuations and would like to see support from Council on Senate Bill 1 and Assembly Bill 1. This would help the City receive additional funding for transportation needs.

City Manager Dawson provided some updates on the legislature regarding these bills, stating the bipartisan support and that the City was cautiously optimistic.

Council Member Marquez requested an update on the two new hotels coming to the City. Economic Development Director Lee responded that the plans were scheduled to be approved in April and grading would begin with both hotels at the same time.

He also commented on the TOT (hotel tax), which Chief Financial Officer Eyerman stated was a general tax measure, which meant the revenue received wasn't restricted on any one specific purpose. The City Council would determine how those dollars were spent.

Mayor Pro Team Baca commented on the great news that the City of Moreno Valley was third in the Nation and fiscally solvent. She was pleased with the Strategic Plan and the six month updates. She expressed the importance of Public Safety and was happy that the new squad truck would be purchased and housed in District 1. Having more patrols visible throughout the City would be better. Congratulated staff on a good job with their presentation and looked forward to being second in the Nation next year.

Mayor Gutierrez looked forward to putting more boots on the ground once the budget was adopted in May. He requested that we have a resolution/MOU commitment to the crossing guards having a two year contract instead of a one year; Mayor Pro Tem Baca seconded the request and was also supported by Council Member Marquez. The crossing guard program is 100 percent funded by the City. Mayor Pro Tem Baca would like to see recognition for the department and for the crossing guards. Council Member Marquez added that he and Mayor Pro Tem Baca would be meeting with the Joint Task Force on April 18th and looked forward to discussing a solution with them. He thanked Chief Financial Officer Eyerman for his presentation and the rest of staff for their hard work.

Mayor Gutierrez thanked Chief Financial Officer Eyerman and the rest of staff for their hard work on the proposal. He also thanked Mayor Pro Tem Baca and Council Member Marquez for their leadership on the Public Safety Sub-Committee and for doing a great job.

ADJOURNMENT

There being no further business to come before the City Council, the Study Session was adjourned at 7:10 p.m.

Submitted by:

Pat Jacquez-Nares, CMC & CERA, City Clerk
 Secretary, Moreno Valley Community Services District
 Secretary, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley
 Secretary, Moreno Valley Housing Authority

Approved by:

Dr. Yxstian Gutierrez, Mayor
 President, Moreno Valley Community Services District
 Chairperson, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley
 Chairperson, Moreno Valley Housing Authority

**MINUTES
JOINT MEETING OF THE
CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
CITY AS SUCCESSOR AGENCY FOR THE
COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF MORENO VALLEY
MORENO VALLEY HOUSING AUTHORITY
BOARD OF LIBRARY TRUSTEES**

**SPECIAL MEETING – 5:30 PM
March 30, 2017**

CALL TO ORDER

The Special Meeting of the City Council of the City of Moreno Valley, Moreno Valley Community Services District, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley, Moreno Valley Housing Authority and the Board of Library Trustees was called to order at 5:34 p.m. by Mayor Gutierrez in the Council Chamber located at 14177 Frederick Street, Moreno Valley, California.

Mayor Gutierrez announced that the City Council receives a separate stipend for CSD meetings.

ROLL CALL

Council:	Dr. Yxstian A. Gutierrez	Mayor
	Victoria Baca	Mayor Pro Tem
	Jeffrey J. Giba	Council Member
	David Marquez	Council Member

INTRODUCTIONS

Staff:	Michelle Dawson	City Manager
	Martin Koczanowicz	City Attorney
	Pat Jacquez-Nares	City Clerk

PUBLIC COMMENTS ON MATTERS ON THE AGENDA ONLY

Lindsay Robinson

1. Good leadership
2. Expressed support for Ray Baker, Brian Lowell, Erlan Gonzalez and Lori Nickel.

Minutes Acceptance: Minutes of Mar 30, 2017 5:30 PM (CONSENT CALENDAR-CITY COUNCIL)

Debra Craig

1. Doing the right thing for the people.
2. Unhappy with the decision to extend the terms.

Frank Wright

1. Supported the Mayor's decision to extend the terms.
2. Expressed his support for Brian Lowell.

Donovan Saadiq

1. Disagreed with the Mayor's decision to extend the terms.
2. Stop supporting other candidates.

Mayor Gutierrez addressed the public as a reminder that he did make his appointments to the Planning Commission at the previous meeting, although his appointments were denied.

Rafael Brugueras

1. Supported the Mayor's decision to extend the terms.

Council Member Giba addressed previous speaker and reminded the public he did support approving one of the Mayor's appointments and he stated the Mayor could extend the terms.

Louise Palomarez

1. People continue to complain.
2. Supported the Mayor's decision to extend the terms.

Hector Diaz

1. Disagreed with the Mayor's decision to extend the terms.
2. Council should move on to appoint Planning Commissioners.

A. BUSINESS

- A.1. Consideration of extension of expiring terms of Planning Commissioners till August 31, 2017. (Report of: City Attorney)

City Attorney Koczanowicz presented his staff report on the item.

Recommendation: That the City Council:

1. By motion extend the terms of the three sitting Planning Commissioners and two Alternates till August 31st 2017, or till new appointments are made by the Mayor and approved by City Council, whichever comes first.

After Council questions and deliberations, there was no consensus to extend the terms as presented.

A.2. CITY COUNCIL REQUESTS AND COMMUNICATIONS

ADJOURNMENT

There being no further business to come before the City Council, the Special Meeting was adjourned at 6:09 p.m.

Submitted by:

Pat Jacquez-Nares, CMC & CERA, City Clerk
 Secretary, Moreno Valley Community Services District
 Secretary, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley
 Secretary, Moreno Valley Housing Authority
 Secretary, Board of Library Trustees

Approved by:

Dr. Yxstian Gutierrez, Mayor
 President, Moreno Valley Community Services District
 Chairperson, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley
 Chairperson, Moreno Valley Housing Authority
 Chairperson, Board of Library Trustees

**MINUTES
CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
CITY AS SUCCESSOR AGENCY FOR THE
COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF MORENO VALLEY
MORENO VALLEY HOUSING AUTHORITY**

**STUDY SESSION – 6:00 PM
April 11, 2017**

CALL TO ORDER

The Joint Meeting of the City Council of the City of Moreno Valley, Moreno Valley Community Services District, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley, Moreno Valley Housing Authority and the Board of Library Trustees was called to order at 6:01 p.m. by Mayor Gutierrez in the Council Chamber located at 14177 Frederick Street, Moreno Valley, California.

Mayor Gutierrez announced that the City Council receives a separate stipend for CSD meetings.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Gutierrez.

ROLL CALL

Council:	Dr. Yxstian A. Gutierrez	Mayor
	Victoria Baca	Mayor Pro Tem
	Jeffrey J. Giba	Council Member
	David Marquez	Council Member

INTRODUCTIONS

Staff:	Martin Koczanowicz	City Attorney
	Pat Jacquez-Nares	City Clerk
	Marshall Eyerman	Chief Financial Officer
	Thomas M. DeSantis	Assistant City Manager
	Joel Ontiveros	Police Chief

PUBLIC COMMENTS ON MATTERS ON THE AGENDA ONLY

Mayor Gutierrez opened the public comments portion of the meetings for items listed on the agenda only, which were received from Roy Bleckert, Pete, Rafael Brugueras and Ulises Cabrera.

Minutes Acceptance: Minutes of Apr 11, 2017 6:00 PM (CONSENT CALENDAR-CITY COUNCIL)

A. BUSINESS

- A.1. Police Services Joint Powers Authority Feasibility Study: Presentation by Matrix Consulting Group (Report of: City Manager)

Recommendation:

1. Receive a report on a Police Services Joint Powers Authority Feasibility Study from Matrix Consulting Group and discuss next steps.

Assistant City Manager DeSantis addressed the City Council and the public regarding the speaker comments received. The speakers referenced the crime had risen, which was not correct. The crime statistics show the crime decreasing year after year. The purpose of this Study Session was to discuss the rising annual costs. The contract cities were informed recently that the Riverside County Sheriff's Department would increase in the current fiscal year more than 5% and more than 10% beginning July 1 for the next fiscal year.

Ian Brady of the Matrix Consulting Firm presented a PowerPoint presentation on the JPA Feasibility Study.

Mayor Gutierrez asked for clarification on the total savings for Moreno Valley, as it was mentioned during the presentation that a 14 million dollar savings and the list for Moreno Valley showed differently. It was confirmed that the 14 million dollar savings was overall for all nine cities.

Additionally, the sworn contingency of the JPA would be Tier 2 for CalPers. The study included the amount of patrol hours and was confirmed to be slightly more service hours for all nine cities.

Council Member Marquez requested clarification on the Riverside Sheriff's Department for certain activities be repeated; civil process, warrants and jails. The consultant responded that these would be additional costs, but were included in the analysis shown during the presentation.

He also inquired as to the liabilities that the cities would encounter. The costs were covered in their assumptions, which included insurance, attorney fees, reserves and workers compensation.

Council Member Giba expressed an interest to hold workshops with other cities. Clarification was provided on the constructing of the JPA and any other models currently used. The consultant confirmed that the analysis was based on data received from the Riverside Sheriff's Department and there were no other entities surveyed. Council Member Giba expressed an interest in having more meetings rather than quarterly meetings and asked that the

City Manager look at other models. It was also mentioned that CalPers was not a State Law requirement.

Assistant City Manager DeSantis responded that there were a number of City Manager's brought together to discuss CalPers and that it could be a different kind of retirement system, which may be more cost effective. The agency would have the ability to have more control. Another benefit to being "non-pers", we would have an incentive to use other recently retired captains, lieutenants and sergeants from other police agencies to get the JPA off and running over a two-year period. There would be no work hour restrictions when not using CalPers.

The consultant confirmed that the crime data being used only included 2013/2014 data and the crime data had changed dramatically since then.

Council Member Giba received clarification from the consultant, that the dedicated positions would be add-ons "a la cart" and would be an additional cost.

Assistant City Manager DeSantis confirmed that it would be the employee's decision whether a union would be implemented.

Council Member Marquez inquired on the start-up costs. What would the staff burden be; would there be additional employees or how would it affect our City. Assistant City Manager DeSantis responded that the JPA would be the new contract agency, a centralized administration and the JPA would handle all of the functions; the City Council would handle the policy decisions relating to the JPA.

Council Member Giba stated that City Manager Dawson, Chief Financial Officer Eyerman and he were the ones who decided to look into this back in 2015. He encouraged everyone to look at the numbers.

Mayor Pro Tem Baca inquired on the timeline for the Peer Review, which Assistant City Manager DeSantis responded it was best to get it right than to do quickly. They would be discussing with the other nine cities to determine how quickly they would want to move forward.

A.2. CITY COUNCIL REQUESTS AND COMMUNICATIONS

There was a consensus by Council to discuss the Planning Commission alternates at the next City Council meeting in May.

ADJOURNMENT

There being no further business to come before the City Council, the Study Session was adjourned at 7:18 p.m.

Submitted by:

Pat Jacquez-Nares, CMC & CERA, City Clerk
 Secretary, Moreno Valley Community Services District
 Secretary, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley
 Secretary, Moreno Valley Housing Authority

Approved by:

Dr. Yxstian Gutierrez, Mayor
 President, Moreno Valley Community Services District
 Chairperson, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley
 Chairperson, Moreno Valley Housing Authority

**MINUTES
CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
CITY AS SUCCESSOR AGENCY FOR THE
COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF MORENO VALLEY
MORENO VALLEY HOUSING AUTHORITY**

**STUDY SESSION – 6:00 PM
June 13, 2017**

CALL TO ORDER

The Study Session of the City Council of the City of Moreno Valley, Moreno Valley Community Services District, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley, Moreno Valley Housing Authority and the Board of Library Trustees was called to order at 6:01 p.m. by Mayor Gutierrez in the Council Chamber located at 14177 Frederick Street, Moreno Valley, California.

Mayor Gutierrez announced that the City Council receives a separate stipend for CSD meetings.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Gutierrez.

ROLL CALL

Council:	Dr. Yxstian A. Gutierrez	Mayor
	Victoria Baca	Mayor Pro Tem
	Jeffrey J. Giba	Council Member
	David Marquez	Council Member

INTRODUCTIONS

Staff:	Michelle Dawson	City Manager
	Martin Koczanowicz	City Attorney
	Pat Jacquez-Nares	City Clerk
	Marshall Eyerman	Chief Financial Officer
	Thomas M. DeSantis	Assistant City Manager
	Ahmad Ansari	Public Works Director/City Engineer
	Joel Ontiveros	Police Chief
	Allen Brock	Community Development Director

Minutes Acceptance: Minutes of Jun 13, 2017 6:00 PM (CONSENT CALENDAR-CITY COUNCIL)

PUBLIC COMMENTS ON MATTERS ON THE AGENDA ONLY

Mayor Gutierrez opened the public comments portion of the meeting for the items listed on the agenda only; however, Mayor made an exception for this meeting that the speakers would be able to speak on any matters on or off the agenda, which were received from Pete (project coming on Hubbard/flood control) and Roy Bleckert (scheduling of meetings and scheduling conflicts).

A. BUSINESS

- A.1. EMWD Update presented by General Manager Paul Jones (Report of: City Clerk)

Dave Slawson, Elected Director on the Eastern Municipal Water District Board, who introduced General Manager Paul Jones for his presentation to the City Council.

It was confirmed by Mr. Jones that the lakes here in Riverside County have increased with the rainfall this year. The Sierras had an approximate 200 percent increase in water levels which help Southern California.

- A.2. MVU ROADMAP (Report of: Financial & Management Services)

Electric Utility Division Manager Olko presented a PowerPoint presentation on the MVU Roadmap.

It was confirmed by Electric Utility Division Manager Olko that the Power Supply and production would become part of the MVU's portfolio. It was also confirm that the MVU's rates were the same as Southern California Edison rates. Our solar and energy efficiency programs meet and some exceed Southern California Edison.

Mayor Pro Tem Baca commended Electric Utility Division Manager Olko for her presentation. She also made an announcement on the vacancies for the Utilities Commission and encouraged those interested to apply.

- A.3. INITIAL ASSESSMENT ON CITYWIDE COMMERCIAL VEHICLE PARKING (Report of: Public Works)

Transportation Division Manager/City Traffic Engineer Lewis presented a PowerPoint presentation on the Initial Assessment on Citywide Commercial Vehicle Parking.

Mayor Gutierrez mentioned the safety issues that residents have shared with him from those parking in the Heacock area.

Mr. Lewis stated there was paid parking in the City of Perris. They were also working with the Joint Powers Authority (JPA) to develop a parking area.

Recommendation:

1. Receive presentation and provide direction to staff.

There was Council consensus to keep the Commercial Vehicle Parking inventory as is; to provide consideration for the residents that are truck owner operators within the City; consideration of Globe Street area and to work with the JPA.

There was no consensus on eliminating the Heacock area.

A.4. CITY COUNCIL REQUESTS AND COMMUNICATIONS

Council Member Marquez stated concerns with the fireworks in the city, the safety of fireworks, raising fines and requested a second look at increasing fines. Council Member Giba second his request.

ADJOURNMENT

There being no further business to come before the City Council, the Study Session was adjourned at 7:04 p.m.

Submitted by:

Pat Jacquez-Nares, CMC & CERA, City Clerk
 Secretary, Moreno Valley Community Services District
 Secretary, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley
 Secretary, Moreno Valley Housing Authority

Approved by:

Dr. Yxstian Gutierrez, Mayor
 President, Moreno Valley Community Services District
 Chairperson, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley
 Chairperson, Moreno Valley Housing Authority

**MINUTES
JOINT MEETING OF THE
CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
CITY AS SUCCESSOR AGENCY FOR THE
COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF MORENO VALLEY
MORENO VALLEY HOUSING AUTHORITY
BOARD OF LIBRARY TRUSTEES**

**SPECIAL MEETING (CEREMONIAL SWEARING-IN) – 4:00 PM
June 16, 2017**

CALL TO ORDER

The Joint Meeting of the City Council of the City of Moreno Valley, Moreno Valley Community Services District, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley, Moreno Valley Housing Authority and the Board of Library Trustees was called to order at 4:15 p.m. by Mayor Gutierrez in the Council Chamber located at 14177 Frederick Street, Moreno Valley, California.

Mayor Gutierrez announced that the City Council receives a separate stipend for CSD meetings.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Ashley Coggins, City of Moreno Valley resident.

INVOCATION

Dr. Steve Overton, Pastor, Moreno Valley Christian Chapel Foursquare Church

ROLL CALL

Council:	Dr. Yxstian A. Gutierrez	Mayor
	Victoria Baca	Mayor Pro Tem
	Ulises Cabrera	Council Member
Absent:	Jeffrey J. Giba	Council Member
	David Marquez	Council Member

Minutes Acceptance: Minutes of Jun 16, 2017 4:00 PM (CONSENT CALENDAR-CITY COUNCIL)

INTRODUCTIONS

Staff:	Michelle Dawson	City Manager
	Martin Koczanowicz	City Attorney
	Pat Jacquez-Nares	City Clerk
	Marshall Eyerman	Chief Financial Officer
	Abdul Ahmad	Fire Chief
	Betsy Adams	Interim Parks & Community Services Director
	Mike Lee	Economic Development Director
	Allen Brock	Community Development Director

PUBLIC COMMENTS ON MATTERS ON THE AGENDA ONLY

Mayor Gutierrez opened the public comments portion of the meeting for the items listed on the agenda only, which were received from the following members of the public who congratulated Council Member Cabrera:

5th District Supervisor Marion Ashley; Jerry Pineda (read scripture) (Spirit Lift); Martin Cabrera, Jr. (Congratulated his brother, Council Member Cabrera) (Moreno Valley's future and making changes) (Spirit Lift); Jorge Quintero (proud of our Latin Community); Roy Bleckert (Governing our City, unity); Jesus Holguin, on behalf of the entire Moreno Valley Unified School District Board of Education and the MVUSD (assistance was offered); Leo Gonzalez; Jeffrey Clayton (career leadership) (community involvement); Azley Rivera; Summer Dominguez, Miss California; Porfirio Siordia, Jr.; Justin Corbett (Be the example for others) (unity); JoAnn Stephan, a District 2 resident (community involvement); Joe Rueda (Thanked Mayor Pro Tem Baca and Mayor Gutierrez) (inspiration to the youth); Oscar Valdepena, on behalf of the Moreno Valley Chamber of Commerce (our youth and business community); Elliott Overton (very proud) (good heart to be a leader, eager to learn, wisdom, goals for a new library); Louise Palomarez (thanked everyone who spoke at the podium, very proud); Martin Cabrera, Sr. (Thanked God) (Congratulated his son, Council Member Cabrera) (words of encouragement) (make the community proud of your work) (thanked everyone in the audience) and Robert Harris (pleasure to work with Council Member Cabrera).

A. SPECIAL ORDER OF BUSINESS

- A.1. APPROVAL OF RESOLUTION NO. 2017-30 RECITING THE FACT OF THE SPECIAL MUNICIPAL ELECTION HELD ON JUNE 6, 2017, DECLARING AND CERTIFYING THE OFFICIAL RESULTS AND SUCH OTHER MATTERS AS PROVIDED BY LAW (Report of: City Clerk)

Recommendation: That the City Council:

1. Adopt Resolution No. 2017-30, a Resolution of the City Council of the City of Moreno Valley, California, reciting the fact of the Special Municipal Election held on June 6, 2017, declaring and certifying the results and such other matters as provided by law.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Victoria Baca, Mayor Pro Tem
SECONDER:	Dr. Yxstian A. Gutierrez, Mayor
AYES:	Ulises Cabrera, Dr. Yxstian A. Gutierrez, Victoria Baca
ABSENT:	Jeffrey J. Giba, David Marquez

Comments were received from Council Member Ulises Cabrera.

Council Member Cabrera thanked God, his family, especially his parents, Martin Cabrera and Angelina Peña, and everyone in the audience for attending. He thanked Mayor Gutierrez and Mayor Pro Tem Baca for their continued support through his campaign and looked forward to working alongside them and learning from them.

Council Member Cabrera shared three priorities that he heard while campaigning for office; public safety, mailbox theft and education. It's his priority to bring the City in unison. He expressed his appreciation for staff, Chief Ahmad and Chief Ontiveros. He looked forward to working with the school board, Jesus Holguin and Dr. Kedziora, to help with our youth by teaching them the right values. Additionally, he plans to work with the pastors and churches which all go hand in hand with our education, and to bring jobs to the City of Moreno Valley.

He thanked everyone who voted for him and thanked God for this opportunity.

B. RECOGNITION OF NEWLY ELECTED CITY OFFICIALS BY THE CITY COUNCIL AND/OR OTHER PUBLIC OFFICERS

Mayor Pro Tem Baca thanked everyone who came to celebrate. She thanked the volunteers for all of their help during the campaign. She also thanked everyone who donated and supported Ulises Cabrera, especially the business community. The volunteers believe him, the people behind him have the wisdom and he wants to learn as well as work hard. He always gives thanks to God and family first, which is a great quality.

Mayor Gutierrez thanked everyone who came out today to congratulate Ulises Cabrera on his victory for District 4 Council seat. Mayor stated he knew early on that he was the right person for the job. He has values, energy, the youth behind him; he serves as inspiration and model to the young people. He believes in the Strategic Plan and moving the City forward. He has a heart for the City and is very humble.

Mayor Gutierrez presented Mr. Cabrera with a gift that was given to him by City Manager Dawson when he became a Council Member, which was a book "Now What? a Practical Guide for Elected Officials". Mayor Gutierrez stated this book helped a lot and now would help Ulises Cabrera.

ADJOURN TO RECEPTION

There being no further business to come before the City Council, the Special Meeting was adjourned to the Foyer for light refreshment at 5:19 p.m.

Submitted by:

Pat Jacquez-Nares, CMC & CERA, City Clerk
 Secretary, Moreno Valley Community Services District
 Secretary, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley
 Secretary, Moreno Valley Housing Authority
 Secretary, Board of Library Trustees

Approved by:

Dr. Yxstian Gutierrez, Mayor
 President, Moreno Valley Community Services District
 Chairperson, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley
 Chairperson, Moreno Valley Housing Authority
 Chairperson, Board of Library Trustees



Report to City Council

TO: Mayor and City Council

FROM: Geriann Kingslan, Acting Human Resources Director

AGENDA DATE: October 17, 2017

TITLE: LIST OF PERSONNEL CHANGES

RECOMMENDED ACTION

Recommendation:

1. Ratify the list of personnel changes as described.

DISCUSSION

The attached list of personnel changes scheduled since the last City Council meeting are presented for City Council ratification.

Staffing of City positions ensures assignment of highly qualified and trained personnel to achieve Momentum MoVal priorities, objectives and initiatives.

FISCAL IMPACT

All position changes are consistent with appropriations previously approved by the City Council.

PREPARATION OF STAFF REPORT

Prepared By:
Denise Hansen
Executive Assistant

Department Head Approval:
Geriann Kingslan
Acting Human Resources Director

CITY COUNCIL GOALS

None

CITY COUNCIL STRATEGIC PRIORITIES

- 1. Economic Development
- 2. Public Safety
- 3. Library
- 4. Infrastructure
- 5. Beautification, Community Engagement, and Quality of Life
- 6. Youth Programs

ATTACHMENTS

- 1. Personnel Changes 10.17.17

APPROVALS

Budget Officer Approval	<u>✓ Approved</u>	10/05/17 10:07 AM
City Attorney Approval	<u>✓ Approved</u>	10/05/17 9:33 AM
City Manager Approval	<u>✓ Approved</u>	10/05/17 11:17 AM

**City of Moreno Valley
Personnel Changes
October 17, 2017**

New Hires

~~Andrea Olsen, Payroll Supervisor
Human Resources Department~~

Promotions

None

Transfers

None

Separations

Cathy Parada, Executive Assistant II
City Manager's Office

Dallas Manlunas, Vehicle/Equipment Technician
Public Works Department/Maintenance & Operations Division

Attachment: Personnel Changes 10.17.17 [Revision 3] (2825 : LIST OF PERSONNEL CHANGES)



Report to City Council

TO: Mayor and City Council

FROM: Rick C. Hartmann, Acting Public Works Director

AGENDA DATE: October 17, 2017

TITLE: PURSUANT TO A LANDOWNER PETITION, ANNEX THREE PARCELS INTO COMMUNITY FACILITIES DISTRICT NO. 2014-01 (MAINTENANCE SERVICES) - AS AMENDMENT NO. 24

RECOMMENDED ACTION

Recommendation:

1. Acting as the legislative body of Community Facilities District No. 2014-01 (Maintenance Services), adopt Resolution No. 2017-___, a Resolution of the City Council of the City of Moreno Valley, California, ordering the annexation of territory to City of Moreno Valley Community Facilities District No. 2014-01 (Maintenance Services) and approving the amended map for said District.

SUMMARY

Approval of the proposed resolution will certify annexation of three parcels into Community Facilities District (CFD) No. 2014-01 (Maintenance Services) ("District"). This action impacts one property owner, not the general citizens or taxpayers of the City.

The City requires property owners of new development projects to mitigate the cost of certain impacts created by the proposed development (i.e. the cost of operation and maintenance of public landscaping and/or street lights). As a condition of approval, the property owners are required to provide an ongoing funding source to maintain those improvements. The City created CFD No. 2014-01 to provide the development community with a financing mechanism to assist in satisfying the requirement. After a property owner elects to annex their property into the District and the City Council approves the annexation, the special tax can be levied on the annual property tax bill(s) of the annexed parcel(s). Revenue generated by the District provides a funding source to operate and maintain only those improvements within the District.

As a condition of approval of its 39 multi-family residential unit project, OM MacArthur LLC (“Property Owner”) is required to provide a funding source for the maintenance and operation of public improvements (street lighting services) and has elected to annex the parcel(s) of their project into the District. The Property Owner submitted a Landowner Petition approving the annexation. The City Clerk has confirmed the petition is valid.

DISCUSSION

District Formation

The District was formed by adoption of Resolution No. 2014-25 to provide an alternative financing tool for the development community. It provides a mechanism to fund the operation and maintenance of street lighting services and maintenance of public landscaping. After a landowner approves annexation of their property into the District and the City Council approves the annexation, the City is authorized to levy a special tax onto the annual property tax bill(s). Residential Tract 31618 (southwest corner of Moreno Beach Dr. and Bay Ave.) formed the original boundaries of the District. Since formation of the District, 23 additional landowners have authorized annexation of their properties into the District.

The Rate and Method of Apportionment of Special Tax (RMA) for the District describes the different special tax rate areas, services provided, and the formula to calculate the special tax rate for each of the tax rate areas. Several special tax rate layers were created to accommodate a variety of scenarios to ensure costs are fairly shared between property owners. For example, there is a tax rate layer for “single-family residential street lighting” and one for “street lighting for property other than single-family residential” (e.g. commercial, industrial, or multi-family projects). Different tax rate layers are needed for street lighting because the spacing and size/type of lights differ based on the type of development. Likewise, there are several tax rate areas for maintenance of public landscaping. A property owner’s proportionate share of landscape maintenance costs will vary depending upon the total square footage of landscaping to be maintained for that development and the number of properties sharing in the cost.

Annexation to the District

On February 10, 2015, the City Council adopted Ordinance No. 889, which designated the entire territory of the City as a future annexation area for the District. Adoption of the Ordinance provides a simplified process for the development community to annex into the District. Annexations can occur without an additional public hearing as long as the annexing landowner provides unanimous consent. Once annexed, parcels are subject to the annual special tax to fund the service(s) they are receiving.

The Property Owner is approved to develop a 39 multi-family residential unit project on Hemlock Avenue, west of Heacock Street. As a condition of approval, the project is required to provide an ongoing funding source for maintenance of street lights installed

on public streets as part of the development project. Information for the parcels under development (or the “Subject Property”) is shown in the table below:

Property Owner/Project	Assessor’s Parcel Number(s)	Location	Amendment No.
OM MacArthur LLC PA14-0027 39 multi-family residential units	292-181-001 292-181-002 292-211-001	Northside of Hemlock Ave., west of Heacock St.	24

The Property Owner has two options to satisfy the condition of approval:

- 1) Submit a Landowner Petition approving annexation of the Subject Property into the District. Approval of the petition and special tax rate allows the City to annually levy the special tax on the property tax bill(s) of the Subject Property. This option is only available if there are fewer than 12 registered voters living within the proposed annexation area. The Office of the Riverside County Registrar of Voters confirmed there were no registered voters residing at the Subject Property allowing for a special election of the landowner to be conducted; or
- 2) Establish a homeowner or property owner association to provide the ongoing maintenance and operation of the improvements.

The Property Owner elected to annex the Subject Property into CFD No. 2014-01 and have the special tax applied to the annual property tax bill. The City Clerk received and reviewed the Property Owner’s Landowner Petition and confirmed the Property Owner unanimously approved the annexation of the Subject Property into the District (Attachment 3). Adoption of the attached resolution (Attachment 1) adds the Subject Property to the tax rate area(s) identified in the table in the Fiscal Impact section of this report and directs the recordation of the boundary map (Attachment 2) and amended notice of special tax lien for Amendment No. 24.

Successful completion of the annexation process satisfies the project’s condition of approval to provide a funding source for the operation and maintenance of street lighting on public streets.

ALTERNATIVES

1. Adopt the proposed resolution. *Staff recommends this alternative as it will annex the Subject Property into CFD No. 2014-01 at the request of the Property Owner and satisfies the condition of approval for the proposed development.*
2. Do not adopt the proposed resolution. *Staff does not recommend this alternative as it is contrary to the Property Owner’s request, will not satisfy the condition of approval, and may delay development of the project.*
3. Do not adopt the proposed resolution but rather continue the item to a future City Council meeting. *Staff does not recommend this alternative as it will delay the*

Property Owner from satisfying the condition of approval and may delay development of the project.

FISCAL IMPACT

Revenue received from the special tax is restricted and can only be used to fund the services for each tax rate area. If the revenue received from the maximum special tax will exceed what is necessary to fund the services within each tax rate area, a lower amount will be applied to the property tax bills for all properties within the affected tax rate area. The special tax can only be applied to a property tax bill of a parcel wherein the property owner has previously provided approval. The maximum estimated special tax revenue which can be generated from this project is detailed below:

Property Owner	Service/ Tax Rate Area	Front Linear Footage ¹	FY 2017/18 Maximum Special Tax	Estimated FY 2017/18 Maximum Special Tax for the Project ²
OM MacArthur LLC	Street Lighting for Property Other than Single-Family Residential, SL-02	231	\$3.75/linear foot	\$866.25

¹ Based on proposed parcel configuration. The special tax calculation will be based on final development of the project.

² The special tax applied to the property tax bill will be based on the needs of the District, which can be lower than but cannot exceed the maximum special tax.

The maximum special tax rates are subject to an annual inflation adjustment based on the change in the Consumer Price Index (CPI) or five percent (5%), whichever is greater. Each year, the City Council must authorize any proposed CPI adjustment prior to the levy of the special tax onto the property tax bills. The increase to the maximum special tax rate cannot exceed the annual inflationary adjustment without a two-thirds approval of the qualified electors (landowners or registered voters depending upon the number of registered voters) within the affected tax rate area.

NOTIFICATION

Annexation materials were mailed to the Property Owner on August 24, 2017. A cover letter, Landowner Petition, RMA, and an envelope to return the completed petition were included.

PREPARATION OF STAFF REPORT

Prepared by:
Isa Rojas
Management Analyst

Department Head Approval:
Rick C. Hartmann
Acting Public Works Director

Concurred by:
Candace E. Cassel
Special Districts Division Manager

CITY COUNCIL GOALS

Revenue Diversification and Preservation. Develop a variety of City revenue sources and policies to create a stable revenue base and fiscal policies to support essential City services, regardless of economic climate.

Community Image, Neighborhood Pride and Cleanliness. Promote a sense of community pride and foster an excellent image about our City by developing and executing programs which will result in quality development, enhanced neighborhood preservation efforts, including home rehabilitation and neighborhood restoration.

CITY COUNCIL STRATEGIC PRIORITIES

- 1. Economic Development
- 2. Public Safety
- 3. Library
- 4. Infrastructure
- 5. Beautification, Community Engagement, and Quality of Life
- 6. Youth Programs

Objective 4.2: Develop and maintain a comprehensive Infrastructure Plan to invest in and deliver City infrastructure.

ATTACHMENTS

- 1. Resolution Ordering Annexation
- 2. Boundary Map
- 3. Certificate of Election Official

APPROVALS

Budget Officer Approval	<u>✓ Approved</u>	10/02/17 8:11 AM
City Attorney Approval	<u>✓ Approved</u>	10/02/17 11:53 AM
City Manager Approval	<u>✓ Approved</u>	10/05/17 8:44 AM

RESOLUTION NO. 2017-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, ORDERING THE ANNEXATION OF TERRITORY TO CITY OF MORENO VALLEY COMMUNITY FACILITIES DISTRICT NO. 2014-01 (MAINTENANCE SERVICES) AND APPROVING THE AMENDED MAP FOR SAID DISTRICT

WHEREAS, by its Resolution No. 2014-25, the City Council established the City of Moreno Valley Community Facilities District No. 2014-01 (Maintenance Services) (the "CFD") pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code Section 53311 *et seq.*) (the "Act"); and

WHEREAS, by its Ordinance No. 874, the City Council levied an annual special tax against all non-exempt parcels of real property within the CFD (the "Special Tax") to fund street lighting services and landscape maintenance services; and

WHEREAS, in order to permit landowners to efficiently annex developing parcels to the CFD, the City Council, by its Ordinance No. 889 designated the entire territory of the City as a future annexation area for the CFD and approved the second amended and restated rate and method of apportionment for the Special Tax; and

WHEREAS, the landowner of the parcels listed on Exhibit A to this Resolution, which is attached hereto and incorporated herein by reference, has submitted to the City a petition requesting and approving annexation of the listed parcels (the "Annexation Parcels") to the CFD; and

WHEREAS, the Annexation Parcels are comprised of the territory shown on the boundary map (the "Boundary Map") "Amendment No. 24 to Boundaries of City of Moreno Valley Community Facilities District No. 2014-01 (Maintenance Services), City of Moreno Valley, County of Riverside, State of California" which is included as Exhibit B to this Resolution, and incorporated herein by this reference; and

WHEREAS, the City Council desires to annex the Annexation Parcels to the CFD.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

1. Recitals. The above recitals are all true and correct and are herein incorporated.

2. Annexation Approved. The Annexation Parcels are hereby added to and part of the CFD with full legal effect. The Annexation Parcels are subject to the Special Tax associated with the Tax Rate Area(s) indicated on Exhibit A to this Resolution.

1
Resolution No. 2017-___
Date Adopted: October 17, 2017

Attachment: Resolution Ordering Annexation (2785 : PURSUANT TO A LANDOWNER PETITION, ANNEX THREE PARCELS INTO COMMUNITY

3. Description of Services. The following is a general description of all services (the "Services") provided in the CFD:

A. Landscape Maintenance Services: Maintaining, servicing, and operating landscape improvements and associated appurtenances located within the public right-of-way and within dedicated landscape easements for the CFD. These improvements may include but are not limited to parkways, medians, open space landscaping, fencing, monuments, ornamental lighting, drainage, turf, ground cover, shrubs, vines and trees, irrigation systems, and appurtenant facilities and structures. Fundable costs may include, but are not limited to: (i) contracting costs for landscape maintenance services, including litter removal, (ii) salaries and benefits of City staff, (iii) expenses related to equipment, apparatus, and supplies related to these services, (iv) City administrative and overhead costs associated with providing such services within the CFD, and (v) lifecycle costs associated with the repair and replacement of facilities.

B. Street Lighting Services: Maintaining, servicing, and operating street lights and appurtenant improvements. Fundable costs may include, but are not limited to: (i) contracting costs for street light maintenance, (ii) salaries and benefits of City staff, if the City directly provides street light maintenance services, (iii) utility expenses and the expense related to equipment, apparatus, and supplies related to these services and authorized by the Act, (iv) City administrative and overhead costs associated with providing such services for the CFD, and (v) lifecycle costs associated with the repair and replacement of facilities.

The Annexation Parcels will only be provided with the services indicated on Exhibit A.

4. Amended Boundary Map. The Boundary Map attached hereto as Exhibit B is hereby approved. This map amends, and does not supersede, the existing maps of the CFD. The City Council directs that said map be filed with the Riverside County Recorder pursuant to Section 3113 of the Streets and Highways Code.

5. Notice of Special Tax Lien. The City Council directs that an amended notice of special tax lien be recorded pursuant to Section 3117.5 of the Streets and Highways Code with respect to the Annexation Parcels associated with the Boundary Map.

6. This Resolution shall be effective immediately upon adoption.

7. The City Clerk shall certify to the adoption of this Resolution, and shall maintain on file as a public record this Resolution.

8. Severability. That the City Council declares that, should any provision, section, paragraph, sentence or word of this Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any

2

Resolution No. 2017-____
Date Adopted: October 17, 2017

preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Resolution as hereby adopted shall remain in full force and effect.

9. Repeal of Conflicting Provisions. That all the provisions heretofore adopted by the City Council that are in conflict with the provisions of this Resolution are hereby repealed.

APPROVED AND ADOPTED this 17th day of October, 2017.

Mayor of the City of Moreno Valley

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Resolution No. 2017-3
Date Adopted: October 17, 2017

Attachment: Resolution Ordering Annexation (2785 : PURSUANT TO A LANDOWNER PETITION, ANNEX THREE PARCELS INTO COMMUNITY

RESOLUTION JURAT

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF MORENO VALLEY)

I, Pat Jacquez-Nares, City Clerk of the City of Moreno Valley, California, do hereby certify that Resolution No. 2017-___ was duly and regularly adopted by the City Council of the City of Moreno Valley at a regular meeting thereof held on the 17th day of October, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(Council Members, Mayor Pro Tem and Mayor)

CITY CLERK

(SEAL)

Resolution No. 2017-___ 4
Date Adopted: October 17, 2017

Attachment: Resolution Ordering Annexation (2785 : PURSUANT TO A LANDOWNER PETITION, ANNEX THREE PARCELS INTO COMMUNITY

EXHIBIT A

List of Annexation Parcel(s)

Boundary Map Amendment No.	Assessor's Parcel Numbers	Services	Tax Rate Area & Maintenance Category
Amendment No. 24	292-181-001 292-181-002 292-211-001	Street Lighting for Properties Other than Single-Family Residential	SL-02

Based on current development plans, it is anticipated that the Annexation Group will be in the Maintenance Category listed above; however all taxes will be calculated as set forth in the Rate and Method of Apportionment.

The parcels associated with a given development constitute a separate Annexation Group for purpose of calculating the applicable Maintenance Category (where applicable) for each Tax Rate Area. The anticipated Maintenance Category (where applicable) is shown in parenthesis following the Tax Rate Area. All capitalized terms in this paragraph have the meanings set forth in the Rate and Method of Apportionment.

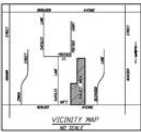
5
Resolution No. 2017-
Date Adopted: October 17, 2017

Attachment: Resolution Ordering Annexation (2785 : PURSUANT TO A LANDOWNER PETITION, ANNEX THREE PARCELS INTO COMMUNITY

EXHIBIT B

**AMENDMENT NO. 24 TO BOUNDARIES
OF CITY OF MORENO VALLEY COMMUNITY
FACILITIES DISTRICT NO. 2014-01 (MAINTENANCE SERVICES)**

CITY OF MORENO VALLEY
COUNTY OF RIVERSIDE
STATE OF CALIFORNIA



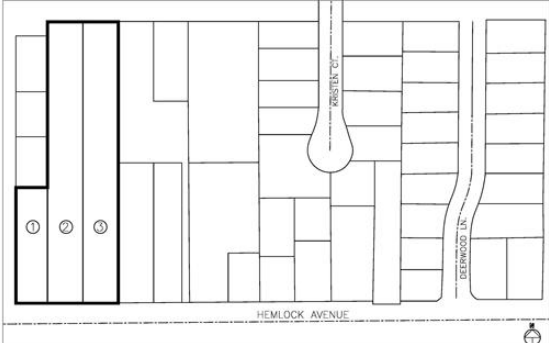
(THESE MAPS AMEND, BY ADDING TERRITORY SHOWN HEREON, THE BOUNDARY MAP FOR CITY OF MORENO VALLEY COMMUNITY FACILITIES DISTRICT NO. 2014-01 (MAINTENANCE SERVICES), CITY OF MORENO VALLEY, RIVERSIDE COUNTY, STATE OF CALIFORNIA, PREVIOUSLY RECORDED AT BOOK 76 OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS AT PAGE 68 IN THE OFFICE OF THE COUNTY RECORDER FOR THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.)

LEGEND

○ MAP REFERENCE NUMBER

□ ADDITIONAL AREA TO DFR 2014-01

MAP REFERENCE NUMBER	ASSESSOR'S PARCEL NUMBER
1	APN: 292-211-001
2	APN: 292-181-001
3	APN: 292-181-002



HEMLOCK AVENUE

FILED IN THE OFFICE OF THE CITY CLERK THIS _____ DAY OF _____, 2017.

CITY CLERK
CITY OF MORENO VALLEY

I HEREBY CERTIFY THAT THE WITHIN MAP SHOWING AMENDED BOUNDARIES OF CITY OF MORENO VALLEY COMMUNITY FACILITIES DISTRICT NO. 2014-01 (MAINTENANCE SERVICES), CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF MORENO VALLEY AT A REGULAR MEETING THEREOF, HELD ON THE _____ DAY OF _____, 2017, BY ITS RESOLUTION NO. _____.

CITY CLERK
CITY OF MORENO VALLEY

FILED THIS _____ DAY OF _____, 2017, AT THE HOUR OF _____ O'CLOCK _____ M. IN THE BOOK _____ PAGE(S) _____ OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS AND INSTRUMENT NO. _____ IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

COUNTY RECORDER
COUNTY OF RIVERSIDE
STATE OF CALIFORNIA

REFERENCE IS MADE TO THAT BOUNDARY MAP OF THE COMMUNITY FACILITIES DISTRICT NO. 2014-01 (MAINTENANCE SERVICES) OF THE CITY OF MORENO VALLEY RECORDED WITH THE RIVERSIDE COUNTY RECORDER'S OFFICE ON FEB. 20, 2014 IN BOOK 76 OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS, PAGE 68 AS INSTRUMENT NO. 2014-0066114.

REFERENCE IS FURTHER MADE TO ANNEXATION MAP NO. 2 OF COMMUNITY FACILITIES DISTRICT NO. 2014-01 (MAINTENANCE SERVICES) OF CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, CALIFORNIA (TERRITORY PROPOSED FOR ANNEXATION IN THE FUTURE, WITH THE CONDITION THAT PARCELS WITHIN THAT TERRITORY MAY BE ANNEXED ONLY WITH THE UNANIMOUS APPROVAL OF THE OWNER OR OWNERS OF EACH PARCEL OR PARCELS AT THE TIME THAT PARCEL OR THOSE PARCELS ARE ANNEXED) RECORDED WITH THE RIVERSIDE COUNTY RECORDER'S OFFICE ON DECEMBER 17, 2014 IN BOOK 77, PAGE 78 OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS AS INSTRUMENT NO. 2014-0481134, WHICH DESIGNATED THE TERRITORY SHOWN HEREON AS TERRITORY FOR FUTURE ANNEXATION TO THE COMMUNITY FACILITIES DISTRICT REFERENCED THEREON.

THE LINES AND DIMENSIONS OF EACH LOT OR PARCEL SHOWN ON THIS DIAGRAM SHALL BE THOSE LINES AND DIMENSIONS AS SHOWN ON THE RIVERSIDE COUNTY ASSESSOR'S MAPS FOR THOSE PARCELS LISTED.

THE RIVERSIDE COUNTY ASSESSOR'S MAPS SHALL GOVERN FOR ALL DETAILS CONCERNING THE LINES AND DIMENSIONS OF SUCH LOTS OR PARCELS.

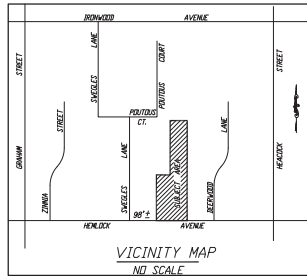
DESIGN CONCEPTS
SHIV TALWAR, ARCHITECT AIA
3340 RIVERSIDE DR. #14, CHINO, CA 91710
TEL: 909-981-9899
Email: designconcepts@yahoo.com

Attachment: Resolution Ordering Annexation (2785 : PURSUANT TO A LANDOWNER PETITION, ANNEX THREE PARCELS INTO COMMUNITY

Resolution No. 2017-____ 6
Date Adopted: October 17, 2017

AMENDMENT NO. 24 TO BOUNDARIES OF CITY OF MORENO VALLEY COMMUNITY FACILITIES DISTRICT NO. 2014-01 (MAINTENANCE SERVICES)

CITY OF MORENO VALLEY
COUNTY OF RIVERSIDE
STATE OF CALIFORNIA

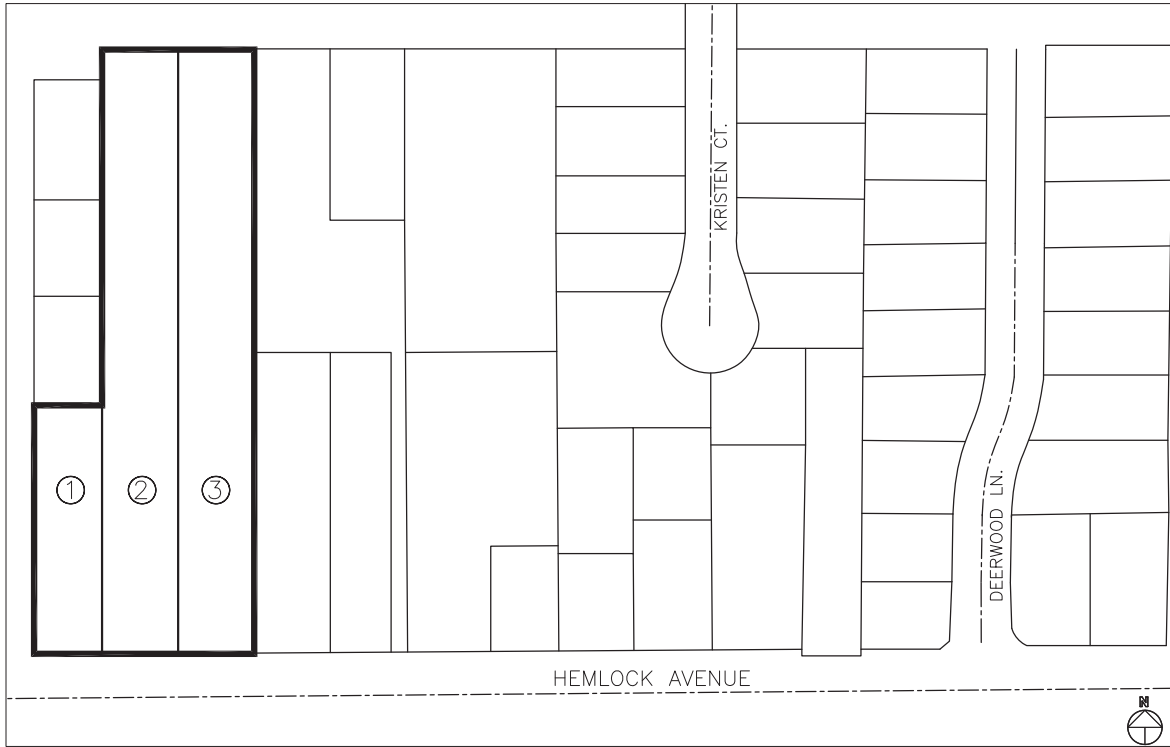


(THIS MAP AMENDS, BY ADDING TERRITORY SHOWN HEREON, THE BOUNDARY MAP FOR CITY OF MORENO VALLEY COMMUNITY FACILITIES DISTRICT NO. 2014-01 (MAINTENANCE SERVICES), CITY OF MORENO VALLEY, RIVERSIDE COUNTY, STATE OF CALIFORNIA, PRIOR RECORDED AT BOOK 76 OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS AT PAGE 69, IN THE OFFICE OF THE COUNTY RECORDER FOR THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.)

LEGEND

- MAP REFERENCE NUMBER
- ▭ ADDITIONAL AREA TO CFD 2014-01

MAP REFERENCE NUMBER	ASSESSOR'S PARCEL NUMBER
1	APN: 292-211-001
2	APN: 292-181-001
3	APN: 292-181-002



FILED IN THE OFFICE OF THE CITY CLERK THIS _____ DAY OF _____, 201__.

CITY CLERK
CITY OF MORENO VALLEY

I HEREBY CERTIFY THAT THE WITHIN MAP SHOWING AMENDED BOUNDARIES OF CITY OF MORENO VALLEY COMMUNITY FACILITIES DISTRICT NO. 2014-01 (MAINTENANCE SERVICES), CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF MORENO VALLEY AT A REGULAR MEETING THEREOF, HELD ON THE ____ DAY OF _____, 201__ BY ITS RESOLUTION _____

CITY CLERK
CITY OF MORENO VALLEY

FILED THIS _____ DAY OF _____, 201__, AT THE HOUR OF _____ O'CLOCK _____ M. IN THE BOOK _____ PAGES(S) _____ MAPS OF ASSESSMENTS AND COMMUNITY FACILITIES DISTRICTS AND INSTRUMENT _____ IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

COUNTY RECORDER
COUNTY OF RIVERSIDE
STATE OF CALIFORNIA

REFERENCE IS MADE TO THAT BOUNDARY MAP OF THE COMMUNITY FACILITIES DISTRICT NO. 2014-01 (MAINTENANCE SERVICES) OF THE CITY OF MORENO VALLEY RECORDED WITH THE RIVERSIDE COUNTY RECORDER'S OFFICE ON FEB. 20, 2014 IN BOOK 7 MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS, PAGE 69 AS INSTRUMENT NO. 2014-0066114.

REFERENCE IS FURTHER MADE TO ANNEXATION MAP NO. 2 OF COMMUNITY FACILITIES DISTRICT NO. 2014-01 (MAINTENANCE SERVICES) OF CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, CALIFORNIA (TERRITORY PROPOSED FOR ANNEXATION IN THE FUTURE UNDER THE CONDITION THAT PARCELS WITHIN THAT TERRITORY MAY BE ANNEXED ONLY WITH THE UNANIMOUS APPROVAL OF THE OWNER OR OWNERS OF EACH PARCEL OR PARCELS AT THE TIME THAT PARCEL OR THOSE PARCELS ARE ANNEXED) RECORDED WITH THE RIVERSIDE COUNTY RECORDER'S OFFICE ON DECEMBER 17, 2014 IN BOOK 77, PAGE _____ OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS AS INSTRUMENT NO. 2014-0481134, WHICH DESIGNATED THE TERRITORY SHOWN HEREIN AS TERRITORY PROPOSED FOR FUTURE ANNEXATION TO THE COMMUNITY FACILITIES DISTRICT REFERENCED THEREIN.

THE LINES AND DIMENSIONS OF EACH LOT OR PARCEL SHOWN ON THIS DIAGRAM SHALL BE THOSE LINES AND DIMENSIONS AS SHOWN ON THE RIVERSIDE COUNTY ASSESSOR'S MAPS FOR THOSE PARCELS LISTED.

THE RIVERSIDE COUNTY ASSESSOR'S MAPS SHALL GOVERN FOR ALL DETAILS CONCERNING THE LINES AND DIMENSIONS OF SUCH LOTS OR PARCELS.

DESIGN CONCEPTS
SHIV TALWAR, ARCHITECT AIA

3340 RIVERSIDE DR. #M, CHINO, CA 91710
TEL: 909-591-3939
Email: designconcepts@yahoo.com



Attachment: Boundary Map [Revision 1] (2785 : PURSUANT TO A LANDOWNER PETITION, ANNEX

**CERTIFICATE OF ELECTION OFFICIAL
AND CONFIRMATION OF LANDOWNER PETITION**

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF MORENO VALLEY)

The undersigned, Election Official of the City of Moreno Valley, County of Riverside, State of California, Does Hereby Certify that on September 13, 2017, I did verify the completeness of the Landowner Petition for the annexation of property into

CITY OF MORENO VALLEY COMMUNITY FACILITIES DISTRICT NO. 2014-01
(MAINTENANCE SERVICES) – AMENDMENT NO. 24

WITNESS my hand this 13th day of September, 2017.

Regina Flores

ELECTION OFFICIAL
CITY OF MORENO VALLEY
STATE OF CALIFORNIA

Attachment: Certificate of Election Official (2785 : PURSUANT TO A LANDOWNER PETITION; ANNEX THREE PARCELS INTO COMMUNITY



Report to City Council

TO: Mayor and City Council

FROM: Marshall Eyerman, Chief Financial Officer

AGENDA DATE: October 17, 2017

TITLE: APPROVE PROFESSIONAL SERVICES AGREEMENT WITH LEIDOS ENGINEERING, LLC FOR AN ORGANIZATIONAL ASSESSMENT OF MORENO VALLEY UTILITY

RECOMMENDED ACTION

Recommendations:

1. Approve the Professional Services Agreement with Leidos Engineering, LLC for an Organizational Assessment of Moreno Valley Utility.
2. Authorize the City Manager to execute the Agreement upon City Attorney review and approval.

SUMMARY

Objective 4.1 of the City's Strategic Plan, Momentum MoVal, calls for the development of a strategic plan for Moreno Valley Utility to prepare for the December 31, 2020 expiration of the agreement with ENCO Utility Services.

On February 7, 2017, the City Council approved an agreement between the City of Moreno Valley and Hometown Connections International, LLC, for the purpose of developing a Road Map for MVU. The Road Map established a vision, strategic areas of focus, and goals for MVU that address many of the opportunities and challenges facing MVU.

The next step, under Initiative 4.1.1, calls for hiring a consultant to assist the City in identifying and analyzing options regarding the organizational structure of the utility. This report recommends approval of an agreement with Leidos Engineering, LLC for the development of an organizational assessment of MVU.

This item was reviewed by the Utilities Commission on September 27, 2017.

DISCUSSION

On June 30, 2017, a Request for Proposal (RFP) was issued with the purpose of seeking assistance in analyzing various strategic organizational options available to the City upon expiration of the long-term agreement with ENCO Utility Services. The objective of the analysis is to clarify and assess the various organizational options, rank the options based upon a cost/benefit analysis, and recommend a preferred organizational option that also considers potential rate impacts and service levels that are currently provided.

The City received five proposals on July 31, 2017. A staff team comprised of the Electric Utility Division Manager, Electric Utility Program Coordinator, and MVU Sr. Accountant reviewed and evaluated the proposals based on the selection criteria provided in the RFP. The preliminary selection criteria included: the firm's general experience and qualification, experience of key personnel, project approach/understanding, and cost. Of the five responses, interviews with four of the firms were conducted on September 11. The interview panel included the Chief Financial Officer/City Treasurer, the Land Development Division Manager, and the Electric Utility Division Manager. Leidos Engineering, LLC was selected based upon their understanding of the project, proposed approach to the project, and their experience developing organizational assessments for other public power agencies across the country.

ALTERNATIVES

1. Approve the Agreement Terms between the City of Moreno Valley and Leidos Engineering, LLC and authorize the execution of a contract in a form approved by the City Attorney. *Staff recommends this alternative. Approval of the Agreement will help Moreno Valley Utility to achieve Initiative 4.1.1 of the City's Strategic Plan.*
2. Do not approve the Agreement Terms between the City of Moreno Valley and Leidos Engineering, LLC. *Staff does not recommend this alternative, as it will not help the utility to achieve Initiative 4.1.1 of the City's Strategic Plan.*

FISCAL IMPACT

Funds are available in account number 6010-30-80-45510-625099, Contractual Services – Other to develop an Organizational Plan that will describe and recommend an organizational structure for Moreno Valley Utility. The amount of the proposed agreement is \$90,100.

NOTIFICATION

Publication of the Agenda.

PREPARATION OF STAFF REPORT

Prepared By:
Jeannette Olko
Electric Utility Division Manager

Department Head Approval:
Marshall Eyerman
Chief Financial Officer/City Treasurer

CITY COUNCIL GOALS

Revenue Diversification and Preservation. Develop a variety of City revenue sources and policies to create a stable revenue base and fiscal policies to support essential City services, regardless of economic climate.

Positive Environment. Create a positive environment for the development of Moreno Valley's future.

CITY COUNCIL STRATEGIC PRIORITIES

- 1. Economic Development
- 2. Public Safety
- 3. Library
- 4. Infrastructure
- 5. Beautification, Community Engagement, and Quality of Life
- 6. Youth Programs

Objective 4.1: Develop a Moreno Valley Utility Strategic Plan to prepare for the 2020 expiration of the ENCO Utility Systems agreement.

ATTACHMENTS

- 1. Leidos Agreement 10172017

APPROVALS

Budget Officer Approval	<u>✓ Approved</u>	9/26/17 11:29 AM
City Attorney Approval	<u>✓ Approved</u>	10/03/17 9:37 AM
City Manager Approval	<u>✓ Approved</u>	10/05/17 8:43 AM

City of Moreno Valley

AGREEMENT FOR ON-SITE AND/OR PROFESSIONAL SERVICES

This Agreement is made by and between the City of Moreno Valley, California, a municipal corporation, with its principal place of business at 14177 Frederick Street, Moreno Valley, CA 92552, hereinafter referred to as the "City", and **Leidos Engineering, LLC** with its principal place of business at **600 South Lake Avenue, Suite 202, Office 3 & 4, Pasadena, CA 91106**, hereinafter referred to as the "Contractor," based upon City policies and the following legal citations:

RECITALS

- A. Government Code Section 53060 authorizes the engagement of persons to perform special services as independent contractors;
- B. Contractor desires to perform and assume responsibility for the provision of professional strategic planning and organizational assessment contracting services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing professional strategic planning and organizational assessment contracting services, is licensed in the State of California, if applicable;
- C. City desires to engage Contractor to render such services for the professional services as set forth in this Agreement;
- D. The public interest, convenience, necessity and general welfare will be served by this Agreement; and
- E. This Agreement is made and entered into effective the date the City signs this Agreement.

TERMS

1. CONTRACTOR INFORMATION:

Contractor's Name: Leidos Engineering, LLC
 Address: 600 South Lake Avenue, Suite 202, Office 3 & 4
 City: Pasadena State: CA Zip: 91106
 Business Phone: 626-585-0365
 Other Contact Number: 737-202-2155
 Business License Number: _____
 Federal Tax I.D. Number: _____

2. CONTRACTOR SERVICES, FEES, AND RELEVANT DATES:

- A. The Contractor's scope of service is described in Exhibit "A" attached hereto and incorporated herein by this reference.
- B. The City's responsibilities, other than payment, are described in Exhibit "B" attached hereto and incorporated herein by this reference.

- C. Payment terms are provided in Exhibit "C" attached hereto and incorporated herein by this reference.
- D. The term of this Agreement shall be from October 17, 2017 to December 31, 2018 unless terminated earlier as provided herein. The City acknowledges that it will not unreasonably withhold approval of the Contractor's requests for extensions of time in which to complete the work required. The Contractor shall not be responsible for performance delays caused by others or delays beyond the Contractor's reasonable control (excluding delays caused by non-performance or unjustified delay by Contractor, his/her/its employees, or subcontractors), and such delays shall extend the time for performance of the work by the Contractor.

3. **STANDARD TERMS AND CONDITIONS:**

- A. Control of Work. Contractor is solely responsible for the content and sequence of the work, and will not be subject to control and direction as to the details and means for accomplishing the anticipated results of services. The City will not provide any training to Contractor or his/her/its employees.
- B. Intent of Parties. Contractor is, and at all times shall be, an independent contractor and nothing contained herein shall be construed as making the Contractor or any individual whose compensation for services is paid by the Contractor, an agent or employee of the City, or authorizing the Contractor to create or assume any obligation or liability for or on behalf of the City, or entitling the Contractor to any right, benefit, or privilege applicable to any officer or employee of the City.
- C. Subcontracting. Contractor may retain or subcontract for the services of other necessary contractors with the prior written approval of the City. Payment for such services shall be the responsibility of the Contractor. Any and all subcontractors shall be subject to the terms and conditions of this Agreement, with the exception that the City shall have no obligation to pay for any subcontractor services rendered. Contractor shall be responsible for paying prevailing wages where required by law [See California Labor Code Sections 1770 through 1777.7].
- D. Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.
- E. Substitution of Key Personnel. Contractor has represented to City that certain key personnel will perform and coordinate the services under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Contractor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the project or a threat to the safety of persons or property, shall be promptly removed from the project by the

Contractor at the request of the City. The key personnel for performance of this Agreement are as follows: **Patricia Cruz, Sebnem Tezsezen, Craig Shepard, Elizabeth Stuart, Keith Mullen, P.E., Joseph Blackwell, David Herron, P.E., and Michael Murray, P.E.**

- F. City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.
- G. Contractor's Representative. Contractor hereby designates **Patricia Cruz**, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the services under this Agreement.
- H. Legal Considerations. The Contractor shall comply with applicable federal, state, and local laws in the performance of this Agreement. Contractor shall be liable for all violations of such laws and regulations in connection with services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.
- I. Standard of Care; Performance of Employees. Contractor shall perform all services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the profession necessary to perform the services. Contractor warrants that all employees and subcontractor shall have sufficient skill and experience to perform the services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the services and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any employee of the Contractor or its subcontractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the services in a manner acceptable to the City, shall be promptly removed from the project by the Contractor and shall not be re-employed to perform any of the services or to work on the project.

- J. Contractor Indemnification. Contractor shall indemnify, defend and hold the City, the Moreno Valley Housing Authority, and the Moreno Valley Community Services District (CSD), their officers, agents and employees harmless from any and all claims, damages, losses, causes of action and demands, including, expert witness fees, reasonable attorney's fees and other related costs and expenses, to the extent caused by Contractor's negligent acts, errors or omissions under this Agreement. Acceptance of this Agreement signifies that the Contractor is not covered under the City's general liability insurance, employee benefits, or worker's compensation. It further establishes that the Contractor shall be fully responsible for such coverage. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, the Moreno Valley Housing Authority, and the CSD, and their officers, agents and employees.
- K. Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section "J" that may be brought or instituted against City, the Moreno Valley Housing Authority, and the CSD, and their officers, agents and employees. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City, the Moreno Valley Housing Authority, and the CSD, and their officers, agents and employees as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City, the Moreno Valley Housing Authority, and the CSD, and their officers, agents and employees as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City, the Moreno Valley Housing Authority, and the CSD, and their officers, agents and employees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.
- L. Limitation of Liability. No employee of Contractor shall have individual liability to City. To the extent permitted by law, the total aggregate liability of Contractor, its officers, directors, shareholders, employees and subconsultants for any and all claims arising out of this contract, including attorneys' fees, and whether caused by negligence, errors, omissions, strict liability, breach of contract or contribution, or indemnity claims based on third party claims, shall not exceed one million dollars (U.S. \$1,000,000.00).
- M. Consequential Damages. In no event and under no circumstances shall Contractor be liable to the City for any principal, interest, loss of anticipated revenues, earnings, profits, increased expense of operation or construction, loss by reason of shutdown or non-operation due to late completion or otherwise or for any other economic, consequential, indirect or special damages.
- N. Insurance Requirements. The Contractor will comply with the following insurance requirements at its sole expense. Insurance companies shall be

rated (A Minus: VII—Admitted) or better in Best’s Insurance Rating Guide and shall be legally licensed and qualified to conduct business in the State of California:

The Contractor shall procure and maintain, at its sole expense, Workers’ Compensation Insurance in such amounts as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Contractor and the City, the Housing Authority and CSD against any loss, claim, or damage arising from any injuries or occupational diseases happening to any worker employed by the Contractor in the course of carrying out the Agreement. This coverage may be waived if the Contractor is determined to be functioning as a sole proprietor and the city provided form “Exception to Worker’s Compensation Coverage” is signed, notarized and attached to this Agreement

General Liability Insurance—to protect against loss from liability imposed by law for damages on account of bodily injury, including death, and/or property damage suffered or alleged to be suffered by any person or persons whomever, resulting directly or indirectly from any act or activities of the Contractor, sub-Contractor, or any person acting for the Contractor or under its control or direction. Such insurance shall be maintained in full force and effect throughout the terms of the Agreement and any extension thereof in the minimum amounts provided below:

Bodily Injury	\$1,000,000 per occurrence/ \$2,000,000 aggregate
Property Damage	\$500,000 per occurrence/ \$500,000 aggregate

Professional Errors and Omission Insurance—such coverage shall not be less than \$1,000,000 per claim and aggregate.

Liability and Property Damage Insurance coverage for owned and non-owned automotive equipment operated on City/CSD/Housing Authority premises. Such coverage limits shall not be less than \$1,000,000 combined single limit.

A Certificate of Insurance and appropriate additional insured endorsement evidencing the above applicable insurance coverage shall be submitted to the City prior to the execution of this Agreement. The Certificate of Insurance or an appropriate binder shall bear an endorsement containing the following provisions:

Solely as respect to services done by or on behalf of the named insured for the City of Moreno Valley, it is agreed that the City of Moreno Valley, the Moreno Valley Housing Authority, and the Moreno Valley Community Services District, their officers, employees and agents are included as additional insured under this policy and the coverage(s) provided shall be

primary insurance and not contributing with any other insurance available to the City of Moreno Valley, the Moreno Valley Housing Authority, and the Moreno Valley Community Services District, its officers, employees and agents, under any third party liability policy

The terms of the insurance policy or policies issued to provide the above coverage shall neither be amended to reduce the required insurance limits and coverages nor shall such policies be canceled by the carrier without thirty (30) days prior written notice by certified or registered mail of amendment or cancellation to the City, except that cancellation for non-payment of premium shall require ten (10) days prior written notice by certified or registered mail. In the event the insurance is canceled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in the amounts established.

- O. Intellectual Property. Any system or documents developed, produced or provided under this Agreement, including any intellectual property discovered or developed by Contractor in the course of performing or otherwise as a result of its work, shall become the sole property of the City unless explicitly stated otherwise in this Agreement. The Contractor may retain copies of any and all material, including drawings, documents, and specifications, produced by the Contractor in performance of this Agreement. The City and the Contractor agree that to the extent permitted by law, until final approval by the City, all data shall be treated as confidential and will not be released to third parties without the prior written consent of both parties.
- P. Entire Agreement. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations of warranties, expressed or implied, not specified in this Agreement. This Agreement applies only to the current proposal as attached. This Agreement may be modified or amended only by a subsequent written Agreement signed by both parties. Assignment of this Agreement is prohibited without prior written consent.
- Q. (a) The City may terminate the whole or any part of this Agreement at any time without cause by giving at least ten (10) days written notice to the Contractor. The written notice shall specify the date of termination. Upon receipt of such notice, the Contractor may continue work through the date of termination, provided that no work or service(s) shall be commenced or continued after receipt of the notice which is not intended to protect the interest of the City. The City shall pay the Contractor within thirty (30) days after receiving any invoice after the date of termination for all non-objected to services performed by the Contractor in accordance herewith through the date of termination.
- (b) Either party may terminate this Agreement for cause. In the event the City terminates this Agreement for cause, the Contractor shall perform no further work or service(s) under the Agreement unless the notice of termination authorizes such further work.

(c) If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished documents and data and other information of any kind prepared by Contractor in connection with the performance of services under this Agreement. Contractor shall be required to provide such documents and other information within fifteen (15) days of the request.

(d) In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, similar to those terminated.

- R. Payment. Payments to the Contractor pursuant to this Agreement will be reported to Federal and State taxing authorities as required. The City will not withhold any sums from compensation payable to Contractor. Contractor is independently responsible for the payment of all applicable taxes. Where the payment terms provide for compensation on a time and materials basis, the Contractor shall maintain adequate records to permit inspection and audit of the Contractor's time and materials charges under the Agreement. Such records shall be retained by the Contractor for three (3) years following completion of the services under the Agreement.
- S. Restrictions on City Employees. The Contractor shall not employ any City employee or official in the work performed pursuant to this Agreement. No officer or employee of the City shall have any financial interest in this Agreement in violation of federal, state, or local law.
- T. Choice of Law and Venue. The laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement, and shall govern the interpretation of this Agreement. Any legal proceeding arising from this Agreement shall be brought in the appropriate court located in Riverside County, State of California.
- U. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor:

Leidos Engineering, LLC
600 South Lake Avenue, Suite 202, Office 3 & 4
Pasadena, CA 91106
Attn: Patricia Cruz

City:

City of Moreno Valley
14177 Frederick Street
P.O. Box 88005
Moreno Valley, CA 92552
Attn: Electric Utility Division Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

- V. Time of Essence. Time is of the essence for each and every provision of this Agreement.
- W. City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this project.
- X. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.
- Y. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.
- Z. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the parties.
- AA. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.
- BB. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- CC. Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.
- BB Supplementary General Conditions (for projects that are funded by Federal programs). The following provisions, pursuant to 44 Code of Federal Regulations, Part 13, Subpart C, Section 13.36, as it may be amended from time to time, are included in the Agreement and are required to be included in all subcontracts entered into by CONTRACTOR for work pursuant to the Agreement, unless otherwise expressly provided herein. These provisions supersede any conflicting provisions in the General Conditions and shall take precedence over the General Conditions for purposes of interpretation of the General Conditions. These provisions do not otherwise modify or replace General Conditions not in direct conflict with these provisions. Definitions used in these provisions are as contained in the General Conditions.

1. CONTRACTOR shall be subject to the administrative, contractual, and legal remedies provided in the General Conditions in the event CONTRACTOR violates or breaches terms of the Agreement.
2. CITY may terminate the Agreement for cause or for convenience, and CONTRACTOR may terminate the Agreement, as provided the General Conditions.
3. CONTRACTOR shall comply with Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by CITY and/or subcontracts in excess of \$10,000 entered into by CONTRACTOR.)
4. CONTRACTOR shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subcontracts for construction or repair.)
5. CONTRACTOR shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a7) as supplemented by Department of Labor regulations (29 CFR Part 5).
6. CONTRACTOR shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327330) as supplemented by Department of Labor regulations (29 CFR Part 5).
7. CONTRACTOR shall observe CITY requirements and regulations pertaining to reporting included in the General Conditions.
8. Patent rights with respect to any discovery or invention which arises or is developed in the course of or under the Agreement shall be retained by the CITY.
9. Copyrights and rights in data developed in the course of or under the Agreement shall be the property of the CITY. FEMA/CalOES reserve a royalty-free, nonexclusive, irrevocable license to reproduce, publish or otherwise use or authorize to others to use for federal purposes a copyright in any work developed under the Agreement and/or subcontracts for work pursuant to the Agreement.
10. CONTRACTOR shall provide access by the City, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
11. CONTRACTOR shall retain all required records for three years after CITY makes final payments and all other pending matters relating to the Agreement are closed.
12. CONTRACTOR shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (This provision applies to contracts exceeding \$100,000 and to subcontracts entered into pursuant to such contracts.)

13. CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94163, 89 Stat. 871).

SIGNATURE PAGE TO FOLLOW

Attachment: Leidos Agreement 10172017 (2761 : APPROVE PROFESSIONAL SERVICES AGREEMENT WITH LEIDOS ENGINEERING FOR

IN WITNESS HEREOF, the parties have each caused their authorized representative to execute this Agreement.

City of Moreno Valley

Leidos Engineering, LLC

BY: _____
City Manager

BY: _____

TITLE: _____
(President or Vice President)

Date

Date

BY: _____

TITLE: _____
(Corporate Secretary)

Date

INTERNAL USE ONLY

APPROVED AS TO LEGAL FORM:

City Attorney

Date

RECOMMENDED FOR APPROVAL:

Department Head

Date

Attachment: Leidos Agreement 10172017 (2761 : APPROVE PROFESSIONAL SERVICES AGREEMENT WITH LEIDOS ENGINEERING FOR

EXHIBIT A
SCOPE OF SERVICES

1. Development of a Project Execution Plan (PEP) that includes the following:
 - a. Development of a communication plan and protocol that includes weekly status calls.
 - b. Provision of reports and updates to the City regarding project scope, personnel, budget status, and schedule.
 - c. Identification of project milestones from project initiation through completion.
 - d. Integrated feedback mechanism to continually improve project execution.
 - e. Outstanding project issues.
2. Review of current functions of MVU through documentation gathered and interviews conducted related to organizational and operational structures, business model, products and services, strategic initiatives, any other pertinent information.
3. Cost/benefit analysis of organizational options under consideration, including immediate organizational needs of MVU.
4. Draft of organizational plan that includes findings and recommendations. Recommendations will highlight benefits, limitations, cost implications, risks, and potential organizational challenges to implementing the optimal solution. Draft will also include a high level implementation plan.
5. Final organizational plan that refines areas of analysis and incorporates comments.
6. Develop presentation of results. Up to 2 members of the project team will be onsite to assist with the presentation or will present the results to the City and other stakeholders.

EXHIBIT B
CITY RESPONSIBILITIES

1. Furnish the Consultant all data which is pertinent to services to be performed by the Consultant and which is within the custody or control of the City, including, but not limited to, copies of financial data related to MVU, rate information, agreement with the third party contractor for certain engineering, customer billing, and operations services, MVU organizational chart, and existing strategic plans.
2. Provide timely review, processing, and reasonably expeditious approval of all submittals by the Consultant.
3. Provide timely City staff liaison with the Consultant when requested and when reasonably needed.

EXHIBIT C

TERMS OF PAYMENT

1. The Contractor's compensation shall not exceed \$90,100.
2. The Contractor will obtain, and keep current during the term of this Agreement, the required City of Moreno Valley business license. Proof of a current City of Moreno Valley business license will be required prior to any payments by the City. Any invoice not paid because the proof of a current City of Moreno Valley business license has not been provided will not incur any fees, late charges, or other penalties. Complete instructions for obtaining a City of Moreno Valley business license are located at: http://www.moval.org/do_biz/biz-license.shtml
3. The Contractor will electronically submit an invoice to the City on a monthly basis for progress payments along with documentation evidencing services completed to date. The progress payment is based on actual time and materials expended in furnishing authorized professional services since the last invoice. At no time will the City pay for more services than have been satisfactorily completed and the City's determination of the amount due for any progress payment shall be final. The Contractor will submit all original invoices to Accounts Payable staff at AccountsPayable@moval.org

Accounts Payable questions can be directed to (951) 413-3073.

Copies of invoices may be submitted to the Moreno Valley Utility at

mvuadmin@moval.org or calls directed to (951) 413-3500.

3. The Contractor agrees that City payments will be received via Automated Clearing House (ACH) Direct Deposit and that the required ACH Authorization form will be completed prior to any payments by the City. Any invoice not paid because the completed ACH Authorization Form has not been provided will not incur any fees, late charges, or other penalties. The ACH Authorization Form is located at: http://www.moval.org/city_hall/forms.shtml#bf
4. The minimum information required on all invoices is:
 - A. Vendor Name, Mailing Address, and Phone Number
 - B. Invoice Date
 - C. Vendor Invoice Number

- D. City-provided Reference Number (e.g. Project, Activity)
 - E. Detailed work hours by class title (e.g. Manager, Technician, or Specialist), services performed and rates, explicit portion of a contract amount, or detailed billing information that is sufficient to justify the invoice amount; single, lump amounts without detail are not acceptable.
6. The City shall pay the Contractor for all invoiced, authorized professional services within thirty (30) days of receipt of the invoice for same.
 7. Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.
 8. Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.



Report to City Council

TO: Mayor and City Council

FROM: Marshall Eyerman, Chief Financial Officer

AGENDA DATE: October 17, 2017

TITLE: APPROVAL OF POWER PURCHASE AGREEMENT FOR RENEWABLE RESOURCES BETWEEN THE CITY OF MORENO VALLEY (AS BUYER) AND SUSTAINABLE POWER GROUP, LLC (AS SELLER)

RECOMMENDED ACTION

Recommendations:

1. Approve the Power Purchase Agreement for Renewable Resources between the City of Moreno Valley (as Buyer) and Sustainable Power Group, LLC (as Seller).
2. Authorize the City Manager to execute the Power Purchase Agreement upon review and approval by the City Attorney.

SUMMARY

All publicly owned utilities must adopt a Renewables Portfolio Standard (RPS) program with mandated goals for purchasing energy generated through eligible renewable sources as required by state law. Common renewable resources include biomass, water (small hydro), geothermal, wind, and solar energy. This report recommends approval of an agreement through which Moreno Valley Utility (MVU) will purchase renewable energy from the Antelope Expansion 3 solar generating facility developed by Sustainable Power Group. The City of Rancho Cucamonga is another buyer in the project, and is executing a separate but identical agreement with the seller.

This item was reviewed by the Utilities Commission on September 27, 2017.

DISCUSSION

On June 11, 2013, the City Council approved Resolution No. 2013-37 adopting a

Renewable Energy Procurement Plan pursuant to Senate Bill 2-1X (SB 2X). SB 2X requires all publicly owned utilities to adopt a RPS program with prescribed goals for procuring renewable energy resources and the criteria for achieving such goals. The goals for procuring renewable energy are as follows:

- Procurement targets are described as a percentage of retail sales –
 - Compliance Period One: an average of 20% RPS eligible resource procurement
 - Compliance Period Two: by December 31, 2016, 25% RPS eligible resource procurement
 - Compliance Period Three: by December 31, 2020, 33% RPS eligible resource procurement

Senate Bill 350, signed by the Governor in October 2015, increases the renewable energy requirement to 50% by December 31, 2030. Beginning January 1, 2021, at least 65% of the renewable resources acquired for each compliance period must come from contracts that are at least 10 years in duration.

In May 2016, Pittsburg Power Company and the Cities of Moreno Valley, Rancho Cucamonga, and Corona issued a Request for Proposals for cost-effective Long-Term Eligible Renewable Energy Resources. Six firms submitted a total of 21 potential projects. The Antelope Expansion 3 solar project submitted by Sustainable Power Group was selected after an extensive review.

The Antelope Expansion 3 solar project is a 20 MW photovoltaic power project located in Los Angeles County, California. The City of Moreno Valley's share of the output is 15 MW, while the City of Rancho Cucamonga's allocation is 5 MW. The expected commercial operation date of the facility is December 1, 2020, when the utility will begin to receive energy from the project.

The terms of the Power Purchase Agreement include a fixed price of \$36.87 per MWh over 20 years for the energy and renewable attributes. The project will also provide Resource Adequacy (capacity) benefits at no additional charge. Guaranteed milestones include completion of an interconnection agreement, project construction start, and commercial operation. If any of these milestones are not met, the Seller will pay daily delay damages in the amount of \$10,000 per day.

The fixed price negotiated with the seller not only provides MVU with some cost stability, but also compares favorably with the price negotiated for the Whitney Point Solar Project that was approved by Council on February 10, 2015. The 20-year fixed price for the energy to be received from the Whitney Point Solar Project is \$58.75 per MWh, which is \$21.88 per MWh higher than for the Antelope Expansion 3 Solar Project. This reduction in price primarily reflects the reduction in the cost of solar panels over the last few years.

MVU's allocation in this project will count towards the renewable energy requirement for Compliance Period 3 as defined in the Renewable Energy Procurement Plan, and

conforms to the policies established by the Integrated Resource Plan that the City Council approved on November 10, 2015.

ALTERNATIVES

1. Approve the Power Purchase Agreement for Renewable Resources between the City of Moreno Valley (as Buyer) and Sustainable Power Group, LLC (as Seller) and authorize the City Manager to execute the Power Purchase Agreement. Staff recommends this alternative. *The approval of this Agreement will help the City to comply with the State mandate for the purchase of renewable energy.*
2. Do not approve the Power Purchase Agreement and do not authorize the City Manager to execute the Power Purchase Agreement. Staff does not recommend this alternative. *The City could be found non-compliant with the State mandate for renewable energy.*

FISCAL IMPACT

The project will require no contributions to constructions costs, and therefore will have no fiscal impact for Fiscal Year 2017/2018, Fiscal Year 2018/2019, and Fiscal Year 2019/2020. MVU will only pay for the actual energy received beginning in December 2020. The projected average annual cost is approximately \$700,000 based on anticipated project output and an offset for the value of energy. This contract will be included in the Fiscal Year 2020/2021 budget.

NOTIFICATION

Publication of the Agenda.

PREPARATION OF STAFF REPORT

Prepared By:
Jeannette Olko
Electric Utility Division Manager

Department Head Approval:
Marshall Eyerman
Chief Financial Officer/City Treasurer

CITY COUNCIL GOALS

Positive Environment. Create a positive environment for the development of Moreno Valley's future.

CITY COUNCIL STRATEGIC PRIORITIES

1. **Economic Development**
2. **Public Safety**
3. **Library**
4. **Infrastructure**
5. **Beautification, Community Engagement, and Quality of Life**

6. Youth Programs

Objective 4.1: Develop a Moreno Valley Utility Strategic Plan to prepare for the 2020 expiration of the ENCO Utility Systems agreement.

ATTACHMENTS

1. S Power Agreement

APPROVALS

Budget Officer Approval	<u>✓ Approved</u>	10/02/17 8:12 AM
City Attorney Approval	<u>✓ Approved</u>	10/02/17 11:53 AM
City Manager Approval	<u>✓ Approved</u>	10/02/17 4:02 PM

POWER PURCHASE AGREEMENT
FOR
RENEWABLE RESOURCES

BETWEEN

Moreno Valley

AND

Antelope Expansion 3A, LLC

[Date]

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

TABLE OF CONTENTS

	Page
1. DEFINITIONS.....	1
2. TERM; POWER PURCHASE AND SALE	17
2.1 Term.....	17
2.2 Purchase and Sale of the Product.....	17
2.3 Payment.....	19
2.4 Curtailment.....	20
2.5 Contract Price.....	21
2.6 Excess Quantity.....	22
2.7 CAISO Costs.....	23
2.8 Buyout Option.....	24
2.9 Market Events.....	24
3. CAPACITY ATTRIBUTES, ENVIRONMENTAL ATTRIBUTES AND TAX ATTRIBUTES.....	24
3.1 Capacity Attributes.....	24
3.2 Environmental Attributes.....	26
3.3 Change in Law.....	29
3.4 Tax Attributes	30
4. MINIMUM ENERGY GUARANTEES	30
4.1 Guaranteed Energy Production.....	30
5. DELIVERY SCHEDULES AND EMERGENCIES	32
5.1 Scheduling.....	32
5.2 Annual Forecast of Delivery Schedules.....	33
5.3 Monthly Forecast of Delivery Schedules.....	33
5.4 Daily Delivery Forecasts and Schedules.....	33
5.5 Hourly or Sub-Hourly Delivery Schedules.....	33
5.6 Forecast.....	34
5.7 Emergency and Other Involuntary Curtailment.....	35
6. OPERATION AND MAINTENANCE	35
6.1 Operating Standards.....	35
6.2 Commercial Operation Date.....	35

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

TABLE OF CONTENTS
(continued)

	Page
6.3 Maintenance Outage.....	36
6.4 Buyer’s Access Rights.	38
7. MILESTONES	38
7.1 Milestones.....	38
7.2 Force Majeure Extension.	39
7.3 GSI Extension.....	39
7.4 Daily Delay Damages.	40
8. METERING.....	41
8.1 Meter and Transformer.	41
8.2 CAISO Standards.	42
8.3 Testing, Audit, and Calibration.....	42
8.4 Inaccurate Meter.....	42
9. BILLING AND PAYMENT	43
9.1 Billing Period.....	43
9.2 Monthly Invoice Calculation.	43
9.3 Method and Time of Payment.....	43
9.4 Examination and Correction of Invoices; Disputes.....	43
9.5 Non-Delivery of Invoices.	44
9.6 Record-Keeping.....	44
9.7 Timeliness of Payment.....	44
9.8 Right to Set Off.	45
9.9 Contract Representative.	45
10. CREDIT REQUIREMENTS	45
10.1 Development Period Security.	45
10.2 Delivery Period Security.....	46
10.3 Letters of Credit.	46
10.4 Return of Letters of Credit.....	47
10.5 Grant of Security Interest/Remedies.....	47
10.6 Substitution of Development Period Security and Delivery Period Security.....	47

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

TABLE OF CONTENTS
(continued)

	Page
11. FORCE MAJEURE	48
11.1 Force Majeure Definition.....	48
11.2 Force Majeure Procedure.....	50
12. EVENTS OF DEFAULT	51
12.1 Events of Default.....	51
13. TERMINATION; REMEDIES.....	55
13.1 Remedies.....	55
13.2 Settlement Amount Calculations.....	57
13.3 Settlement Amount- Seller as Defaulting Party.....	58
13.4 Settlement Amount- Buyer as Defaulting Party.....	59
13.5 Rights and Obligations Surviving Termination.....	60
13.6 Limitation of Remedies, Liability and Damages.....	61
14. REPRESENTATIONS AND WARRANTIES; COVENANTS.....	61
14.1 Representations and Warranties.....	61
14.2 Additional Seller Representations, Warranties and Covenants.....	63
15. PERFORMANCE REQUIREMENTS.....	64
15.1 Modifications to Facility.....	64
15.2 Interconnection.....	64
15.3 Assignment.....	65
15.4 Collateral Assignment.....	66
15.5 Change in Control.....	67
15.6 Insurance.....	67
15.7 Debt Liability Disclaimer; Hold Harmless.....	69
15.8 Compliance with Applicable Laws, Including CAISO Interconnection Standards and the California Environmental Quality Act (“CEQA”) Guidelines.....	69
15.9 Decommissioning and Other Costs.....	69
15.10 Change of CAISO Scheduling Practices.....	69
15.11 Taxes.....	70
15.12 Confidentiality of Data.....	70
15.13 Public Announcements.....	73

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

TABLE OF CONTENTS
(continued)

	Page
16. MISCELLANEOUS	73
16.1 Counterparts.....	73
16.2 Exclusivity.....	73
16.3 Title and Risk of Loss.....	73
16.4 Indemnities by Seller.....	73
16.5 Governing Law; Venue.....	74
16.6 Waiver of Trial by Jury.....	74
16.7 Notices.....	74
16.8 Joint Effort.....	74
16.9 Relationship of the Parties.....	75
16.10 No Third Party Beneficiary.....	75
16.11 Resolution of Disputes.....	75
16.12 Entire Agreement.....	76
16.13 Violation of Governmental Approvals.....	76
16.14 Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).....	76
16.15 Standard of Review.....	77
16.16 Further Assurances.....	78
16.17 Captions; Construction.....	78
16.18 Forward Contract.....	78

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

TABLE OF CONTENTS
(continued)

Page

EXHIBITS

EXHIBIT A – FORM OF ATTESTATION	A-1
EXHIBIT B – [RESERVED]	B-1
EXHIBIT C – CONTRACT QUANTITY	C-1
EXHIBIT D – PAYMENT AND CONTACT INFORMATION	D-1
EXHIBIT E – SELLER'S MILESTONE SCHEDULE	E-1
EXHIBIT F – FACILITY AND SITE DESCRIPTION	F-1
EXHIBIT G – FORM OF CONSENT AND AGREEMENT	G-1
EXHIBIT H – QUALIFIED OPERATORS	H-1
EXHIBIT I – FORM OF PERFORMANCE BOND	I-1
EXHIBIT J – BUYOUT OPTION	J-1
EXHIBIT K – NEGATIVE PRICE CURTAILMENT PROTOCOL	K-1
EXHIBIT L – SAMPLE CALCULATION OF AMOUNTS DUE FOR EACH SETTLEMENT INTERVAL FOR PURPOSES OF CALCULATING THE MONTHLY PAYMENT	L-1

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

THIS POWER PURCHASE AGREEMENT FOR RENEWABLE RESOURCES (the "Agreement") is entered into as of the Execution Date defined herein by and between Moreno Valley ("Buyer") and Antelope Expansion 3A, LLC ("Seller").

RECITALS

- 1. Seller intends to develop, finance, build, own and operate a solar photovoltaic electric generating facility which shall obtain a Full Capacity Deliverability Status Finding from the CAISO as described herein and be located at the Site.
- 2. Buyer is a municipal utility governed by the City of Moreno Valley, by and through its Council, which has all powers necessary and appropriate to a municipal corporation, including, but not limited to, the authority granted by the City Charter, Article XI, Section 9(a) of the California Constitution, California Government Code Section 39732 and California Public Utilities Code Section 10002, to establish, purchase, and operate public works to furnish its inhabitants with electrical power. Under this authority, Buyer is engaged in the business of delivering electricity to its residential and commercial customers in Moreno Valley, California, and buying electricity with the intention of routinely taking physical delivery.
- 3. Buyer wishes to purchase the output from the Facility to meet Buyer's needs at a known price and timing and intends to resell related output to its residential and commercial customers.
- 4. Buyer is willing to purchase, and Seller is willing to sell, the output of the Facility, on the terms and conditions and at the prices set forth in this Agreement.

Now, therefore, in consideration of the covenants and conditions contained herein, the Parties agree as follows:

1. DEFINITIONS

The following rules of interpretation shall apply, unless otherwise required by the context in which any term appears: (i) Capitalized terms used in this Agreement shall have the meanings specified in this section; (ii) Terms defined in the singular shall include the plural and vice versa; (iii) References to "Sections" and "Exhibits" shall be to sections or exhibits hereof; (iv) All references to a particular entity shall include a reference to such entity's successors and permitted assigns; (v) The words "herein," "hereof," and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (vi) References to this Agreement shall include a reference to all appendices and Exhibits hereto, as the same may be amended, modified, supplemented, or replaced from time to time; (vii) Terms used in the masculine shall include the feminine and vice versa; (viii) The term "including," when

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

used in this Agreement, shall mean to include without limitation; and (ix) The term “day” when used in this Agreement shall mean a calendar day unless specified otherwise. Capitalized terms, used but not otherwise defined herein, shall have the meaning ascribed to them in the CAISO Tariff.

“Accepted Compliance Costs” has the meaning set forth in Section 3.3(d).

“Additional GSI Extension” has the meaning set forth in Section 7.3.

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, that Party but not including any Facility Lender. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities or by contract or otherwise.

“Affiliate Manager” has the meaning set forth in the Shared Facilities Agreement to be agreed upon by the Parties pursuant to Section 15.2(a).

“Agreement” means this Agreement together with the Exhibits attached hereto, as such may be amended from time to time.

“Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Facility or the terms of this Agreement.

“Bankrupt” means, with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such case filed against it is not dismissed in ninety (90) days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they become due.

“Billing Period” has the meaning set forth in Section 9.1.

“Binding Milestone Deadline” has the meaning set forth in Section 7.1(a).

“Binding Milestones” has the meaning set forth in Section 7.1(a).

“BPM” has the meaning set forth in Section 8.1(a).

“Business Day” means any day other than Saturday, Sunday, and any day that is a holiday observed by Federal Reserve member banks in San Francisco, California.

“Buyer” has the meaning set forth in the Preamble.

“Buyer Purchase Damages” has the meaning set forth in Section 13.3(a).

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

“CAISO Cost Share” has the meaning set forth in Section 2.7.

“CAISO Costs” has the meaning set forth in Section 2.7.

“CAISO Charges Invoice” has the meaning set forth in Section 2.7.

“CAISO Integration Charge Cost Cap” means the maximum dollar amount of Integration Charges for which Seller is liable and shall equal (a) in any Contract Year, Three Thousand Six Hundred Dollars (\$3,600) per MW of Installed Contract Capacity, and (b) during the Delivery Period, an aggregate of Seventy-Two Thousand Dollars (\$72,000) per MW of Installed Contract Capacity.

“CAISO Revenue Meter” has the meaning set forth in Section 8.1(a).

“CAISO Tariff” means the CAISO tariff in effect upon the Execution Date and as amended from time to time.

“California RPS” means the State of California Renewable Portfolio Standard Program codified in California Public Utilities Code Sections 399.11 through 399.32 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attributes” means any and all current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, and ramp up or ramp down at a given rate), certificates, tags, credits, or ancillary service attributes, or accounting constructs, however entitled, or other attribute of the Facility, attributed to or associated with the Facility or any unit of generating capacity of the Facility throughout the Delivery Period, so that the maximum amount of

Contract Quantity of the Facility may be counted toward a Resource Adequacy requirement by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under Applicable Law, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other such products.

"CEC" means the California Energy Commission.

"CEQA" means the California Environmental Quality Act (Cal. Pub. Res. Code, section 21000 et seq.) and the CEQA Guidelines, as amended from time to time.

"Change in Control" means the occurrence, whether voluntary or by operation of law and whether in a single transaction or in a series of related transactions, following which the Ultimate Parent Entity directly or indirectly no longer (i) remains the owner of at least fifty percent (50%) of the equity ownership of Seller, or (ii) retains the power to control the management and policies of Seller; provided, however, that a Change in Control shall not include any Permitted Transfer.

"Claiming Party" has the meaning set forth in Section 11.2.

"Claims" has the meaning set forth in Section 16.4.

"Commercial Operation Date" or "COD" means the later of (i) December 1, 2020, or (ii) the date commercial operation is achieved as specified in Section 6.2.

"Compliance Costs" and "Compliance Cost Cap" have the respective meanings set forth in Section 3.3(b).

"Construction Permits" means all permits required for construction of the Facility.

"Contract Price" means \$36.87/MWh during the Delivery Term. The Contract Price for Test Energy shall be \$21.75/MWh plus \$10/MWh for each WREGIS Certificate associated with such Test Energy delivered to Buyer.

"Contract Quantity" means the quantity of Energy expected to be delivered by Seller from the Facility to Buyer at the Delivery Point as set forth in Exhibit C.

"Contract Year" means each year beginning on January 1 and ending on December 31 of such year; provided, however, that the first Contract Year shall commence on the Commercial Operation Date and end on the

following December 31, and that the last Contract Year shall commence on January 1 and end on the last day of the Delivery Period.

“Costs” means, with respect to the Non-Defaulting Party, (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into new arrangements necessitated by an Event of Default, and (b) all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with such new arrangements.

“CPUC” means the California Public Utilities Commission.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third-party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by the Rating Agencies.

“CSPV” has the meaning set forth in Section 7.3.

“Daily Delay Damages” has the meaning set forth in Section 7.4.

“Damage Payment” means (a) the Development Period Security less (b) amounts collected by Buyer (either as draw downs of Development Period Security or payments by Seller) in connection with any delays pursuant to Section 7.4.

“Day-Ahead” shall have the meaning set forth in the CAISO Tariff.

“Day-Ahead Market” shall have the meaning set forth in the CAISO Tariff.

“Day-Ahead Schedule” has the meaning set forth in Section 5.4(a).

“Defaulting Party” has the meaning set forth in Section 12.1.

“Delivery Period” means the period commencing on COD and ending at midnight on the last day of the calendar month twenty (20) years from the month of the COD.

“Delivery Period Damage Payment” means (a) the Delivery Period Security less (b) amounts collected by Buyer either as draw downs on Delivery Period Security or payments by Seller in connection with reductions in delivery of the Contract Quantity as described in Section 4.1(b).

“Delivery Period Security” has the meaning set forth in Section 10.2(a).

“Delivery Point” means the PNode corresponding to the Point of Interconnection or some other point as agreed to in writing by the Parties.

“Development Period Security” has the meaning set forth in Section 10.1(a).

“Dodd-Frank Act” or “DFA” has the meaning set forth in Section 16.14.

“Early Termination Date” has the meaning set forth in Section 13.1(a).

“Economic Dispatch Down” means curtailment of delivery of Product from the Project that is the result of economic curtailment where Buyer (as the Scheduling Coordinator) or a third party Scheduling Coordinator (in accordance with Buyer’s directions) either submits a self-schedule with a binding Product quantity or an economic bid in the applicable CAISO market or fails to submit any such schedule or bid, in either case, that when implemented by the CAISO results in an otherwise available Product quantity not being scheduled or awarded in such CAISO market and such curtailment is not concurrently the result of a Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault.

“Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in California Public Utilities Code Section 399.12, as may be amended.

“Energy” means electrical energy in MWh that is produced by the Facility and delivered by Seller.

“Environmental Attributes” mean any and all current or future credits, benefits, emissions reductions, Renewable Energy Credits, offsets, and allowances, howsoever entitled, attributed to capacity and Energy generated at the Facility and its avoided emissions of pollutants, including:

- (a) Any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (b) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by any applicable Governmental Authority or association of governmental representatives, such as, but not limited to, the United Nations Intergovernmental Panel on Climate Change, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere (avoided emissions may or may not have any value for GHG compliance

purposes; although avoided emissions are included in the list of Environmental Attributes, the inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program); and

- (c) The reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include, without limitation, those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992, or as may be amended, and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one (1) Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.

Environmental Attributes do not include:

- (d) Any Energy, capacity, reliability or other electrical attributes from the Facility;
- (e) Tax Attributes associated with the construction or commercial operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation;
- (f) Fuel-related subsidies or "tipping fees" that may be paid to a Seller to accept certain fuels, or local subsidies received by Seller for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or
- (g) Emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

"Environmental Attributes Value" means the value of an Environmental Attribute purchased by Buyer under this Agreement, stated in \$/MWh, determined based on a Renewable Energy Credit pricing index that has been mutually agreed upon by Seller and Buyer or, if such index is not available, the value of the Environmental Attributes (stated for a single Environmental Attribute) as determined by the average of three (3) nationally recognized broker quotes for Environmental Attributes; provided, however, that during the period of time the Contract Price is reduced pursuant to Section 3.3(d)ii), "Environmental Attributes Value" shall mean Zero Dollars (\$) per MWh.

“Environmental Impact Report” or “EIR” means the Environmental Impact Report approved by the City of Lancaster and filed with the State Clearinghouse in July 2015 (State Clearinghouse No. 2014071077).

“Event of Default” has the meaning set forth in Section 12.1.

“Excess Quantity” has the meaning set forth in Section 2.6(a).

“Execution Date” means the date on which the Agreement has been executed by the authorized representatives of both Parties.

“Expected Contract Capacity” means the generation capability of the Facility net at the Point of Interconnection, designated in MW which is expected to be fifteen (15) MW.

“Facility” means the Seller’s electric generating facility, as measured by a single independent meter, and as described in Exhibit F (as may be updated from time to time in accordance with Sections 15.1(a) and 15.1(b), together with all materials, equipment systems, structures, features and improvements used to produce the Product for delivery to Buyer which, subject to Section 3.3, is certified by the CEC as an ERR.

“Facility Lender” means, collectively, any lenders or other third parties, including their agents and trustees, providing Seller or its Affiliates with construction financing, long-term financing or other credit facilities, including refinancing, in connection with the development, construction or operation of the Facility. Seller shall identify such Facility Lender through Notice to Buyer. Facility Lender shall include the Tax Equity Investor.

“FERC” means Federal Energy Regulatory Commission.

“Force Majeure” has the meaning set forth in Section 11.1.

“Force Majeure Extension” has the meaning set forth in Section 7.2.

“Forced Outage” means the removal of service availability, unavailability, constraint on availability, or reduction of one (1) MW or more of the Facility or the transmission line serving the Facility if under the Seller’s control, for mechanical or operational (and not purely financial) reasons other than a Force Majeure or Maintenance Outage.

“Full Capacity Deliverability Status” has the meaning set forth in the CAISO Tariff.

“FCDS Finding” means a written confirmation from the CAISO (including by posting to the CAISO website or inclusion on an NQC list) that the Project is eligible for FCDS.

“GEP Period” has the meaning set forth in Section 4.1(a).

“Good Industry Practice” means those practices, methods and acts that would be implemented and followed by prudent builders and operators of electric generation facilities similar to the Facility in the western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety, and shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers’ warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO and Applicable Law. Good Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

“Governmental Approvals” means all CAISO agreements, tariffs and standards; all applicable interconnection agreements and standards; NERC and WECC regulations and protocols; and all applicable regulatory authorizations, consents, approvals, waivers, exceptions, mitigation measures, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority and, with respect to the Seller, shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the development, construction, use, improvement, and continuous lawful operation of the Facility.

“Governmental Authority” means any federal, state, local or municipal government body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; any court or governmental tribunal; or any independent operator, regional transmission organization or other regulatory body; in each case having jurisdiction over either Party, the Facility, the Site, Seller’s interconnection facilities, the Transmission Provider’s interconnection facilities, or the Transmission Provider’s transmission system.

“GSI” has the meaning set forth in Section 7.3.

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

“Guaranteed Energy Production” or “GEP” has the meaning set forth in Section 4.1.

“Hourly Metered Quantity” means Metered Quantity delivered in a particular hour.

“Initial GSI Extension” has the meaning set forth in Section 7.3.

“Initial Negative Interval” has the meaning set forth in Section 2.3(c).

“Initial Negotiation End Date” has the meaning set forth in Section 16.11.

“Installed Contract Capacity” means the generation capability of the Facility net at the Point of Interconnection, designated in MW, measured on the Commercial Operation Date.

“Integration Charges” means charges assessed by the CAISO to the Scheduling Coordinators of solar photovoltaic generators (or other intermittent generators) for products and/or services implemented after the date of this Agreement, where the primary need for such products and/or services is identified by the CAISO as related to the integration of solar photovoltaic (or other intermittent) energy generation into the CAISO grid or the management of such energy resources.

“Interconnection Queue Position” means the CAISO-specified order of Seller’s valid request for interconnection relative to all other valid interconnection requests. The Facility queue number is Q1208.

“Land Use Permits” means all permits required for operation of the Facility.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit issued by a Qualified Issuer, in such form as is reasonably acceptable to Buyer.

“LMP” shall have the meaning set forth in the CAISO Tariff.

“Load Uplift Obligation” shall have the meaning set forth in the CAISO Tariff.

“Lost Output” means, in any measurement period, the amount of Product that the Facility was available to produce and could reasonably have been expected to deliver, but was not delivered due to (a) Force Majeure; (b) Buyer Curtailment; (c) an Event of Default where Buyer is the Defaulting Party that prevented the delivery of Product by Seller

hereunder; or (d) an emergency, any reliability curtailment or other involuntary order or direction to curtail output of the Facility declared or delivered, as applicable, by the CAISO or the Transmission Provider. Lost Output shall be determined pursuant to the procedures set forth in Section 5.6(b).

“Maintenance Outage” has the meaning set forth in Section 6.3(a) and shall not include Forced Outages.

“Major Equipment Malfunction” means a non-Force Majeure malfunction, breakdown, or failure of major equipment at the Facility resulting in a reduction of Energy production of the Facility by at least fifty percent (50%) of the applicable Contract Quantity in a Contract Year, and such malfunction, breakdown, or failure was not caused by Seller and could not have been avoided through the exercise of Good Industry Practice.

“Material Permits” means all permits required for Commercial Operation of the Facility.

“Metered Quantity” means all Energy produced from the Facility and delivered to the Delivery Point as measured in MWh at the Facility’s Revenue Meter as may be adjusted by CAISO market settlements.

“Milestones” or “Milestone Schedule” mean the events set forth in Section 7.1 and Exhibit E.

“Monthly Delivery Forecast” has the meaning set forth in Section 5.3.

“Monthly Payment” has the meaning set forth in Section 2.3(d).

“Moody’s” means Moody’s Investor Service, Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized Credit Rating agency.

“MW” means megawatt alternating current (AC).

“MWh” means megawatt hours of electrical energy.

“Negative LMP Floor” means the Floor Price as defined in the Negative Pricing Bid Protocol given in Exhibit K.

“NERC” means North American Electric Reliability Council, Inc.

“Non-Defaulting Party” has the meaning set forth in Section 13.1

“Notice” has the meaning set forth in Section 16.7.

“One-Time Update” has the meaning set forth in Section 2.2(c)(i).

“Outage Schedule” has the meaning set forth in Section 6.3(b).

“Operational Meter Analysis and Reporting” or “OMAR” means the CAISO web-based application that allows users to view, download, graph, and submit settlement quality meter data.

“Participating Intermittent Resource” shall have the meaning set forth in the CAISO Tariff.

“Party” or “Parties” means Buyer or Seller, and each such Party’s respective successors and permitted assignees.

“Payment” means the amount paid by Buyer, or Seller, as applicable, as set forth in Section 2.3.

“Performance Assurance” means the Development Period Security and the Delivery Period Security.

“Permitted Transfer” means

- (a) Any change of economic and voting rights triggered in Seller’s organization documents arising from the financing of the Facility and which does not result in the transfer of ownership, economic or voting rights to any entity that had no such rights immediately prior to the change;
- (b) A pledge of direct or indirect equity interests in Seller, or the ownership of the Facility in connection with a lease in connection with any Tax Equity Financing;
- (c) Any transaction or series of transactions in which membership or equity interests in Seller or an Upstream Equity Owner are issued or transferred to another Person solely for the purpose of a Tax Equity Financing;
- (d) Any transfer of direct or indirect equity in Seller that does not materially impact the direct or indirect equity interests of FTP Power, including any transaction amount Affiliates of Seller and any corporate reorganizations or transfers to entities under common control of FTP Power; or
- (e) A transaction involving the Facility and a Tax Equity Investor that is a sale leaseback or other lease transaction referenced in the definition of Tax Equity Financing.

“Point of Interconnection” means the physical interconnection point where the Facility interconnects with the CAISO Controlled Grid as identified by Seller in Exhibit F.

“Pooled Money Investment Account” means the “Pooled Money Investment Account” managed by the Investment Division of the California State Treasurer’s Office under statutory authority granted by California Government Code Sections 16430 and 16480.4.

“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.

“PNode” has the meaning set forth in the CAISO Tariff.

“Product” means capacity and Energy generated at the Facility and delivered to Buyer, including all associated Environmental Attributes and Capacity Attributes including Resource Adequacy and ancillary services.

“Qualified Issuer” means a United States commercial bank or a United States branch of a foreign bank with a rating on senior unsecured long-term debt of “A-” or higher by S&P and “A3” or higher by Moody’s (without a “credit watch,” “negative outlook” or other rating decline alert by either S&P or Moody’s).

“Qualified Operator” means (a) a Person that has at least two (2) years of operating experience with at least two (2) utility-scale solar projects of twenty (20) MW or higher, (b) any Person identified on Exhibit G or any such Person’s Affiliates, or (c) any other Person reasonably acceptable to Buyer.

“Qualified Transferee” means (x) Seller Lender, (y) a Person that (a) has (or its ultimate parent or any upstream equity owner of such Person has) a tangible net worth that is equal to or in excess of One Hundred Million Dollars (\$100,000,000.00), or (b) maintains a current long-term credit rating (corporate or long-term senior unsecured debt) of (i) “A3” or higher by Moody’s and “A-” or higher by S&P, if such Person is rated by both Moody’s and S&P or (ii) “A3” or higher by Moody’s, or “A-” or higher by S&P if such Person is rated by either S&P or Moody’s, or (iii) equivalent ratings by any other credit rating agency of recognized national standing and retains, and is a Qualified Operator or retains, a Qualified Operator to operate the Facility (or otherwise agrees not to interfere with the existing Qualified Operator for the Facility), or (z) is reasonably acceptable to Buyer.

“Quarter” in any Contract Year, each of the following time periods: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

“Ratings Agency” means either S&P or Moody’s.

“Real-Time” has the meaning set forth in the CAISO Tariff.

“Real-Time Schedule” has the meaning set forth in Section 5.5(a).

“Referral Date” has the meaning set forth in Section 16.11.

“Relief Measures” has the meaning set forth in Section 7.3.

“Remedial Action Plan” has the meaning set forth in Section 7.1(e).

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented.

“Replacement Energy Price” means (a) the price (stated on a per MWh basis) at which Buyer, acting in a commercially reasonable manner, purchases Replacement Product, or, (b) absent such a purchase, (i) the average PNode Price for the applicable GEP Period, plus (ii) the price of the Environmental Attributes that would have been generated by the Facility valued at the Environmental Attributes Value, whether sold separately or bundled as a package, in each case, for the calculation period, all as reasonably calculated by Buyer.

“Replacement Product” means Energy produced by a facility other than the Facility and Environmental Attributes equal to the amount of the Other Quantity for a given GEP Period.

“Resource Adequacy” or “RA” means the procurement obligation of load serving entities, as set forth in any Resource Adequacy laws, rules, or regulations enacted, adopted or promulgated by any applicable Governmental Authority or CAISO Tariff, as those obligations may be altered from time to time, and includes the programs and requirements for local capacity, system, and flexible capacity.

“Resource Adequacy Benefits” means the Resource Adequacy, Capacity Attributes, including flexible capacity, and any other rights and privileges associated with the Facility and Product that satisfy any entity’s Resource Adequacy obligations, as those obligations are set forth in any Resource

Adequacy rulings and shall include any local, zonal, or otherwise locational flexible attributes associated with the Facility.

“Revenue Meter” means the revenue quality device that is used to record the output, auxiliary usage, or power flow at a generator, tie line or other point of interconnection to the CAISO Controlled Grid, in accordance with Section 8.1.

“S&P” means Standard & Poor’s or any successor thereto, or in the event that there is no such successor, a nationally recognized Credit Rating agency.

“SCADA” means supervisory control and data acquisition.

“Scheduled Quantity” means the total quantity of Energy scheduled hereunder that CAISO approves in its final schedule and publishes in accordance with the CAISO Tariff.

“Scheduling Coordinator” means the Scheduling Coordinator for the Facility designated by Seller in accordance with Section 5.1 herein.

“Scheduling Coordinator Costs” means the actual costs (including the costs of Seller employees or agents if Seller acts directly as the Facility’s Scheduling Coordinator) reasonably incurred by Seller, as a result of Seller or Seller’s designated third party acting as the Facility’s Scheduling Coordinator, including the costs associated with the registration of the Facility with the CAISO and the installation, configuration, and testing of all equipment and software necessary for Seller or Seller’s designated third party to act as Scheduling Coordinator or to schedule the Generating Facility and settle all charges from the CAISO.

“Secure File Transfer Protocol” means a network protocol that provides file access, file transfer, and file management functionalities over any reliable data stream.

“Self Schedule” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth in the Preamble.

“Seller Sales Damages” has the meaning set forth in Section 13.4(a).

“Settlement Amount” has the meaning set forth in Section 13.2(a).

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Period” has the meaning set forth in the CAISO Tariff.

“Shared Facilities Agreement(s)” means the co-tenancy and shared facility agreement(s) that govern the relationship between various solar facilities utilizing shared interconnection equipment.

“Shortfall Damages” has the meaning set forth in Section 4.1(b).

“Shortfall Energy” has the meaning set forth in Section 4.1(b)i).

“Site” means the real property on which the Facility is located, as more particularly described in Exhibit F.

“Supply Plan” has the meaning set forth in the CAISO Tariff.

“Tax Attributes” means (i) investment tax credits (including any grants or payments in lieu thereof) and any other tax deductions or benefits under federal, state or other law available as a result of the ownership and operation of the Facility or the output generated by the Facility (including, without limitation, tax credits, payments in lieu thereof and accelerated and/or bonus depreciation); and (ii) present or future (whether known or unknown) cash payments, grants under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 or outright grants of money relating in any way to the Facility.

“Tax Equity Financing” means, with respect to Seller or its parent entities, any transaction or series of transactions pursuant to which (i) a Tax Equity Investor either (A) obtains less than a one hundred percent (100%) of the equity interest in Seller that has an interest in Seller, or (B) obtains all of the equity interest of Seller in connection with a sale-leaseback transaction, and (ii) such Tax Equity Investor is allocated a share of profits, losses, and tax allocations associated with such equity interest or the Facility, as applicable.

“Tax Equity Investor” means an investor that has acquired an equity interest in Seller pursuant to a financing structure that assigns such investor all rights, title and benefits to the Tax Attributes of Seller.

“Term” means the term of the Agreement as stated in Section 2.1.

“Transmission Provider” means Southern California Edison Company or any successor entity thereto.

“USITC” has the meaning set forth in Section 7.3.

“Ultimate Parent Entity” means (a) as of the Execution Date, FTP Power LLC, and (b) from and after any other Change in Control or other transfers

permitted under Section 15.5 where the Ultimate Parent Entity changes, the entity specified by Seller.

“Upstream Equity Owner” means any direct or indirect owner of Seller at any level below the Ultimate Parent Entity.

“VER Forecasting Program” means the rules, protocols, procedures and standards for Participating Intermittent Resources under the CAISO’s Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

“WECC” means the Western Electricity Coordinating Council and any successor entity thereto.

“WREGIS” means Western Renewable Energy Generation Information System, or its successor; provided that said successor is capable of performing substantially similar functions and is acceptable to both Parties.

“WREGIS Certificates” has the meaning set forth in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the rules adopted by WREGIS, as amended from time to time.

2. TERM; POWER PURCHASE AND SALE

2.1 Term.

- (a) The Term of this Agreement is from the Execution Date until the end of the Delivery Period unless terminated earlier as provided in the Agreement.
- (b) This Agreement may be terminated at any time by written agreement of both Parties.

2.2 Purchase and Sale of the Product.

- (a) In accordance with the terms and conditions hereof and throughout the Delivery Period, Seller shall sell and Buyer shall purchase the Product. Seller shall deliver the Product to the Delivery Point, and Buyer shall receive the Product from Seller at the Delivery Point. Unless otherwise provided in this Agreement, in no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement.

- (b) During the Test Period, Seller shall sell and Buyer shall purchase all Test Energy delivered at the Delivery Point.
- (c) No later than thirty (30) days after the Commercial Operation Date, Seller will provide Buyer with a production report with the expected Contract Quantity for Contract Year 2. If the amount of expected production in the report is less than ninety-eight percent (98%) of the Contract Year 2 Contract Quantity set forth in Exhibit C, then Seller shall use commercially reasonable efforts to update the design of the Facility if feasible in light of the constraints of the Site and the Interconnection Agreement. No later than thirty (30) days prior to the end of Contract Year 1, Seller shall provide Buyer with an updated production report with the expected Contract Quantity for Year 2 that accounts for any redesign which Seller was able to undertake consistent with the foregoing sentence.
- i. In the event, that despite such commercially reasonable efforts by the Seller, the expected Contract Quantity for Contract Year 2 is less than the Contract Quantity for Contract Year 2 set forth in Exhibit C, then Seller may adjust the Contract Quantities described in Exhibit C upon Notice pursuant to Section 16.7 one time during the Term of this Agreement according to the provisions set forth in this Section 2.2(c) (“One-Time Update”). Seller shall submit any One-Time Update to Exhibit C to Buyer. Such proposed updated Exhibit C included in the One-Time Update shall be submitted by October 1 of the second full Contract Year.
- ii. If the revised Contract Quantity in the One-Time Update is less than the Contract Quantity for Contract Year 2 set forth in Exhibit C but not less than ninety percent (90%) of such amount, Seller shall pay to Buyer a one-time buy-down payment equal to Fifteen Dollars (\$15.00) per MWh that the revised Contract Quantity for Contract Year 2 is below the amount set forth in Exhibit C for Contract Year 2 as of the Effective Date. If the revised Contract Quantity for Contract Year 1 in the One-Time Update is less than ninety percent (90%) of the Contract Year 2 Contract Quantity as of the Effective Date, Buyer shall have the right to terminate as described in Section 13.
- iii. Seller’s proposed updated production profile shall be subject to Buyer’s review and approval, which such approval shall not be unreasonably withheld, conditioned or delayed, and, upon approval, Seller’s updated production profile will be deemed to replace the then-existing Exhibit C without any further action of the Parties.

2.3 Payment.

- (a) The Monthly Payment formula below is based on the current CAISO market design. Accordingly, Seller shall schedule delivery with the CAISO, CAISO will pay Seller under the CAISO Tariff for delivery through the CAISO system, and CAISO will charge Buyer for Buyer's load that could have been served by the Energy delivered. Consequently, the Payment reflects both the agreed-to Contract Price and the payment Seller receives from the CAISO (which Seller may retain). The Parties have agreed to a written protocol for negative price curtailment as set forth in Exhibit K attached hereto. As an accommodation to Buyer, Seller or Seller's SC will be deemed to sell the Metered Quantity to CAISO on behalf of Buyer at the Delivery Point and Buyer hereby provides all required authorizations to Seller to schedule and deliver such Metered Quantity to CAISO and to retain the revenue associated with such sales except as otherwise set forth below. Examples of the payment calculations set forth in Section 2.3, Section 2.4 and Section 2.6 are set forth in Exhibit L.

- (b) For the purposes of calculating the amount payable under this Agreement with respect to any hour or partial hours, as applicable ("Settlement Interval"), settlement will be based on the Day-Ahead Market hourly LMP at the Delivery Point. The amount payable for each hour shall be calculated as follows:

If the Day-Ahead Market hourly LMP at the Delivery Point is Zero Dollars (\$0) or positive, the amount payable will be calculated as:

Hourly Metered Quantity * (Contract Price — Delivery Point Day-Ahead Market hourly LMP)

If the Day-Ahead Market hourly LMP at the Delivery Point is less than Zero Dollars (\$0) but not less than the Negative LMP Floor, the amount payable will be calculated as:

Hourly Metered Quantity * (Contract Price + the absolute value of the negative Delivery Point Day-Ahead Market hourly LMP)

If the Day-Ahead Market hourly LMP at the Delivery Point is less than the Negative LMP Floor, per Exhibit K, absent instruction from Buyer to the contrary, the Settlement Period shall be deemed a Buyer Curtailment.

- (c) for the first fifty (50) Settlement Periods in the Day-Ahead Market in any Contract Year (or such other number of Settlement Intervals as

would be equal to fifty (50) hours in the event that CAISO changes the number of minutes in a Settlement Interval as of the Effective Date) in which Buyer elects to curtail delivery (each of such fifty (50) Settlement Periods or hours, an “Initial Negative Interval”), Buyer shall pay Zero Dollars (\$0) for curtailed output.

Notwithstanding the above, if at any time during a Contract Year the Contract Quantity exceeds the threshold specified in Section 2.6 below, the amount payable will be calculated as provided in Section 2.6.

For the avoidance of doubt, the following clarifications are provided: (i) if the Day-Ahead Market hourly LMP at the Delivery Point is less than Zero Dollars (\$0) but not less than the Negative LMP Floor, the above calculation will result in a payment by Buyer of the Settlement Interval [Metered Quantity * (Contract Price plus the absolute value of the negative Delivery Point Day-Ahead Market hourly LMP)]; and (ii) if the Day-Ahead Market hourly LMP at the Delivery Point is more than the Contract Price, the above calculation will result in a negative amount, which such amount will be payable to Buyer pursuant to Section 2.3(d) below. The payment due to Seller when the Day-Ahead Market hourly LMP at the Delivery Point is less than the Negative LMP Floor is specified in Exhibit K.

- (d) The “Monthly Payment” shall be the sum of the amounts payable for all hours in each calendar month. If the Monthly Payment amount so determined above is positive, then Buyer shall pay Seller such amount. If the Monthly Payment amount so determined above is negative, then Seller shall pay Buyer such amount.
- (e) The total Hourly Metered Quantity as measured at the end of each month shall be used for the purposes of calculating the Monthly Payment under this Agreement. All Product purchased under this Agreement must be measured by the Facility’s CAISO Revenue Meter to be eligible for payment under this Agreement.
- (f) Buyer may reduce any Monthly Payment due in any Billing Period by any amount due from Seller under Section 4.1 for Shortfall Damages, regardless of when the Shortfall Damages first became due.

2.4 Curtailment.

- (a) Except as specifically set forth in this Section 2.4 and Section 2.6 and Exhibit K, payment shall only be made under this Agreement for Product actually delivered.
- (b) Seller may elect to curtail delivery of output from the Facility, in whole or in part, in any hour that does not qualify as Buyer

Curtailment for managing the intermittency of the resource to reduce uninstructed or other deviations.

- (c) Buyer may curtail delivery of output from the Facility at any time and for the duration specified by Buyer ("Buyer Curtailment") provided that Buyer provides sufficient notice to Seller for the alteration of a Day Ahead Schedule, and in no event less than 10 minutes before such schedule must be submitted. Notwithstanding any such Buyer Curtailment, Seller may, but is not required, to schedule Output from the Facility into CAISO during any Buyer Curtailment, in whole or in part, and, unless otherwise provided under Section 2.3(c), Buyer will pay Seller for Lost Output as set forth in this Section 2.4(c), Buyer will be exempted from any incremental CAISO charges for which it would otherwise be responsible pursuant to Section 2.7, and Buyer shall receive no Product during any such Settlement Period from the Facility. In its Buyer Curtailment notice to Seller, Buyer shall indicate the duration of the Buyer Curtailment period, which shall be for a minimum of thirty (30) minutes, and the time at which Buyer requests Seller to resume delivery of the output from the Facility to Buyer. To the extent Buyer requests any change in the duration of the requested curtailment period, Seller shall effectuate any such change no later than ten (10) minutes following notice from Buyer's notification to Seller of the proposed change to curtailment. Seller shall respond to a Buyer Curtailment notice (including the end of such curtailment periods) in accordance with Good Industry Practice and consistent with the Facility's operational characteristics as then-currently modeled in the CAISO Master File. Buyer shall pay Seller, on the date payment would otherwise be due in respect of each month in which any Buyer Curtailment occurred, an amount equal to the product of (1) the Lost Output during any Buyer Curtailment, and (2) the Contract Price. In addition, any Lost Output during an event of Buyer Curtailment will be included in the Lost Output calculation for GEP purposes.

2.5 Contract Price.

- (a) The Contract Price, as may be adjusted under this Agreement, together with Buyer's payment of the CAISO Cost Share, is full compensation for all performance under this Agreement, including, unless otherwise specifically provided herein, costs to generate and deliver the Product to the Delivery Point, and costs to operate and maintain the Facility, including:
- i. transmission and transmission related costs;
 - ii. all CAISO Costs;

- iii. subject to Section 3.3, compliance cost and/or penalties from the North American Electric Reliability Corporation, Peak Reliability, Western Electricity Coordinating Council, or successor entity, imposed on or related to the delivery of the Product from the Facility up to the Delivery Point;
 - iv. subject to Section 3.3, costs to maintain California RPS certification and qualification;
 - v. taxes related to the generation and delivery of the Product up to and at the Delivery Point;
 - vi. environmental permitting costs, including greenhouse gas emissions or allowances, if any;
 - vii. subject to Section 3.3, costs for compliance with all Applicable Laws; and
 - viii. subject to Section 3.3, costs of registering in WREGIS, and any mandatory ongoing WREGIS costs and charges.
- (b) In the event that Seller is compensated by a third party for any Products produced by the Facility, as permitted by Section 16.2 or otherwise, including compensation for Resource Adequacy Benefits, Environmental Attributes, or economic dispatch of the Facility, Seller shall remit all such compensation directly to Buyer (less any reasonable costs incurred by Seller in connection with achieving the Reductions).
- (c) At no cost to Seller, except for any de minimis administrative costs, Seller shall cooperate with Buyer to enable Buyer to realize CAISO credits, where available, associated with serving load including, but not limited to, Load Uplift Obligation transacted via Inter-SC Trades.

2.6 Excess Quantity.

- (a) In any Contract Year during the Delivery Period, if the amount of Energy delivered by Seller exceeds one hundred ten percent (110%) of the annual Contract Quantity ("Excess Quantity"), the amount payable with respect to each MWh of Excess Quantity shall be calculated as follows, subject to the limitation in subsection (b) below, notwithstanding any other provision of this Agreement:

Amount payable = Hourly Metered Quantity of Excess Quantity * [(0.50 * Contract Price) — Delivery Point Day-Ahead Market hourly LMP];

- (b) The maximum amount payable by Buyer under this Section 2.6 will not exceed an amount calculated as:

Hourly Metered Quantity of Excess Quantity * (0.50 * Contract Price).

2.7 CAISO Costs.

In its capacity as Scheduling Coordinator, Seller shall (i) be responsible for and shall pay for the first Three Thousand Seven Hundred Fifty Dollars (\$3,750.00) each month of all CAISO fees, charges and penalties, including: A) charges and penalties associated with imbalance or deviation between actual and scheduled generation; B) Scheduling Coordinator Costs; C) VER Forecasting Program costs, including forecasting fees and related charges associated with the Facility becoming a Participating Intermittent Resource and participating in the VER Forecasting Program; and D) Load Uplift Obligations (if applicable) ("CAISO Costs"). Buyer shall reimburse Seller for all CAISO Costs above Three Thousand Seven Hundred Fifty Dollars (\$3,750.00) each month ("CAISO Cost Share"). Seller (as SC) shall be responsible for all settlement functions with CAISO related to the Facility subject to reimbursement from Buyer as set forth herein. Notwithstanding the foregoing, Seller shall be responsible for and shall pay for all Integration Charges up to the CAISO Integration Charge Cost Cap; however, in the event that Integration Charges exceed the CAISO Integration Charge Cost Cap, Buyer shall be obligated to pay Seller for all Integration Charges in excess of the CAISO Integration Charge Cost Cap. Seller shall promptly notify each Buyer of the amount of Buyer's share of the CAISO Costs and any CAISO Integration Charges owed by Buyer in excess of the CAISO Integration Charge Cost Cap in a manner that is sufficient to allow Buyer to timely request that Seller dispute with the CAISO those charges on behalf of Buyer. Seller shall render a separate invoice to Buyer for its share of the CAISO Costs and other CAISO charges for which Buyer is responsible under this Agreement ("CAISO Charges Invoice"), including this Section 2.7. The CAISO Charges Invoices shall be rendered by Seller after settlement information becomes available from the CAISO that identifies any CAISO charges. The CAISO Charges Invoice shall include all information and supporting documentation from the CAISO reasonably necessary for Buyer to validate any such charges or penalties, including information regarding scheduling by Seller (as SC). Notwithstanding the foregoing, Buyer acknowledges that CAISO may issue additional invoices reflecting CAISO adjustments to such CAISO charges. Seller shall reflect any such adjustments on subsequent CAISO Charges Invoices. Buyer shall pay the amount of CAISO Charges Invoices within thirty (30) days of Buyer's receipt of the CAISO Charges Invoice. If Buyer fails to pay such CAISO Charges Invoice within that period, Seller may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Buyer under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

2.8 Buyout Option.

Seller hereby grants to Buyer an option to purchase the Facility subject to the terms and at the time set forth in Exhibit M.

2.9 Market Events

- (a) If at any point during the Delivery Period, an alternative market design is implemented in which the Facility will or can participate in a new energy market or the scheduling protocols substantially change (a "Market Event"), and such Market Event materially changes the delivery requirements in this PPA, including in ways that mitigate negative price risk or reduce risks in transacting in the real-time market, the Parties shall cooperate in good faith to facilitate the delivery of Metered Quantity from the Point of Delivery to Buyer to retain the economic benefit of the bargain to the Parties, at the least possible cost to the Parties, consistent with this PPA to the extent possible.
- (b) During the Term, Buyer may request that the Parties discuss modifications to the payment mechanics that utilize the Real-Time LMP price at the Delivery Point instead of the Day-Ahead hourly LMP price at the Delivery Point if such modification would retain the economic benefit of the bargain to the Parties; provided that either Party will be obligated to agree to any modifications or amendments to this PPA to utilize such Real-Time LMP price at the Delivery Point.

3. CAPACITY ATTRIBUTES, ENVIRONMENTAL ATTRIBUTES AND TAX ATTRIBUTES

3.1 Capacity Attributes.

For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Product and Environmental Attributes on the terms and conditions set forth herein, Seller hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of Seller's rights, title, and interest in and to the Capacity Attributes. The consideration for the transfer of Capacity Attributes, if any, is contained within the applicable Contract Price, provided that Seller shall pay Buyer liquidated damages in accordance with Section 3.1(b) in the event that Seller is unable to obtain a Full Capacity Deliverability Status Finding or otherwise provide the amount of Capacity Attributes that Buyer would have otherwise received if the Project had obtained Full Capacity Deliverability Status.

- (a) **Covenant Regarding Capacity Attributes.** Without limiting any of Seller's obligations under this Agreement, Seller shall use commercially reasonable efforts to cause the Facility to obtain an

FCDS Finding by no later than ninety (90) days after the Commercial Operation Date, provided that the obtaining such FCDS Finding shall not be a condition to the achievement of Commercial Operation, and no Default shall occur hereunder solely due to the failure of the Facility to obtain such status or the loss of such status once obtained, unless such failure is due to the actions or omissions of Seller.

- (b) Consequences of Failure to Obtain an FCDS Finding. Any failure by Seller to obtain an FCDS Finding, and any remedy by Seller to address such a failure, shall be resolved on a non-discriminatory basis among the Facility and any other generating facility which shares the same capacity designation.
- i. If Seller is unable to obtain a Full Capacity Deliverability Status Finding as of the day ninety (90) days after the Commercial Operation Date, then Seller shall pay Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer for the Capacity Attributes that Seller failed to convey to Buyer, calculated in accordance with Sections 3.1(b)ii) and 3.1(b)iii) below, provided that in lieu of paying such liquidated damages Seller may deliver alternative Capacity Attributes equivalent to those that would have been provided by the Facility for such RA Shortfall Month if the Facility had Full Capacity Deliverability Status.
 - ii. Seller shall calculate the "RA Deficiency Amount" using the formula set forth in Section 3.1(b)iii) for each RA Shortfall Month and shall notify Buyer of such amount no later than the last day of the applicable RA Shortfall Month. Seller shall pay the RA Deficiency Amount monthly in the form of a deduction from the amount invoiced by Seller in such month pursuant to Section 9. In the event that the RA Deficiency Amount payment due in any month exceeds the invoiced amount pursuant to Section 9, Buyer shall not make any payment to Seller for that Month, and the difference between the invoiced amount and the RA Deficiency Amount payment shall be included in the following Month's invoiced amount, until the full amount has been deducted. Any dispute with regard to the calculation of any RA Deficiency Amount shall be resolved in accordance with Section 9.4.
 - iii. For Buyer, the RA Deficiency Amount shall be equal to the product of (w), (x), and (y) where: (w) is the per unit RA Value that Buyer would reasonably incur to procure replacement RA, not to exceed Two Dollars (\$2.00) per kW-

mo, (x) is the Installed Contract Capacity, and (y) is the relevant monthly NQC Factor (e.g., the relevant monthly Technology Factor for the first year of operation) as listed on the most recent NQC report. The RA Deficiency Amount shall be lowered by the amount of any RA received from the Facility by Buyer, including for partial RA allocations as shown below. The RA Deficiency Amount for Buyer is represented by the following equation:

$$\text{RA Deficiency Amount (\$/Month)} = \text{RA Value (\$/MW/Month)} * ((\text{Installed Contract Capacity (MW)} * \text{relevant NQC Factor}) - \text{actual NQC})$$

- iv. To the extent that information is required by Buyer from Seller to complete its plans related to Resource Adequacy, Seller shall promptly provide such information at no additional cost to such Buyer.
- (c) Representation Regarding Ownership of Capacity Attributes. Seller shall not assign, transfer, convey, encumber, sell, or otherwise dispose of any of the Capacity Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Capacity Attributes, unless requested by Buyer to do so pursuant to Section 3.3(e) below. During the Term of this Agreement, Seller shall not report to any Person that any of the Capacity Attributes belong to any Person other than Buyer. Buyer may, at Buyer's own risk and expense, report to any Person that such Capacity Attributes belongs to it. Seller, as Scheduling Coordinator, shall submit to CAISO a Supply Plan (as defined in the CAISO Tariff) in accordance with applicable CAISO requirements noting Buyer as the entity to which such Capacity Attributes belong.
- (d) Further Assurances. Seller shall execute and deliver such documents and instruments and take such other action as required by the CAISO and as any Buyer's Authorized Representative may reasonably request to effect recognition and transfer of the Capacity Attributes to Buyer at Buyer's cost.
- (e) At Buyer's request and with reasonable prior notice, Seller shall use commercially reasonable efforts to resell Capacity Attributes to third parties identified by Buyer and remit any revenue net of Seller's reasonable cost to Buyer.

3.2 Environmental Attributes.

- (a) Transfer of Environmental Attributes. In addition to the agreement by Buyer and Seller to purchase and sell Energy and capacity on

the terms and conditions set forth herein, Seller shall transfer to Buyer, and Buyer shall receive and accept from Seller, all right and title to, and interest in, all Environmental Attributes, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Delivery Period, associated with all Energy delivered to the Delivery Point and capacity. Seller agrees to transfer pursuant to Section 3.2(d) and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by Applicable Law upon Seller's production or acquisition of the Environmental Attributes attributable to the Product. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Environmental Attributes to any person or entity other than Buyer. Buyer and Seller acknowledge and agree that the consideration for the transfer of Environmental Attributes is contained within the Contract Price.

- (b) Reporting of Ownership of Environmental Attributes. During the Term, Seller shall not report to any person or entity that the Environmental Attributes granted hereunder to Buyer belong to any person or entity other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to Buyer.
- (c) Cooperation. Seller shall cooperate reasonably with Buyer and provide such certifications or attestations to Buyer as are reasonably necessary to verify that all Environmental Attributes attributable to the Product delivered have been transferred to Buyer. Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions or other emissions attributable to the generation of Energy, including reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Facility reasonably necessary to permit Buyer to comply with such requirements, if any. Nothing in this Section 3.2(c) shall cause Buyer to assume any liability or obligation with respect to Seller's compliance obligations with respect to the Facility under any new Applicable Laws.
- (d) Use of WREGIS to transfer certain Environmental Attributes. Seller shall evidence the transfer of Environmental Attributes associated with the Product to Buyer by participating in WREGIS in accordance with WREGIS reporting protocols.

- i. Seller shall report renewable generation to WREGIS for development of WREGIS Certificates and direct WREGIS to transfer WREGIS Certificates to Buyer. The Parties agree that the Facility will be registered with WREGIS, initially, with the Generating Unit Name of ANTEX3A or as otherwise agreed by the Parties.
- ii. Seller agrees to comply with directions from Buyer regarding WREGIS or WREGIS Certificates. After the Facility is registered with WREGIS, at Buyer's option, Seller agrees to transfer WREGIS Certificates to Buyer using the Forward Certificate Transfer method, as defined and detailed in WREGIS Operating Rules and as designated by Buyer. Seller shall be responsible for the WREGIS expenses associated with registering the Facility, maintaining its account, paying WREGIS Certificate issuance fees, and transferring WREGIS Certificates to Buyer.
- iii. Buyer shall be responsible for the WREGIS expenses associated with maintaining its account and subsequent transferring or retiring of WREGIS Certificates.
- iv. Forward Certificate Transfers will occur on a monthly basis in accordance with the procedures established by the WREGIS Operating Rules. Seller shall be responsible for, at its expense, validating and disputing data with WREGIS in its reasonable discretion prior to certificate creation each month.
- v. Except as the Parties may otherwise agree in writing, in the event that WREGIS is not in operation, or WREGIS does not track Seller's transfer of WREGIS Certificates to Buyer, or its designees, on or before the 30th day of each calendar month, Seller shall document the production and transfer of Environmental Attributes under this Agreement by delivering to Buyer an attestation for the Environmental Attributes produced by the Facility, in whole MWh for the preceding month. The form of attestation shall be substantially in the form as set forth in Exhibit A; provided, however, Buyer may change the form of attestation from time to time during the Delivery Period by giving at least thirty (30) days' prior Notice to Seller, subject to Seller's approval (which Seller shall not unreasonably withhold, condition or delay). If Seller has not objected to Buyer's proposed changes to the form of attestation within thirty (30) days after receiving it, the changes shall be deemed approved.

3.3 Change in Law.

- (a) **ERR Certification.** Seller shall ensure that throughout the Delivery Period the Facility is certified by the CEC as an ERR. If a change in Applicable Law occurs after execution of this Agreement that causes the Facility to not qualify as an ERR, Seller shall be deemed to have complied with the foregoing sentence and the representation set forth in Sections 14.2(e), 14.2(g), and 14.2(h) and there shall be no Event of Default under Section 12.1(b)xii(xii), provided in each case that Seller uses commercially reasonable efforts to comply with such change in law.
- (b) **Commercially Reasonable Efforts.** Seller shall be deemed to have made commercially reasonable efforts to comply with a change in law under (a) above if Seller takes all actions to comply with or implement any change or improvement to the Facility to maintain such certification or qualification ("Compliance Costs") which would require Seller to incur in the aggregate Compliance Costs up to Ten Thousand Dollars (\$10,000.00) per MW of Installed Contract Capacity and in the aggregate throughout the Delivery Term at Twenty Thousand Dollars (\$20,000.00) per MW of Installed Contract Capacity (collectively "Compliance Cost Cap"). Seller shall include with each monthly invoice a report of all accumulated Compliance Costs as they are incurred.
- (c) **Compliance Cost Cap Exceeded.** If, after a change in law described under (a) above has occurred, Seller determines that it will exceed the Compliance Cost Cap, Seller shall notify Buyer and provide documentation and calculations to support the expected excess. Buyer shall then have sixty (60) days after receipt of the notice to verify or dispute Seller's documentation and calculation. Any dispute by Buyer hereunder shall be handled in accordance with Section 16.11.
- (d) **Agreement on Costs.** If Buyer agrees with Seller's verified costs and calculations and the necessary Compliance Costs will exceed the Compliance Cost Cap, Buyer will notify Seller of its election to:
 - i. Pay the costs that exceed the Compliance Cost Cap (the "Accepted Compliance Costs"). Upon agreement by Buyer of Accepted Compliance Costs, Buyer shall direct Seller to take any and all actions necessary to resume or maintain the ERR status of the Facility, which shall include payment by Seller for compliance actions up to the Compliance Cost Cap. Buyer shall pay Seller the Accepted Compliance Costs on a reimbursement basis in accordance with Section 9. Provided Seller takes compliance actions as

agreed, and Buyer reimburses Seller for the Accepted Compliance Costs as agreed, and the Facility resumes qualification as an ERR as soon as practicable, the Agreement will continue in force and effect on the same terms and conditions herein and Seller shall not be deemed to have made a misrepresentation under Sections 14.2(e), 14.2(g) and 14.2(h) and Seller shall be deemed to be in compliance with Section 3.3(a) and there shall be no Event of Default under Section 12.1(b)xii; or

- ii. Waive Seller's obligation to incur Compliance Costs in excess of the Compliance Cost Cap, in which case the Agreement will continue in force and effect, provided that the Contract Price for the remainder of the Delivery Period and for all calculations of amounts payable under this Agreement shall be adjusted to eighty-five percent (85%) of the Contract Price and Seller shall be relieved of its obligations hereunder related thereto unless Seller is able to restore its certification or verification, in which case the original Contract Price will be restored.
- (e) Failure to Comply. If (i) Seller fails to comply with the Parties' agreement under (d) above, or (ii) within sixty (60) days of receipt of Buyer's agreement to reimburse under (d) above, Seller fails to initiate compliance efforts in order to qualify the Facility as an ERR, Seller shall be deemed not to have complied with the representation set forth in Section 14.2(e), Section 14.2(g) and Section 14.2(h) and there shall be an Event of Default under Section 12.1(b)xii). For the avoidance of doubt, in the event that Seller takes compliance actions as agreed pursuant to Section 3.3(d)i) and the Facility's ERR status is not maintained or resumed, as applicable, Seller shall not be deemed to have made a misrepresentation under Section 14.2(e), Section 14.2(g) or Section 14.2(h), Seller shall be deemed to be in compliance with Section 3.3(a) and there shall be no Event of Default under Section 12.1(b)xiii).

3.4 **Tax Attributes.** Seller shall have all right, title and interest in and to all Tax Attributes. Buyer acknowledges that any Tax Attributes belong to Seller.

4. MINIMUM ENERGY GUARANTEES

4.1 Guaranteed Energy Production.

- (a) GEP Calculation. Seller shall ensure that the Facility generates and delivers to Buyer no less than the "Guaranteed Energy Production" or "GEP" over each period of two (2) consecutive

Contract Years (i.e., Contract Years 1 and 2; 2 and 3; 3 and 4 and so on; provided that the first and last Contract Year GEP amounts shall be prorated for the number of months included in such Contract Year) (each such period a “GEP Period”). “GEP” means an amount of delivered Energy that is equal to one hundred sixty percent (160%) of the simple average of (A) and (B), where (A) is equal to Contract Quantity in one Contract Year minus Lost Output in that Contract Year, and (B) is equal to Contract Quantity in the next Contract Year minus Lost Output in that Contract Year.

GEP = 1.6 * (A + B)/2, where:

A = Contract Quantity for the first Contract Year of the GEP Period - Lost Output in the first Contract Year of the GEP Period; and

B = Contract Quantity for the second Contract Year of the GEP Period - Lost Output in the second Contract Year of the GEP Period.

(b) Shortfall Damages.

- i. If Seller fails to achieve the GEP as set forth in Section 4.1(a) (such shortfall amount, the “Shortfall Energy”) Seller shall pay Buyer liquidated damages (the “Shortfall Damages”) calculated as follows:

The Shortfall Damages shall be equal to the product of (I) and (II), where (I) is the Replacement Energy Price, and (II) is the Shortfall Energy.

Shortfall Damages = Replacement Energy Price * Shortfall Energy.

- ii. If Seller pays Shortfall Damages in any GEP Period, then for the purpose of calculating the Shortfall Damages in the next GEP Period, the Metered Quantity for the first year of the next GEP Period shall be eighty percent (80%) of the Contract Quantity.
- iii. If WREGIS Certificates issued by Seller to Buyer are less than the delivered Metered Quantity and such difference is caused by Seller or due to Seller’s action or inaction, the Shortfall Damages calculations will be based on the WREGIS Certificates issued to Buyer by the Seller in accordance with Section 3.2; provided if the Facility is no longer an ERR and no WREGIS Certificates are delivered, the Shortfall Damages shall be based on the Metered Quantity.

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

5. DELIVERY SCHEDULES AND EMERGENCIES

5.1 Scheduling.

Seller shall be responsible for designating a Scheduling Coordinator to schedule the Product from the Facility to the Delivery Point in accordance with the CAISO Tariff. Seller may change its Scheduling Coordinator upon thirty (30) days' advance written Notice to Buyer. Seller shall schedule or cause to be scheduled the Product generated by the Facility in accordance with, and shall at all times comply with, all applicable CAISO requirements and scheduling protocols. Scheduling shall commence on the date when the Facility starts to generate Test Energy in advance of COD, unless the Parties mutually agree to another date. The Scheduling Coordinator for the Facility shall file with the CAISO monthly Resource Adequacy Supply Plans for the Facility that accurately reflect the generating capability commensurate with the Contract Quantity. Seller shall send a copy of these plans to Buyer at the same time the plans are filed with the CAISO.

- (a) Buyer shall have the option to act as Scheduling Coordinator for the Facility upon sixty (60) days' advance written Notice to Seller if Seller consents to such arrangement. Unless otherwise agreed pursuant to Section 5.1(c), Buyer, in acting as Scheduling Coordinator, shall act as Seller's agent and submit Seller's schedule without modification.
- (b) Buyer shall also have the option to purchase the Product from Seller using an Inter-SC Trade upon sixty (60) days' advance written Notice to Seller, in which case the calculation of Payment will be modified by mutual agreement of the Parties to ensure that Buyer's Payment to Seller reflects the Contract Price for the delivered Product and any Lost Output.
- (c) If Buyer elects the option to serve as Scheduling Coordinator and Seller consents to such arrangement, the Parties (both acting reasonably) shall execute a mutually acceptable agreement governing the provision of Scheduling Coordinator services for the Facility by Buyer. Seller shall be financially and operationally responsible for transmitting the Product to the Delivery Point. If Buyer serves as Scheduling Coordinator, then the Seller obligations set forth in this Section 5.1 with respect to RA shall apply to Buyer. Further, if Buyer serves as the Scheduling Coordinator, it shall provide Seller with access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount, all necessary CAISO settlement data no later than five (5) Business Days following receipt of the T+12 settlement statements from CAISO in a form mutually agreed upon by Buyer and Seller. Finally, if Buyer serves as the Scheduling Coordinator, all costs associated with Buyer's role as Scheduling Coordinator,

including scheduling, forecasting, billing, imbalance or deviation charges, and administrative services shall be Buyer's sole responsibility.

5.2 Annual Forecast of Delivery Schedules.

Seller shall provide a non-binding forecast of each month's hourly schedule for the first Contract Year no later than sixty (60) days before the scheduled commencement of the Delivery Period, and thereafter by August 1 of each subsequent Contract Year during the Delivery Period. The format of Seller's forecast shall be consistent with Exhibit C.

The non-binding forecasts provided under this section will not amend or affect the Contract Quantity in any manner.

5.3 Monthly Forecast of Delivery Schedules.

Ten (10) Business Days before the scheduled commencement of the Delivery Period and sixty (60) calendar days before the beginning of each month, or as required by CAISO for RA compliance, Seller shall provide a non-binding forecast of each day's hourly schedule for the following month ("Monthly Delivery Forecast").

5.4 Daily Delivery Forecasts and Schedules.

- (a) Seller shall provide Buyer with a copy of the scheduled Product for each hour of the applicable trading day ("Day-Ahead Schedule") if such schedules are submitted, or a non-binding forecast of such Product, if such schedules are not submitted. Each Day-Ahead Schedule shall clearly identify, for each hour, all amounts of Product to be delivered to Buyer pursuant to this Agreement.
- (b) Throughout the Delivery Period, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits (as provided under the CAISO Tariff) associated with the Product.
- (c) When Seller has an accepted Self Schedule in the Day-Ahead Market, Seller shall submit a Real Time Inter-SC Trade with Buyer for Integrated Forward Market Load Uplift Obligation credit and confirm with Buyer's Scheduling Coordinator in accordance with applicable tariff and protocol provisions of the CAISO.

5.5 Hourly or Sub-Hourly Delivery Schedules.

- (a) Seller shall provide Buyer with a copy of the schedule for the Product for each hour of the applicable trading day ("Real-Time Schedule") if such schedules are submitted, or a non-binding forecast of such Product, if such schedules are not submitted. Each Real-Time Schedule shall clearly identify, for each hour, all

amounts of Product to be delivered to Buyer pursuant to this Agreement

- (b) Seller shall notify Buyer as soon as practicable, but in no event later than two (2) Business Days, after discovering any change to the Facility, including Forced Outages, that result in a change in deliveries by contacting Buyer's Scheduling contact listed in Exhibit D. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

5.6 Forecast.

- (a) To comply with its requirements to provide forecasts to Buyer as provided in Sections 5.2, 5.3 and 5.4, if applicable, Seller shall use the EIRP Forecast for the Facility or, if the EIRP Forecast is not available, the best available forecast (the "Forecast").
- (b) Lost Output shall be calculated pursuant to the applicable formula below:
 - i. If an EIRP Forecast for the applicable curtailment event is available, the Lost Output shall be equal to (i) the amount of MWh provided for in the EIRP Forecast applicable to the curtailment event, regardless of whether Seller is participating in the EIRP during the curtailment event less (ii) the amount of Energy delivered to the Delivery Point during the curtailment event (in the event of a partial curtailment) excluding any amounts delivered pursuant to Section 2.4(c) during a Buyer Curtailment.
 - ii. If no EIRP Forecast is available or Seller demonstrates to Buyer's reasonable satisfaction that the EIRP Forecast does not represent an accurate forecast of generation from the Facility, the Lost Output shall be equal to (i) an amount of MWh calculated based on an equation that incorporates relevant Facility availability, weather and other pertinent data for the period of time during the curtailment event in order to approximate the amount of Facility Energy that would have been delivered less (ii) the amount of Energy delivered to the Delivery Point during the curtailment event (in the event of a partial curtailment, if any) excluding any amounts delivered pursuant to Section 2.4(c) during a Buyer Curtailment pursuant to Section 2.4(c).

- iii. Provided that, if the applicable difference calculated pursuant to the applicable formula provided in (b)(i) and (ii) above is negative, the Lost Output shall be zero (0).
- iv. The calculations to determine the quantity of Forecast, performed according to (b)(i) and (ii) above, shall be subject to review and approval by Buyer, which such review and approval shall be conducted reasonably and concluded no later than thirty (30) days after the date of the monthly invoice.

5.7 Emergency and Other Involuntary Curtailment.

If Seller has a CAISO-accepted bid for Energy that is curtailed by order or direction of CAISO or the Transmission Provider due to an emergency, reliability issue or other involuntary order or direction to curtail output of the Facility, the curtailed Energy shall be deemed Lost Output for purposes of calculating the GEP as described in Section 12.1(b)(viii)). In the event that any such order or direction is received by Seller, Seller shall follow CAISO instructions until such emergency, reliability issue, or other order or direction to curtail is over or is otherwise resolved. The action of the CAISO issuing a schedule (including a zero schedule or no schedule at all) shall not by itself constitute an order or direction by the CAISO to curtail energy deliveries.

6. OPERATION AND MAINTENANCE

6.1 Operating Standards.

Throughout the Term, Seller shall (i) operate and maintain the Facility in accordance with all applicable Governmental Approvals, Good Industry Practices, and WECC and NERC Reliability Standards (as published by NERC from time to time); (ii) obtain and maintain all required Governmental Approvals for the Facility; and (iii) pay all costs and penalties associated with this Section 6.1.

6.2 Commercial Operation Date.

The Commercial Operation Date shall be the later of (i) December 1, 2020 or (ii) a date selected by Seller upon at least three (3) Business Days' Notice to Buyer. If the Commercial Operation Date is delayed beyond January 15, 2021, unless excused under Section 7.2 herein, Seller shall be responsible for paying damages for delay to Buyer as described in Section 7.4. The Commercial Operation Date may not occur until each of the following has been satisfied:

- (a) Seller has all necessary permits required to commence operation of the Facility at the output level for which it was designed; the Facility is capable of operating on a sustained basis at substantially the output level for which it was designed; and all interconnections, the capacity rating of the interconnection

facilities, the interconnection agreement, and transmission connection are sufficient for the delivery of the full Energy output of the Facility to the Delivery Point;

- (b) Seller has provided Buyer with a certification from Seller and from an independent engineer that the Facility has been completed in all material respects (except punch list items that do not materially and adversely affect the ability of the Facility to operate as intended);
- (c) Seller has provided Buyer with a communication from the CAISO approving the proposed COD (as defined in the GIA) for the Facility; and
- (d) Seller has posted the Delivery Period Security required under Section 10.2.

6.3 Maintenance Outage.

- (a) Seller may schedule outages necessary to accomplish required inspections and preventative maintenance ("Maintenance Outages") if:
 - i. With respect to any equipment at the Facility, the inspection or preventative maintenance is required by, or consistent with, the original manufacturer recommendations of such equipment or Good Industry Practice in order to maintain such equipment under warranty, or such manufacturer otherwise recommends the inspection and/or maintenance to operators of such equipment based on actual operating hours, equivalent starts, the passage of time or service bulletins;
 - ii. The inspection or preventative maintenance is required in connection with testing required by any governmental agency for the operation of the Facility, including annual performance testing and pollution control testing; and
 - iii. The inspection or preventative maintenance will occur (i) during October through May, at any time and for any reasonable period or (ii) during June through September between hours ending 2300 on a given day through hours ending 0600 of the following day.
- (b) Not later than August 1 each year prior to the commencement of any Contract Year, or, in the case of the first Contract Year, at least sixty (60) Business Days before the commencement of the Delivery Period, Seller shall submit to Buyer its schedule of Maintenance Outages for the upcoming Contract Year ("Outage Schedule").

- (c) Within ten (10) Business Days after its receipt of the Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule. If Buyer fails to provide such Notice within the prescribed period, Buyer shall be deemed to have approved the Outage Schedule. Any request by Buyer for changes to the Outage Schedule must be submitted in writing to Seller at least four (4) days in advance of the requested date. Seller shall make commercially reasonable efforts to accommodate such alternate dates. Seller may make reasonable requests to change the approved Outage Schedule. Buyer shall make commercially reasonable efforts to accommodate such alternate dates, or if the alternate dates are imposed on Seller by CAISO under any rights CAISO may have, such dates shall be accepted.
- (d) On the first Business Day of each quarter of each Contract Year, Seller shall provide Buyer updates to the Outage Schedule and any known Maintenance Outages for the following twelve (12) months.
- (e) Additional Maintenance Outages may be taken with two (2) days' advance written Notice to Buyer and with the consent of the Buyer, such consent not to be unreasonably withheld or delayed; provided, however, as to each of subparagraphs 6.3(a)- 6.3(c) above and this subparagraph (e), that it is Good Industry Practice to interrupt the Facility's generating availability in order to perform the maintenance and/or inspection(s) for which the Maintenance Outage is claimed.
- (f) Seller shall notify Buyer of any Maintenance Outages not previously scheduled as soon as practicable after the condition becomes known to Seller. Seller shall submit outage schedules and all subsequent changes, additions or modifications to the schedule pursuant to CAISO protocols and timelines as set forth in the CAISO Tariff, and Seller shall follow all CAISO outage coordination protocols set forth therein.
- (g) Maintenance Outages may not exceed fifteen (15) calendar days per Contract Year except as provided herein. If extenuating circumstances arise during an ongoing Maintenance Outage, the outage may be extended for a period of time necessary to ensure the reliability of the Facility, not to exceed ninety (90) calendar days, subject to Seller's providing reasonable notice to Buyer and Buyer's approval not to be unreasonably withheld, conditioned or delayed. In no event shall a Maintenance Outage qualify as Lost Output or otherwise reduce Seller's GEP requirement pursuant to Section 4.1 or 12.1(b)vii).

6.4 Buyer's Access Rights.

With reasonable prior Notice, Buyer shall have the right of access, at its expense and at its own risk, to visit the Facility at reasonable hours for any purpose reasonably connected with this Agreement; provided, that Buyer shall observe all applicable Facility safety rules.

7. MILESTONES

7.1 Milestones.

- (a) The Parties agree that time is of the essence and that certain milestones for the achievement of COD of the Facility must be achieved in a timely fashion or Buyer shall suffer damages. Such milestones (the "Binding Milestones") are those Milestones that are identified as "Binding" in Exhibit E. The day each Binding Milestone must be achieved ("Binding Milestone Deadline") is set forth in Exhibit E, as adjusted or extended according to this Agreement.
- (b) Seller shall use commercially reasonable efforts to meet the Milestone Schedule set forth in Exhibit E and avoid or minimize any delays in meeting this schedule. In addition to the reports and certifications required under (c) below, Seller shall provide Buyer any additional information concerning Seller's progress towards, or confirmation of, achievement of the Milestones, as Buyer may reasonably request from time to time.
- (c) Starting on the Execution Date, Seller shall provide to Buyer written monthly progress reports concerning the progress towards completion of the Milestones set forth in Exhibit E. Seller shall include in such report a list of all letters, notices, applications, approvals, authorizations, filings, permits and licenses related to any Transmission Provider, Governmental Authority or the CAISO and shall provide any such documents as may be required on Notice from Buyer. In addition, within five (5) Business Days of the completion of each Milestone, Seller shall provide a certification to Buyer (along with any supporting documentation) demonstrating the satisfaction of the Milestone.
- (d) Seller shall advise Buyer as soon as reasonably practicable of any problems or issues of which Seller is aware that may materially impact Seller's ability to meet the Milestone Schedule. Upon becoming aware that it will, or is reasonably likely to, fail to achieve a Milestone by the required date, for any reason including Force Majeure, Seller shall so notify Buyer in writing as soon as it is reasonably practicable. Such Notice shall explain the cause of the delay, provide an updated date for achievement of the Milestone(s)

and describe Seller's plan for meeting the Milestone. Seller's Notice will also explain any impact such delay may or will have on any other Milestone, and measures to be taken to mitigate such impact.

- (e) If Seller misses three (3) or more Milestones (other than a Binding Milestone), or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone, or the expiration of the 90 day period, if applicable, a remedial action plan ("Remedial Action Plan"). The Remedial Action Plan must provide a detailed description of Seller's proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Commercial Operation Date. Seller shall not have any liability for failure to timely achieve a Milestone other than the obligation to submit a Remedial Action Plan; provided, however, that the foregoing shall not limit Buyer's right to exercise any right or remedy available under this Agreement for any other Default occurring concurrently with or before or after Seller's delay in achievement of the applicable Milestone.

7.2 Force Majeure Extension.

In the event that a Force Majeure causes any delay to the achievement of the Binding Milestone, the Binding Milestone Deadline may be extended by Seller upon notice to Buyer day for day to reflect the occurrence and continuance of such Force Majeure, for a period not to exceed one hundred eighty (180) days ("Force Majeure Extension"). A Force Majeure Extension of any Binding Milestone shall extend the deadline for subsequent Binding Milestones.

Seller may claim one or more Force Majeure Extensions, provided that (i) if achievement of a Binding Milestone is extended more than one hundred eighty (180) days after the Binding Milestone Deadline, the period of extension after one hundred eighty (180) days will be subject to Daily Delay Damages as set forth in Section 7.4, and (ii) the combined total of all Force Majeure Extensions claimed may not exceed three hundred sixty (360) days.

7.3 GSI Extension.

Notwithstanding anything to the contrary contained in this PPA, the Parties expressly acknowledge that on April 26, 2017, a petition was filed pursuant to Section 201 of the Trade Act of 1974, 19 U.S.C. 2251 et seq., in the United States International Trade Commission ("USITC") regarding Crystalline Silicon Photovoltaic ("CSPV") Cells and Modules, triggering a Global Safeguard Investigation ("GSI"). In the event any duty,

fee, minimum import tariff, or quota (“Relief Measures”) is imposed by any part of the U.S. government with respect to CSPV modules and/or CSPV cells as a result of the GSI on or before the Commercial Operation Date Binding Milestone Deadline, as such date may be extended pursuant to Section 7.2, then all Binding Milestone Deadlines on and after the date of the Relief Measures are imposed may be extended by Seller upon notice to Buyer of the imposition of such Relief Measure for a period of six (6) months provided that Seller must provide Buyer at the time of its notice of extension a proposed remedial plan which discusses Seller’s proposal to achieve the Commercial Operation Date Binding Milestone Deadline in light of the Relief Measures (“Remedial Action Plan”) (“Initial GSI Extension”). The Initial GSI Extension may be further extended for a period of six (6) additional months if, prior to the end of the Initial GSI Extension, Seller delivers written notice to Buyer which demonstrates to Buyer’s reasonable satisfaction, not to be unreasonably conditioned, withheld or delayed, that Seller has made reasonable progress in taking the actions described in the Remedial Action Plan or such other actions that are necessary to overcome the effects of the Relief Measures (“Additional GSI Extension”). In connection with any Additional GSI Extension, Seller will deliver energy along with Renewable Energy Credits to Buyer, which shall be PCC1 Renewable Energy Credits in an amount equal to one-half of the Contract Year 1 Contract Quantity, and Buyer shall pay the Contract Price for any such energy and Renewable Energy Credits received. An Initial GSI Extension and Additional GSI Extension shall extend all Binding Milestone Deadlines after the Relief Measures are imposed for the same six (6) or twelve (12) month period.

7.4 Daily Delay Damages.

- (a) Seller shall cause the Facility to achieve each Binding Milestone by the Binding Milestone Deadline set forth in Exhibit E, subject to extensions of said Binding Milestone Deadlines pursuant to Section 7.2, Section 7.3 or Section 4 hereof. In the event Seller fails to achieve a Binding Milestone by its respective Binding Milestone Deadline, as may be extended pursuant to Section 7.2, Section 7.3 or Section 7.4 hereof, Buyer will be entitled to damages in the amount of Ten Thousand Dollars (\$10,000.00) per day provided that if Seller is delayed in achieving more than one Binding Milestone concurrently, then Seller shall be required to pay for only one missed Binding Milestone at any one time (“Daily Delay Damages”) calculated as provided in Section 7.4(b) below. At Seller’s option, Daily Delay Damages may be paid either in cash or by draw upon the Development Period Security per Section 10.1. In the event that Seller achieves Commercial Operation by the Binding Milestone Deadline therefor, then Buyer shall refund to Seller, without interest, any amounts previously paid to Buyer as Daily Delay Damages for failure to achieve the any Binding Milestone by the respective Binding Milestone Deadlines therefor.
- (b) At least five (5) Business Days before the Commercial Operation Date Binding Milestone Deadline, as such date may be extended

pursuant to Section 7.2 or Section 7.3, Seller may submit a Notice to Buyer claiming an extension not to exceed ninety (90) days from the Commercial Operation Date Binding Milestone Deadline, as such date may be extended pursuant to Section 7.2 or Section 7.3, in which case Buyer shall be entitled to Daily Delay Damages for each day beginning from the first day of the extension until the earlier of: (1) COD; (2) the day total accrued Daily Delay Damages equal Nine Hundred Thousand Dollars (\$900,000.00); or (3) Seller informs Buyer that Seller wishes to cease claiming an extension and Seller has not achieved COD. Buyer shall be entitled to terminate this Agreement based on the occurrence of an Event of Default under Section 12.1(b)vi if COD has not been achieved before the earlier of: (1) the ninety-first day from the Commercial Operation Date Binding Milestone Deadline, as such date may be extended pursuant to Section 7.2 or Section 7.3; (2) the day total accrued Daily Delay Damages equals Nine Hundred Thousand Dollars (\$900,000.00); or (3) Seller informs Buyer it wishes to cease claiming an extension.

8. METERING

8.1 Meter and Transformer.

- (a) At Seller's sole cost and expense, Seller or its designee shall select, provide, install, own, maintain, repair and operate a single CAISO-compliant Revenue Meter ("CAISO Revenue Meter") and corresponding step-up transformer to measure the delivery of Energy from the Facility in accordance with the CAISO Tariff and Business Practice Manuals (BPM).
- (b) Seller shall provide Buyer with read-only access to OMAR or its successor and the CAISO Revenue Meter.
- (c) Seller shall include in each invoice the unadjusted readings from the CAISO Revenue Meter in a readable electronic format (i.e., comma delimited text files, Excel spreadsheets, etc.), and any meter and step-up transformer adjustment, or loss factors (if applicable).
- (d) The CAISO Revenue Meter must be dedicated solely to the Facility and exclusively measure output of the Facility.
- (e) At least ninety (90) days prior to finalizing its meter configuration, the Seller shall provide to Buyer for its review the Facility's metering schematic (single line diagram). Such schematic shall clearly depict the location of the CAISO Revenue Meter and corresponding step-up transformer specifically with respect to the CAISO

Controlled Grid and/or the Transmission Provider's distribution system for the Facility. Buyer will Notice Seller within thirty (30) days indicating whether the metering configuration is consistent with this Agreement. Seller shall make any reasonable changes requested by Buyer to the schematic and/or configuration and shall resubmit a revised schematic to Buyer for its review in accordance with this Section 8.1(e). Seller shall provide to Buyer make, model, test procedures and acceptable test limits of the selected CAISO approved Revenue Meter and corresponding step-up transformer.

8.2 CAISO Standards.

Seller shall comply with all CAISO agreements, tariffs, BPM, and standards applicable to energy metering. To facilitate the monthly settlement process, Seller shall authorize Buyer to view the Facility's CAISO on-line meter data by identifying Buyer as an authorized user with "read only" privileges on the applicable CAISO Meter Service Agreement Schedule.

8.3 Testing, Audit, and Calibration.

Seller shall perform (or cause to be performed), at its expense, annual testing, audit, and/or calibration of the CAISO Revenue Meter and the corresponding step-up transformer (if applicable) in accordance with Good Industry Practices and CAISO agreements, tariffs, BPM, and standards. Seller shall Notice Buyer ten (10) Business Days in advance of any inspection, testing, audit, or calibration of the CAISO Revenue Meter and/or the corresponding step-up transformer (if applicable). Buyer shall have the right to have a representative present at such inspection, test, audit, or calibration of the CAISO Revenue Meter and corresponding step-up transformer (if applicable).

Seller shall provide Buyer with a copy of any CAISO notice, exemption, approval, certification, report, finding, or result, including any changes needed or made to the settings or configuration of the CAISO Revenue Meter or corresponding step-up transformer (if applicable), no later than ten (10) Business Days after it becomes available.

Buyer's representative's presence (or lack thereof) during inspection, test, audit, or calibration of the CAISO Revenue Meter and corresponding step-up transformer (if applicable) shall not waive the requirements above or relieve the Seller of any obligations hereunder.

8.4 Inaccurate Meter.

If the Revenue Meter is inaccurate, Seller shall promptly cause such CAISO Revenue Meter to be corrected in accordance with Good Industry Practices and with CAISO agreements, tariffs, BPM, and standards; provided, however, neither Party shall be entitled to a Payment adjustment hereunder for any previous period of inaccurate CAISO Revenue Meter readings solely by reason of such inaccuracy, and provided

further that Seller shall bear any and all costs, fines or penalties imposed by CAISO as a result of the inaccurate CAISO Revenue Meter.

9. BILLING AND PAYMENT

9.1 Billing Period.

The accounting and billing period for transactions under this Agreement shall be one (1) calendar month ("Billing Period").

9.2 Monthly Invoice Calculation.

After COD is achieved, and for the remainder of the Term, on or before the tenth (10th) Business Day of each calendar month immediately following a calendar month in which Seller transfers WREGIS Certificates to Buyer's account, the Parties shall send invoices for charges under this Agreement. Seller shall invoice Buyer for the Product no earlier than upon completion of the transfer of the associated WREGIS certificates. Invoices sent to any Party shall be sent to the appropriate billing address as set forth in Exhibit D. In each monthly invoice, Seller shall state the following: (a) the hourly volumes of the Product for the Billing Period and (b) the Monthly Payment amount due from Buyer for the Product for the Billing Period as calculated in accordance with Section 2.3. Any invoice from a Party to the other Party shall include supporting documentation. Commencing on the COD and continuing throughout the Delivery Period, Seller shall calculate Lost Output and prepare and provide to Buyer a detailed monthly Lost Output report with supporting documentation with each monthly invoice, if applicable. Seller shall send adjustment invoices to Buyer as soon as practicable if changes that affect a payment occur after Seller has already invoiced Buyer; such changes would include CAISO's adjustment of the LMP assigned to a particular hour and WREGIS' adjustment to the number of WREGIS Certificates transferred to Buyer's account.

9.3 Method and Time of Payment.

Payments for undisputed amounts invoiced under this Agreement shall be delivered to the Party to be paid on or before the thirtieth (30th) day after receipt of the invoice. If the due date falls on a non-Business Day, then the payment shall be due on the following Business Day. Payment shall be deemed delivered on time if sent via electronic funds transfer, as set forth in Exhibit D, prior to 5 p.m. PST on the due date. Parties shall submit all payments under this Agreement to each other's representative for billing as shown in Exhibit D. Any changes to the address designated for purposes of payment must be made by Notice to the other Party at the address listed in Exhibit D at least sixty (60) days prior to the first submittal of payment to the new address.

9.4 Examination and Correction of Invoices; Disputes.

In order to dispute an invoice in whole or in part, a Party must provide written Notice of the dispute to the other Party. Such written Notice shall specify the amount in

dispute and state the basis for the dispute. In case any portion of the invoice is in dispute, only the undisputed amount must be paid. Any excess amount that, through inadvertent errors or as a result of a dispute, may have been overpaid or underpaid shall be returned or paid (as appropriate) by the owing Party upon determination of the correct amount, with interest calculated in a manner set forth in Section 9.7. A Party shall have the right to dispute the accuracy of any invoice or payment only for a period of three (3) years after the date of delivery of the invoice that first contained the disputed charge.

9.5 Non-Delivery of Invoices.

If a Party's records reveal that an invoice was not delivered, the Party may deliver to the appropriate Party an invoice no later than one (1) year after the date on which the invoice would have been delivered under Section 9.1. No right to payment exists, and the Parties agree not to assert any such right, with respect to any amounts not invoiced within the one (1) year period.

9.6 Record-Keeping.

Each Party shall keep complete and accurate records, and shall maintain such data as may be necessary for the purpose of ascertaining the accuracy of all relevant data, estimates, or invoices submitted hereunder for a period of three (3) years from the due date of the final payment under this Agreement. Within a three (3) year period from the due date on which the invoice was initially delivered, any Party may request in writing copies of the records of the other Party to the extent reasonably necessary to verify the accuracy of any invoice. The Party from which documents or data have been requested shall provide all reasonably requested documents and data within a reasonable time period and in no event later than thirty (30) days. If applicable, such requested data shall include, but is not limited to, read-only access to the following CAISO systems for the Facility: the Automatic Dispatch System, the CAISO Master File for the Resource, Scheduling Infrastructure and Business Rules system, the Outage Management system for the CAISO, the CAISO Market Results Interface system, OMAR, and Secure File Transfer Protocol systems for the downloading of settlement data, or any of their respective successors. Parties agree that Section 15.12 applies to all information provided pursuant to this Section 9.6.

9.7 Timeliness of Payment.

Except where payment is the subject of a bona fide dispute, or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this PPA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the lesser of (i) two percent (2%) above the per annum Prime Rate reported daily in *The Wall Street Journal*, or (ii) ten percent (10%) per annum, and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.8 Right to Set Off.

In addition to any right now or hereafter granted under Applicable Law and not by way of limitation of any such rights, either Party shall have the right at any time or from time to time to reduce any undisputed amount due to the other Party under this Agreement by any undisputed amount owed to the other Party under this Agreement.

9.9 Contract Representative.

Seller will provide contract representatives, as set forth in Exhibit D, who shall be accessible to Buyer in case of emergency, at the Seller's sole cost and expense.

10. CREDIT REQUIREMENTS

10.1 Development Period Security.

- (a) Seller shall be required to establish collateral in favor of Buyer by providing Buyer with cash, a Letter of Credit from a Qualified Issuer or a performance and payment bond substantially in the form of Exhibit I from a Qualified Issuer, or any combination thereof, provided that, unless otherwise agreed to by Buyer in writing, in no event may the amount of security posted by Seller in the form of a payment bond exceed forty percent (40%) of Seller's Developer Period Security requirement, to secure Seller's obligations under this Agreement for the period between the Execution Date and the Commercial Operation Date (the "Development Period Security").
- (b) The Development Period Security shall be provided on or prior to thirty (30) days after the Execution Date and shall be maintained in full force and effect by Seller until the return date specified in Section 10.4 below. The amount of the Development Period Security shall be maintained at Nine Hundred Thousand Dollars (\$900,000.00); provided, however, in the case of any payment of damages associated with a delay in a Binding Milestone pursuant to Section 7.4, the Seller shall not be required to replenish the Development Period Security to a level in excess of the then-remaining amount of the Damage Payment.
- (c) In the event, prior to COD, Buyer terminates this Agreement due to Seller's Event of Default as set forth in Section 12.1, as applicable, Buyer shall be entitled to any Development Period Security equal to the Settlement Amount payable by Seller to Buyer pursuant to Section 13.2. Any excess Development Period Security shall be returned to Seller pursuant to the provisions of Section 10.4.

10.2 Delivery Period Security.

- (a) Seller shall be required to establish collateral in favor of Buyer by providing Buyer with cash, a Letter of Credit from a Qualified Issuer or a performance and payment bond substantially in the form of Exhibit I from a Qualified Issuer, or any combination thereof, provided that, unless otherwise agreed to by Buyer in writing, in no event may the amount of security posted by Seller in the form of a payment bond exceed forty percent (40%) of Seller's Delivery Period Security requirement, to secure Seller's performance of its obligations under this Agreement during the Delivery Period (the "Delivery Period Security").
- (b) The Delivery Period Security pursuant to this Section 10.2 shall be provided on or prior to COD and shall be maintained in full force and effect by Seller until the return date specified in Section 10.4 below. The amount of the Delivery Period Security shall be maintained at One Million Three Hundred Fifty Thousand Dollars (\$1,350,000.00).
- (c) In the event, after COD, Buyer terminates this Agreement due to Seller, after COD Default as set forth in Section 12.1, as applicable, Buyer shall be entitled to draw on the Delivery Period Security to the extent required to satisfy any Settlement Amount payable by Seller to Buyer pursuant to Section 13.2. The Delivery Period Security drawn by Buyer shall be credited against the Settlement Amount payable by Seller and any excess Delivery Period Security shall be returned to Seller pursuant to the provisions of Section 10.4.

10.3 Letters of Credit.

- (a) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by the Seller.
- (b) If the rating of the financial institution issuing the Letter of Credit ceases to make it a Qualified Issuer, Buyer may require Seller by Notice to Seller to replace the Letter of Credit, within ten (10) Business Days of the date of such Notice, with a Letter of Credit from another Qualified Issuer.
- (c) Any Letter of Credit required under this Agreement must cover the full Development Period Security or Delivery Period Security amount, respectively. Each Letter of Credit shall include a provision for at least thirty (30) days advance Notice to Buyer of any expiration so as to allow Buyer sufficient time to exercise its

rights under the Letter of Credit if Seller fails to extend or replace the Letter of Credit.

10.4 Return of Letters of Credit.

- (a) Buyer shall return to Seller the unused portion of the Development Period Security after the earlier of (A) the date on which Seller has delivered the Delivery Period Security, provided all obligations secured by the Development Period Security have been met, (B) termination of the Agreement, or (C) as provided in Section 10.6.
- (b) Buyer shall promptly return to Seller the unused portion of the Delivery Period Security after the earlier of: (A) the occurrence of both of the following (i) the Delivery Term has expired or terminated early; and (ii) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, payment of Settlement Amount, indemnification payments or other damages for known claims, and including any obligations arising by virtue of CAISO reruns, are paid in full (whether directly or indirectly such as through set-off or netting) not to exceed three (3) years following the end of the Term; provided that the Parties may mutually agree to reduce the Delivery Period Security during the three (3) year period following the end of the Term to an amount commensurate with Seller's then-remaining payment obligations; or (B) as provided in Section 10.6.

10.5 Grant of Security Interest/Remedies.

To secure its obligations under this Agreement and to the extent Seller delivers the Development Period Security or Delivery Period Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Letters of Credit posted with Buyer and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) days of the delivery of the Development Period Security or Delivery Period Security, as applicable, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Letters of Credit and any and all proceeds resulting therefrom or from the liquidation thereof.

10.6 Substitution of Development Period Security and Delivery Period Security.

So long as there is no Event of Default with respect to Seller, Development Period Security and Delivery Period Security may be substituted with any other acceptable form of Development Period Security or Delivery Period Security, as applicable. Buyer shall promptly return any Development Period Security or Delivery

Period Security upon Seller's provision of replacement Development Period Security or Delivery Period Security, as applicable.

11. FORCE MAJEURE

11.1 Force Majeure Definition.

"Force Majeure" means:

- (a) any cause or event beyond the reasonable control of the affected Party which causes either Party to fail to perform that (i) was not foreseeable as of the Execution Date, (ii) was not due directly or indirectly to the fault or negligence of the affected Party, and (iii) could not reasonably have been avoided, overcome, prevented, or mitigated by the affected Party's exercise of due diligence and use of reasonable precautions and efforts.
- (b) Subject to (a) above, events that could qualify as Force Majeure include:
 - i. Acts of God, such as extreme weather conditions, droughts, floods, earthquakes, volcanic eruption, epidemics, or other natural disaster;
 - ii. fires, explosions, accidents that could not have been prevented by acting in accordance with Good Industry Practice; or
 - iii. war (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of vandalism, terrorism and/or sabotage, blockades, embargoes, industry-wide strikes.
- (c) Force Majeure shall not include, but is not limited to, such events as:
 - i. economic factors or the economic hardship of either Party;
 - ii. events arising from the failure to operate and maintain the Facility in accordance with Good Industry Practice;
 - iii. events that merely increase the cost of a Party's performance;
 - iv. the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent caused solely by an event of Force Majeure of the specific types described in any of subsections (b)(i)-(iii);

- v. failure of third parties to provide goods or services essential to a Party's performance except to the extent caused solely by an event of Force Majeure of the specific types described in any of subsections (b)(i)-(iii);
- vi. reductions in generation from the Facility resulting from ordinary wear and tear, deferred maintenance or Operator error;
- vii. mechanical breakdown, or electrical breakdown, or failure of any such machinery or equipment of all or part of the Facility unless caused solely by Buyer or an event of Force Majeure of the specific types described in any of subsections (b)(i)-(iii);
- viii. the loss or failure of Seller's supply;
- ix. Seller's ability to sell the Product at a price greater than the Contract Price;
- x. Buyer's ability to purchase replacement product at a price less than the Contract Price;
- xi. any delay in providing, or denial of, any Governmental Approval for the construction, operation, or maintenance of the Facility;
- xii. any delay in providing, failure to obtain, or cancellation of interconnection service;
- xiii. curtailment or reduction in deliveries at the direction of a Transmission Provider or the CAISO unless caused solely by an event of Force Majeure of the specific types described in any of subsections (b)(i)-(iii);
- xiv. Seller's failure to obtain financing or other funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;
- xv. a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the engineering, procurement and construction contractors or subcontractors thereof or any other third party employed by Seller to work on the Facility; or
- xvi. any delay resulting from litigation relating to or affecting the Facility or the Site.

11.2 Force Majeure Procedure.

- (a) To the extent either Party is prevented by Force Majeure from carrying out, in whole or in part, its obligations under this Agreement, and such Party (the "Claiming Party") gives Notice and details of the Force Majeure to the other Party as soon as practicable, then, unless as otherwise expressly provided herein, and as limited in Section 7.2, 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). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.
- (b) Any Party claiming Force Majeure shall advise the other Party as soon as possible of the occurrence of the event and shall provide the other Party with the basis of the claim, in writing, within ten (10) days of the occurrence of the event.
- (c) The Parties shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.
- (d) If a Force Majeure affecting a Party continues for an uninterrupted period of one hundred eighty (180) days from its inception (with respect to Force Majeure occurring prior to COD) or three hundred sixty-five (365) Days from its inception (with respect to Force Majeure occurring after COD), the non-Claiming Party may, at any time following the end of such period, terminate this Agreement upon Notice to the other Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination; provided, however, that if the Force Majeure is one affecting Seller and can be corrected through repair or restoration work to the Facility or other actions by Seller, and Seller provides evidence satisfactory to Buyer that it is diligently pursuing such actions, then Buyer shall not have the right to terminate this Agreement for an additional ninety (90) day period so long as (i) Seller is using Good Industry Practice to complete such repair work, restoration or such other actions, and (ii) prior to expiration of the initial one hundred eighty (180) or three hundred sixty-five (365) Day period, Seller informs and provides reasonable proof to Buyer of Seller's intention and ability to undertake and complete such actions.

12. EVENTS OF DEFAULT

12.1 Events of Default.

An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following

- (a) With respect to either Party:
 - i. The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) calendar days after Notice of the failure;
 - ii. Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, provided, if
 - A. The misrepresentation or breach of warranty is capable of a cure, an Event of Default will be deemed to occur if the misrepresentation or breach of warranty is not remedied within thirty (30) days after Notice; provided, however, that if such misrepresentation or breach is not reasonably capable of being remedied within the thirty (30) day cure period, such Party shall have such additional time (not exceeding an additional thirty (30) days) as is reasonably necessary to remedy such misrepresentation or breach, so long as such Party promptly commences and diligently pursues such remedy; or
 - B. The misrepresentation or breach of warranty is not capable of cure, but the non-breaching Party’s damages resulting from the inaccuracy can reasonably be ascertained, an Event of Default will be deemed to occur if the payment of such damages is not made within ten (10) Business Days after a Notice of these damages is provided by the non-breaching Party to the breaching Party;
 - iii. Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within thirty (30) days after written Notice, which Notice sets forth in reasonable detail the nature of the failure; provided, however, that if such failure is not reasonably capable of

- being remedied within the thirty (30) day cure period, such Party shall have such additional time (not exceeding an additional thirty (30) days) as is reasonably necessary to remedy such failure, so long as such Party promptly commences and diligently pursues such remedy;
- iv. Such Party becomes Bankrupt;
 - v. Such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting surviving or transferee entity fails to assume all the obligations of that Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or
 - vi. Such Party assigns this Agreement or any of its rights hereunder other than in compliance with Sections 15.3, 15.4 or 15.5, as applicable.
- (b) With respect to Seller as the Defaulting Party, the occurrence of any of the following:
- i. Failure by Seller to provide or maintain the Development Period Security as required by Section 10.1, if such failure is not remedied within ten (10) Business Days after written Notice from Buyer;
 - ii. Failure by Seller to post and maintain the Delivery Period Security as required by Section 10.2, if such failure is not remedied within ten (10) Business Days after written Notice from Buyer;
 - iii. With respect to any outstanding Letter of Credit, the failure by Seller to provide for the benefit of Buyer a substitute Letter of Credit from a different Qualified Issuer within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:
 - A. the issuer of the outstanding Letter of Credit fails to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;
 - B. the issuer of such Letter of Credit becomes Bankrupt;
 - C. the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such

Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

- D. the issuer of the outstanding Letter of Credit fails to honor a properly documented request to draw on such Letter of Credit;
 - E. the issuer of the outstanding Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit; or
 - F. such Letter of Credit fails or ceases to be in full force and effect at any time.
- iv. Failure by Seller to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit;
 - v. Failure by Seller to achieve the Binding Milestone by the Binding Milestone Deadline set forth in Exhibit E, as such deadline may be extended under Section 7.2, 7.3 or 7.4;
 - vi. Except as otherwise permitted under this Agreement, Seller does not own or control the Facility;
 - vii. Failure of the Facility to generate at least fifty percent (50%) of Contract Quantity annually, provided that, (i) any Lost Output shall be deemed to have been delivered for purposes of such calculation, and (ii) if the failure to meet the fifty percent (50%) requirement is principally caused by a Major Equipment Malfunction and Seller is making commercially reasonable efforts to remedy and such Major Equipment Malfunction is remedied within three hundred sixty-five (365) days of the Major Equipment Malfunction, no Event of Default shall have occurred;
 - viii. Failure by Seller to operate the Facility for a continuous period of sixty (60) days, other than in the event of Force Majeure, due to a Major Equipment Malfunction, as may be required by CAISO or the Transmission Provider, or due to action or inaction of Buyer;
 - ix. Seller intentionally or knowingly schedules or delivers, or attempts to schedule or deliver, at the Delivery Point for sale

under this Agreement electric energy that was not in fact generated by the Facility;

- x. Seller removes any site equipment upon which the Installed Contract Capacity has been based, except in connection with permitted modifications under Section 15.1 below, or as required for purposes of replacement, refurbishment, repair or maintenance if the equipment is not returned within five (5) Business Days after Notice from Buyer;
- xi. The Facility consists of an ERR type(s) that is different from solar photovoltaic;
- xii. Except where there has been a change in Applicable Law that would affect Seller's status as an ERR, and Seller has made commercially reasonable efforts in accordance with Section 3.3(b) to comply with the change, the Facility fails to qualify as an ERR;
- xiii. A termination as a result of a Seller default of any agreement necessary for Seller to:
 - A. interconnect the Facility to the Transmission Provider's electric system;
 - B. transmit the electric energy on the Transmission Provider's electric system; or
 - C. comply with the CAISO Tariff or relevant Transmission Provider's tariff (as applicable)

and such service is not reinstated, or alternative arrangements implemented, within thirty (30) days after such termination;
- xiv. Except as otherwise provided in this Agreement, including in Section 3.3, Seller fails to take any action necessary to dedicate, convey or effectuate the use of any and all Environmental Attributes and Capacity Attributes including Resource Adequacy Benefits, if any, for Buyer's sole benefit if such failure is not remedied within ten (10) Business Days after written Notice from Buyer;
- xv. Seller withdraws, transfers, or assigns its Interconnection Queue Position for the Facility except as permitted in Section 15.2(c);

- xvi. Without prior written consent of Buyer, Seller installs generating capacity in excess of the Expected Contract Capacity at the Facility on the Site and such excess generating capacity is not removed or otherwise limited within five (5) Business Days after Notice from Buyer;
- xvii. Seller fails to take all commercially reasonable actions, including any actions required in Seller's interconnection agreement, to expeditiously obtain Full Capacity Deliverability Status if such failure is not remedied within ten (10) Business Days after written Notice from Buyer;
- xviii. Except as provided and in accordance with Section 15.2, Seller assigns or transfers its rights, obligations, interests, property or title under or in the interconnection agreement or in any Shared Facilities Agreement which would reasonably be expected to have a material adverse effect on either the Facility or the rights of Seller under the Shared Facilities Agreement(s), without the consent of Buyer;
- xix. Seller fails to comply with any of the requirements of Section 15.2; or
- xx. Seller sells or attempts to sell any Product of the Facility to a third party; provided that to the extent the Seller participates in the CAISO markets solely for the purposes of effectuating the terms of this Agreement it shall not be considered a third party sale.

13. TERMINATION; REMEDIES

13.1 Remedies.

If an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party ("Non-Defaulting Party") shall have the following rights, which shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement:

- (a) Send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date"). If the Non-Defaulting Party elects not to terminate the Agreement or exercise remedies available pursuant to this Agreement following an Event of Default, this election shall not constitute a waiver by the Non-Defaulting Party as to any subsequent Event of Default by the Defaulting Party;

- (b) Accelerate all amounts owing between the Parties;
- (c) Withhold any payments due to the Defaulting Party under this Agreement;
- (d) Exercise its rights pursuant to Section 7.4 or 10.1 to draw upon any retained Development Period Security, or its rights pursuant to Section 10.2 to draw upon any retained Delivery Period Security, as applicable, and to liquidate all Development Period Security or Delivery Period Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller, and exercise any of the other rights and remedies of a secured party with respect to all Development Period Security or Delivery Period Security, as applicable, including any such rights and remedies under the law then in effect. Buyer shall apply the proceeds of the collateral realized to reduce Seller's obligations under the Agreement with Seller remaining liable for any amounts owing to Buyer after such application, subject in the case of the Delivery Period Security to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full; and
- (e) Collect the Settlement Amount calculated in accordance with Section 13.2;
- (f) Suspend Performance, excluding the obligation to post and maintain Development Period Security and Delivery Period Security in accordance with Section 10; and
- (g) Exercise any other rights or remedies available at law or in equity (including the collection of monetary damages) to the extent otherwise permitted under this Agreement.

Seller shall provide Buyer with a Notice identifying the Facility Lender(s) and providing appropriate contact information for the Facility Lender(s). Following receipt of such Notice, Buyer shall provide Notice of any breach or default of Seller to the Facility Lender, and Buyer will accept a cure performed by the Facility Lender, so long as the cure is accomplished within the applicable cure period set forth in this PPA or the lender consent to assignment.

The Non-Defaulting Party's election to exercise or not exercise any of the above rights following an Event of Default shall not constitute a waiver by the Non-Defaulting Party of any remedy with respect to any subsequent Event of Default by the Defaulting Party.

13.2 Settlement Amount Calculations.

- (a) The "Settlement Amount" means the sum of all amounts owed to the Non-Defaulting Party under this Agreement, including the Seller Default Damages or Buyer Default Damages, as applicable, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date except as otherwise set forth herein.
- (b) If the Non-Defaulting Party's Settlement Amount exceeds zero, that amount shall be paid by the Defaulting Party to the Non-Defaulting Party within ten (10) Business Days after Notice is provided. If the Settlement Amount is less than zero (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), the Non-Defaulting Party shall not be liable for any payments to the Defaulting Party and shall be entitled to recover Costs, to be paid within thirty (30) days after Notice is provided.
- (c) The Non-Defaulting Party shall calculate the Settlement Amount in a commercially reasonable manner. Third Parties supplying information for purposes of calculating gains or losses may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the gains or losses, such prices should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three (3), then the average of the three (3) quotes shall be deemed to be market price. Where a quote is in the form of a bid and ask price, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes shall be obtained in a commercially reasonable manner and shall be (i) for a like amount, (ii) of the same product, (iii) at the same or comparable Delivery Point, and (iv) for the remaining delivery term. Regardless of the method chosen by the Non-Defaulting Party to calculate the Settlement Amount, the Settlement Amount must still be reasonable under the circumstances.
- (d) The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.
- (e) The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Settlement Amount.

- (f) The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages.

13.3 Settlement Amount- Seller as Defaulting Party.

- (a) If Seller is the Defaulting Party, the Settlement Amount shall include an amount (the "Buyer Purchase Damages") equal to the discounted value (discounted at a discount rate of one (1) percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of fifteen (15) percent) of the positive difference, if any, of:

- i. all dollar amounts that Buyer would, in the manner set forth below, be expected to pay at the prevailing market conditions (utilizing commercially reasonable efforts) to buy from a third party Product comparable to what is being purchased under this Agreement through the remainder of the Delivery Period;

plus

- ii. all incremental costs over and above those that Buyer would otherwise incur; provided that such costs are quantifiable and directly related to the termination of this Agreement;

less

- iii. all dollar amounts Buyer would have been expected to pay to Seller under this Agreement through the remainder of the Delivery Period;
- iv. provided, however, that, for an Event of Default occurring prior to the Commercial Operation Date, in no event shall the Settlement Amount exceed an amount equal to the Damage Payment.

- (b) Buyer shall calculate the Buyer Purchase Damages in a commercially reasonable manner using relevant market and/or industry data that it deems appropriate. In no event shall Buyer Purchase Damages include any penalties or ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall not be required to actually have purchased replacement Product to calculate Buyer Purchase Damages as set forth herein. If Buyer Purchase Damages are owed as a result of an Event of Default and the Buyer Purchase Damages are a negative number

then the Buyer Purchase Damages shall be deemed to equal Zero Dollars (\$0) (i.e., if the estimated cost for Buyer of obtaining substantially similar products is less than the amount it would have paid Seller, neither Party shall owe any damages to the other). Buyer shall provide the Buyer Purchase Damages calculations, including the supporting data such as associated charges and other relevant assumptions used to calculate the Buyer Purchase Damages, to the degree Buyer reasonably deems pertinent. In Seller’s sole discretion it may request and Buyer shall provide all documentation reasonably required by Seller in order to verify the Buyer Purchase Damages.

- (c) Upon receipt of the Buyer Purchase Damages, if Seller disputes the calculation of the Buyer Purchase Damages, in whole or in part, Seller shall, within fifteen (15) Business Days following its receipt of such Notice, provide to Buyer a detailed written explanation of the basis for such dispute; provided, however, Seller can only dispute the calculation based on a failure as to the material assumptions used in preparation of the Buyer Purchase Damages. Buyer shall nevertheless be entitled during the pendency of any dispute to draw the entire amount due from the Delivery Period Security set forth in Section 10.2. Any dispute as described above shall be pursued through the dispute resolution process as described in Section 16.11 of this Agreement. Upon resolution of the dispute, any amount required to be returned to Seller by Buyer shall be paid within thirty (30) Business Days following such resolution.

13.4 Settlement Amount- Buyer as Defaulting Party.

- (a) If Buyer is the Defaulting Party, the Settlement Amount shall include an amount (the “Seller Sales Damages”) calculated as the discounted value (discounted at a rate of one (1) percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of fifteen (15) percent) of the positive difference, if any, of:

- i. all dollar amounts that Seller would, in the manner set forth below, be expected to receive from the sale of the Product under this Agreement;

plus

- ii. all incremental costs over and above those that Seller would otherwise incur when delivering the Product to the Delivery Point;

less

- iii. all dollar amounts Seller actually received (or reasonably would be expected to receive at then-prevailing market conditions utilizing commercially reasonable efforts) from the sale to a third party of the Product that it would have provided to Buyer through the remainder of the Delivery Period.
- (b) Seller shall calculate the Seller Sales Damages in a commercially reasonable manner using relevant market and/or industry data as is reasonably appropriate. In no event shall Seller Sales Damages include any penalties, or ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Buyer's liability. For the purposes of this definition, Seller shall not be required to actually resell the Product to calculate the Seller Sales Damages as set forth herein. If Seller Sales Damages are owed as a result of an Event of Default and the Seller Sales Damages are a negative number then the Seller Sales Damages shall be deemed to equal Zero Dollars (\$0) (i.e., if the estimated cost for Seller to sell substantially similar products is more than the amount it would have received from Buyer, neither Party shall owe any damages to the other). Seller shall provide the Seller Sales Damages calculations, including the supporting data such as associated charges and other relevant assumptions used to calculate the Seller Sales Damages to the degree Seller reasonably deems pertinent. In Buyer's sole discretion it may request and Seller shall provide all documentation reasonably required by Buyer in order to verify the Seller Sales Damages.
- (c) Upon receipt of the Seller Sales Damages, if Buyer disputes the calculation of the Seller Sales Damages, in whole or in part, Buyer shall, within fifteen (15) Business Days following its receipt of such Notice, provide to Seller a detailed written explanation of the basis for such dispute; provided, however, Buyer can only dispute the calculation based on a failure as to the material assumptions used in preparation of the Seller Sales Damages. Any dispute as described above shall be pursued through the dispute resolution process as described in Section 16.11 of this Agreement. Upon resolution of the dispute, any payment required from one Party to the other shall be made by the owing Party within thirty (30) Business Days following such resolution.

13.5 Rights and Obligations Surviving Termination.

Any default under or upon termination of this Agreement or expiration of the Term shall not release either Party from any applicable provisions of this Agreement

with respect to (a) the payment of any amounts owed to the other Party arising prior to or resulting from termination of, or on account of breach of, this Agreement; (b) for a period of three (3) years after the termination date, the right to submit a payment dispute pursuant to Section 9.4; and (c) the resolution of any dispute submitted pursuant to Section 9.4 prior to, or resulting from, termination; (d) the confidentiality obligations pursuant to Section 15.12; and (e) the duties and obligations pursuant to Sections 15.5, 15.7, 15.11, 16.4, 16.5, 16.7, 16.11, and 16.13.

13.6 Limitation of Remedies, Liability and Damages.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS PROVIDED IN SECTIONS 15.5, 15.7, 15.11, 16.4, and 16.13, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE PARTIES FURTHER AGREE THAT PAYMENT OF SUCH AMOUNT SHALL BE LIQUIDATED DAMAGES AND NOT AS A PENALTY, AND IS THEREFORE NOT SUBJECT TO AVOIDANCE UNDER CALIFORNIA CIVIL CODE SECTION 1671.

14. REPRESENTATIONS AND WARRANTIES; COVENANTS

14.1 Representations and Warranties.

As of the Execution 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 jurisdiction of its formation;
- (b) it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

- (c) it is registered with the California Secretary of State to do business in California, except it is agreed that Buyer is not required to do so;
- (d) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (e) this Agreement, and any other document executed and delivered in accordance with this Agreement, constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;
- (f) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (g) there is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (h) in the case of Seller, the information provided and assertions made in its proposal, as listed in Schedule 1 hereto, were true and accurate as of the Execution Date, to the best of the Seller's knowledge;
- (i) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement. It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement;
- (j) it is, and any guarantor, credit support provider or pledgor of assets in support of its obligations are each, an "eligible contract participant" (ECP) as defined in Section 1a(18) of the Commodity Exchange Act;
- (k) to the extent any transaction covered by this Agreement is considered to be a "swap" and subject to the mandatory clearing under Commodity Futures Trading Commission ("CFTC") rules, regulations, orders, supplementary information, guidance, questions and answers, staff letters and interpretations ("CFTC");

Regulations”) it is eligible to rely on the end-user exception to the clearing requirement as set forth in CFTC Rule 50.50;

- (l) Seller represents and warrants to Buyer that Seller is not a Special Entity as defined in CFTC Regulations. Buyer represents and warrants to Seller that Buyer is a Special Entity as defined in CFTC Regulations; and
- (m) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Product as contemplated in this Agreement.

14.2 Additional Seller Representations, Warranties and Covenants.

Seller hereby represents, warrants, and covenants to Buyer that throughout the Delivery Period:

- (a) Seller shall own (or, in the absence of ownership, control) and operate the Facility, subject to the provisions of Section 15.3;
- (b) Seller shall deliver to Buyer the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person or entity;
- (c) Seller shall obtain, maintain and remain in compliance with all Governmental Approvals, interconnection agreements and transmission rights necessary to operate the Facility and to deliver electric energy from the Facility to the Delivery Point;
- (d) Seller shall not withdraw the Interconnection Queue Position identified in Section 1, assign or transfer that Interconnection Queue Position to any entity, or utilize the Interconnection Queue Position for the benefit of any power purchase and sale agreement other than the Agreement, in each case, without Buyer’s prior written consent.
- (e) Subject to Section 3.3, Seller shall take all actions necessary for the Facility to qualify and be certified by the CEC as an ERR and for the Product delivered to Buyer to qualify under the requirements of the California RPS.
- (f) Seller shall take, or cause to be taken, all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS prior to the first delivery under the Agreement;
- (g) Subject to Section 3.3, the Facility qualifies and is certified by CEC as an ERR and the Facility’s output delivered to Buyer qualifies

under the California RPS and as amended in the future due to a change in Applicable Law;

- (h) Subject to Section 3.3, the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California RPS and as amended in the future due to a change in Applicable Law; and
- (i) Seller shall hold the rights to all Environmental Attributes and Capacity Attributes including Resource Adequacy Benefits, which Seller has conveyed and has committed to convey to Buyer hereunder.

15. PERFORMANCE REQUIREMENTS

15.1 Modifications to Facility.

- (a) Seller may update Exhibit F by Notice to Buyer pursuant to Section 16.7 one time during the Term of this Agreement according to the provisions set forth in this Section 15.1(a); provided that if any update would result in a material increase to the expected output of the Facility as represented by the Contract Quantity then Seller must obtain Buyer's consent to such change which such consent shall not be unreasonably withheld, conditioned or delayed. Seller's updated Exhibit F will be deemed to replace the then-existing Exhibit F without any further action of the Parties.
- (b) Seller shall provide Buyer with advance Notice at the earliest practicable time of any further proposed material changes to the Facility as described in Exhibit F, but in no event less than ninety (90) days before such changes are to be made, which Notice must include an update to any relevant information set forth in Exhibit F. If, upon review, Buyer approves Seller's proposed changes to the Facility, such approval not to be unreasonably withheld, conditioned or delayed, Exhibit F will be deemed amended accordingly.

15.2 Interconnection.

- (a) Seller shall obtain and maintain throughout the Delivery Period any and all interconnection and transmission service rights and Permits required to effect delivery of the electric energy from the Facility to the Delivery Point. The interconnection agreement shall provide for interconnection capacity available or allocable to the Facility that is no less than the Installed Contract Capacity. The Parties acknowledge that ownership and use of interconnection, transmission facilities, and/or associated equipment such as transformation and substation equipment (including the interconnection agreement itself) may be subject to Shared

Facilities Agreements under which an Affiliate of Seller may act as a manager on behalf of Seller and other seller(s) under the interconnection agreement (“Affiliate Manager”).

- (b) On and after the Execution Date, prior to the execution of any Shared Facilities Agreement(s), Seller shall provide drafts of said Shared Facilities Agreement(s) to Buyer for its review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Seller shall apply for and expeditiously seek FERC’s acceptance of any Shared Facilities Agreement(s), if required. Following execution of any Shared Facilities Agreement(s), Seller shall provide drafts of any material amendments to the Shared Facilities Agreement(s) which would reasonably be expected to have a material adverse effect on either the Facility or the rights of Seller under the Shared Facilities Agreement(s) to Buyer for its review and approval, which approval shall not be unreasonably withheld, conditioned or delayed.
- (c) Seller shall not assign or transfer Seller’s rights or obligations under the interconnection agreement or any Shared Facilities Agreement to any Person which would reasonably be expected to have a material adverse effect on either the Facility or the rights of Seller under the Shared Facilities Agreement(s) without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.
- (d) As between Buyer and Seller under this Agreement, Seller shall be responsible for all costs and charges directly caused by, associated with, or allocated to Seller, the Affiliate Manager, or the other sellers under the interconnection agreement, the Shared Facilities Agreements, and the CAISO Tariff in connection with the interconnection of the Facility to the Transmission Provider’s electric system and transmission of electric energy from the Facility to the Transmission Provider’s electric system.
- (e) Seller shall, or shall cause the Affiliate Manager, as applicable, to comply with the CAISO Tariff, including security and maintaining in full force all required CAISO agreements, certifications and approvals, and including securing the CAISO Resource ID that is to be used solely for the Facility.

15.3 Assignment.

- (a) Consent to Assignment: Except as specifically provided herein, neither Party shall transfer or assign this Agreement or its rights hereunder, without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or

delayed except as set forth in Sections 15.4 and 15.5. Either Party may, without the consent of the other Party (and without relieving itself from any liabilities hereunder that arose prior to the date of such transfer) and provided that in each case the conditions in Section 15.3(b) are satisfied (except as otherwise provided), transfer or assign this Agreement: (i) to an Affiliate of such Party whose creditworthiness is equal to or higher than that of such Party as of the Execution Date; (ii) to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party as of the Execution Date, or (iii) with respect to Seller, in connection with any Permitted Transfer.

- (b) As a condition to the effectiveness of any assignment by Seller permitted under this Agreement under Section 15.3(a) and except as provided in Section 15.5 and with respect to any Permitted Transfer:
 - i. Seller must have demonstrated to Buyer that the proposed assignee will be a Qualified Transferee;
 - ii. The proposed assignee must have agreed in writing to be bound by the terms and conditions hereof;
 - iii. Seller shall have paid Buyer all of Buyer's reasonable costs and expenses incurred in the review, negotiation, and/or approval of the transfer or assignment, including, without limitation, attorneys' fees; and
 - iv. The proposed assignee must have delivered Performance Assurance in accordance with the terms of this Agreement.
- (c) A Party's consent to one assignment shall not be deemed consent to any subsequent assignment.

15.4 Collateral Assignment.

- (a) Notwithstanding Section 15.3, Seller may, without the consent of Buyer (and without relieving itself from any liabilities hereunder that arose prior to the date of such transfer), assign this Agreement, interconnection agreement and any Shared Facilities Agreement for the Facilities to one or more Facility Lenders as collateral for any financing or refinancing of Seller or its Affiliates.
- (b) In connection with any assignment of this Agreement by Seller to one or more Facility Lenders as collateral for any financing or refinancing of the Facility, or any transfer, sale, pledge, encumbrance or assignment of this Agreement, the interconnection

agreement and Shared Facilities Agreement for the Facility or the accounts, revenues or proceeds hereof or thereof in connection with any financing or other financial arrangements, if requested by Seller, Buyer (acting reasonably) shall enter into a mutually agreeable consent which shall be in substantially the same form as attached hereto as Exhibit G; provided that Buyer agrees to negotiate in good faith modifications to such form as may be reasonably requested by Facility Lenders, to collateral assignment with Buyer and such Facility Lender(s) provided that Seller shall be responsible at Buyer's request for Buyer's reasonable costs associated with the review, negotiation and execution of such consent to collateral assignment, including, without limitation, attorneys' fees. Seller shall identify the Facility Lender and provide at least thirty (30) days' advance Notice to Buyer before requiring Buyer to enter into such consent to collateral assignment with Buyer and such Facility Lender.

- (c) Upon the receipt of a written request from Seller or any Facility Lender or Tax Equity Investor, Buyer shall execute, or arrange for the delivery of, such certificates, opinions and other documents as may be reasonably necessary in order for Seller to consummate any financing or refinancing of the Facility or any part thereof and will enter into agreements with such Facility Lender and Tax Equity Investor satisfactory to Buyer, which agreements will grant certain rights to the Facility Lenders and Tax Equity Investors as more fully developed and described in such documents.

15.5 **Change in Control.**

A Change in Control is permitted if (i) Buyer has given prior written consent to the transaction or transactions constituting the Change in Control, or (ii) the Change in Control occurs in connection with the exercise of remedies by a Facility Lender (including a transfer of direct or indirect interests in the Facility by a Facility Lender following the exercise of remedies) and the new Upstream Equity Owner following the Change in Control is a Qualified Transferee.

15.6 **Insurance.**

At all times during the Term of this Agreement, Seller shall maintain at its own expense insurance policies for the Facility, its fixtures and other tangible assets in such amounts and against such risks and losses as are consistent with Good Industry Practices for Facilities of similar size and nature, including, but not limited to, general liability, workers' compensation, automobile liability, and pollution liability insurance, with responsible insurers who maintain a Standard & Poor's Credit Rating of at least "BBB+" (or equivalent). Within ten (10) Business Days after receipt of a request for the same from Buyer, Seller shall deliver to Buyer insurance endorsements and a certificate of insurance for any or all policies maintained in accordance with this Section 15.6, which

certificate shall include at least the following information: (i) the name of the insurance company, policy number and expiration date; (ii) the coverage and limits on coverage, including the amount of deductibles or self-insured retentions; and (iii) proof of Buyer as an additional named beneficiary under such policies. Seller shall hold harmless and indemnify Buyer from any direct or indirect losses and liability, including attorneys' fees and costs of litigation, resulting from the injury or death of any person or damage to any property if (i) Seller fails to comply with the provisions of this Section 15.6 and (ii) Buyer would have been protected had Seller complied with the requirements of this Section 15.6.

- (a) General Liability – Seller shall maintain general liability with limits not less than Two Million Dollars (\$2,000,000.00) each occurrence including bodily injury, personal injury, and property damage coverage, with a general aggregate not less than Four Million Dollars (\$4,000,000.00). The policy shall be endorsed to include Buyer and the State of California, its officers, agents, employees and servants as additional insureds. The additional insured endorsement shall be provided to Buyer.
- (b) Automobile Liability – Seller shall maintain motor vehicle liability with limits not less than Two Million Dollars (\$2,000,000.00) combined single limit per accident including bodily injury and property damage. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. The policy shall be endorsed to include Buyer and the State of California, its officers, agents, employees and servants as additional insureds. The additional insured endorsement shall be provided to Buyer.
- (c) Workers' Compensation and Employer's Liability – Seller shall maintain statutory workers' compensation and employer's liability coverage for all its employees, or employees of its Affiliate, who will be engaged in the performance of the Agreement. Employer's liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury, disease, or death occurring as a result of each accident. If work is performed on State owned or controlled property the workers' compensation policy shall contain a waiver of subrogation in favor of the State. The waiver of subrogation endorsement shall be provided to Buyer.
- (d) Pollution Liability – Seller shall maintain pollution liability coverage with limits not less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) each incident and One Million Five Hundred Thousand Dollars (\$1,500,000.00) in aggregate. The policy shall be endorsed to include Buyer and the State of California, its officers, agents, employees and servants as additional insureds. The additional insured endorsement shall be provided to Buyer.

15.7 Debt Liability Disclaimer; Hold Harmless.

Buyer, including, but not limited to, any source of funding for Buyer, any General Fund or any special self-insurance program, is not liable for any debts, liabilities, settlements, liens, or any other obligations of the Seller or its heirs, successors or assigns. Buyer has no obligation to defend or undertake the defense on behalf of the Seller or its heirs, successors or assigns. Seller shall defend, indemnify and hold harmless Buyer from any claims, actions, lawsuits, administrative proceedings or damages associated with any contract, tort, action or inaction, error in judgment, act of negligence, intentional tort, mistakes, or other acts taken or not taken by the Seller, its employees, agents, servants, invitees, guests, or anyone acting in concert with or on behalf of Seller arising out of this Agreement.

15.8 Compliance with Applicable Laws, Including CAISO Interconnection Standards and the California Environmental Quality Act ("CEQA") Guidelines.

Subject to Section 3.3 as applicable, Seller, at its own cost and expense, shall comply with all Applicable Laws relating to the operation of the Facility and the generation and sale of Product to Buyer, including obtaining and maintaining all relevant approvals and permits. In particular, Seller agrees throughout the Term of the Agreement to fully comply with any and all operational standards and requirements imposed by the CAISO, and to comply with the electrical interconnection requirements as stated in the applicable and controlling CAISO Tariff. Buyer will cooperate with Seller and, if necessary, will provide consents and execute with the CAISO such agreements as are necessary to permit the interconnection of the Facility. The electrical interconnection shall be done at no cost or liability to Buyer, and Seller shall reimburse Buyer for all out of pocket costs incurred by Buyer in connection with any interconnection agreement.

Seller represents to Buyer that it will comply with applicable provisions of CEQA. Seller shall be responsible for, at its own cost and expense, conducting environmental compliance monitoring to ensure compliance with all applicable permits. Seller agrees to perform consistent with the EIR for the Facility and any amendments or supplements thereto, and all other Governmental Approvals related to the Facility or Site.

15.9 Decommissioning and Other Costs.

Buyer shall not 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.

15.10 Change of CAISO Scheduling Practices.

In the event the CAISO or its successor modifies its scheduling practices and data necessary to settle the invoices hereunder, the Parties shall coordinate to implement scheduling protocols consistent with the then-current CAISO practices and consistent with the rights of the Parties hereunder.

15.11 Taxes.

Seller is liable for and shall pay, or cause to be paid, or reimburse Buyer for if Buyer has paid, all taxes applicable to performance under this Agreement and delivery of the Product hereunder arising before and at the Delivery Point. Buyer is liable for and shall pay, or cause to be paid, or reimburse Seller for if Seller has paid, all taxes applicable to performance under this Agreement and delivery of the Product arising after the Delivery Point. If Buyer is required to remit any tax that is Seller's responsibility hereunder, the amount shall be deducted from any sums due to the Seller. The Seller shall indemnify, defend, and hold harmless Buyer from any claims for such taxes. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any tax.

15.12 Confidentiality of Data.

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, including, without limitation, the California Public Records Act (Government Code §§ 6250 et seq., "CPRA"), all documents, data (including operating data provided in connection with the scheduling of energy 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 15.12 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 outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

- (a) Subject to the CPRA, either Party may, without violating this Section 15.12, disclose matters that are made confidential by this Agreement:
- i. to its counsel, accountants, auditors, advisers, other professional consultants, credit rating agencies, actual or prospective, co-owners, investors, purchasers, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party or its subsidiaries or Affiliates;
 - ii. to governmental officials and parties involved in any proceeding in which a Party is seeking a Permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; and
 - iii. to governmental officials or the public as required by any law, regulation, order, rule, ruling or other Requirement of Law, including oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports.
- (b) If a Party is requested or required, pursuant to any applicable Law, regulation, order, rule, or ruling, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.
- (c) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer is subject to disclosure as required by CPRA. Confidential Information of Seller provided to Buyer pursuant to this Agreement shall become the property of Buyer, and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to CPRA; provided that Seller shall (i) provide notice to Seller prior to any such disclosure in accordance with Section 15.12(b), (ii) endeavor, in good faith, not to disclose any of Seller's "trade secrets" as consistent with the CPRA and (iii) support, to the extent in compliance with Buyer's endeavor, in good faith, not to disclose any of the Confidential Information, Seller in its

efforts to obtain a protective order or other appropriate remedy with respect to the disclosure of operating data from the Facility or any engineering drawings, project plans, technical specifications or other similar information regarding the Project.

- (d) Notwithstanding the foregoing or any other provision of this Agreement, Buyer may 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 applicable law the credit support contemplated by this Agreement, and the rights, Liens and priorities of Buyer with respect to such credit support.
- (e) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information is subject to disclosure under CPRA, then Buyer shall notify the other Buyer and Seller of the request and its intent to disclose the documents. Buyer, as required by CPRA, shall 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 Buyer and the Indemnitees from and against all suits, claims, and causes of action brought against Buyer or any Indemnitees for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by Buyer and any Indemnitees, and specifically including costs of 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 Buyer or any Indemnitees, through and including any appellate proceedings. Seller's obligations to Buyer and all Indemnitees under this indemnification provision shall be due and payable on a Monthly, ongoing basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by 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 13.6.

15.13 Public Announcements

Seller shall make no public announcement regarding any aspect of this Agreement or the role of Seller in regards to the development or operation of the Project without the prior written consent of Buyer, which consent shall not be unreasonably withheld. Any public announcement by Seller must comply with California Business and Professions Code § 17580.5 and with the *Guides for the Use of Environmental Marketing Claims*, published by the FTC, as it may be updated from time to time.

16. MISCELLANEOUS

16.1 Counterparts.

This Agreement may be executed in any number of counterparts, and upon execution by the Parties, each of which shall be deemed an original, but all of which shall constitute one Agreement after each Party has signed such the same instrument.

16.2 Exclusivity.

At no time shall Seller sell or otherwise dispose of the Contract Quantity to any third party, except as approved in writing by Buyer, which approval shall not be unreasonably withheld, conditioned or delayed; provided that to the extent the Seller participates in the CAISO markets solely for the purposes of effectuating the terms of this Agreement it shall not be considered a third party sale.

16.3 Title and Risk of Loss.

Title to and risk of loss related to the Product shall transfer from Seller or Seller's SC to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to or at the Delivery Point.

16.4 Indemnities by Seller.

Seller shall release, indemnify, defend, and hold harmless, Buyer, its directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest ("Claims"), including reasonable costs and attorneys' fees, resulting from, or arising out of or in any way connected with this Agreement, including (i) any event, circumstance, act, or incident relating to the Product delivered under this Agreement up to and at the Delivery Point, (ii) Seller's development, permitting, construction,

ownership, operation and/or maintenance of the Facility, (iii) the failure by Seller or the failure of the Facility to comply with Applicable Laws, (iv) any Governmental Charges for which Seller is responsible hereunder, or (v) any liens, security interests, encumbrances, or other adverse Claims against the Product delivered hereunder made by, under, or through Seller, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

16.5 Governing Law; Venue.

This Agreement shall be governed by, construed under and enforced in accordance with the laws of the State of California without regard to principles of conflicts of law. The venue for any court action brought pursuant to this Agreement shall be Riverside County, California.

16.6 Waiver of Trial by Jury.

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

16.7 Notices.

All notices that must to be given under the terms of this Agreement (each a "Notice"), except as herein otherwise provided, shall be in writing and shall be communicated by prepaid mail, overnight courier, e-mail or facsimile addressed to the respective Party at the addresses listed in Exhibit D or to such other address as respectively designated hereafter in writing from time to time. If Notice is sent via e-mail or facsimile, a signed, hard copy of the material shall also be mailed. The workday the e-mail or facsimile was sent shall control the date Notice was deemed given if there is a facsimile machine generated document on the date of transmission. An e-mail or facsimile transmitted after 5:00 p.m. PST shall be deemed to have been transmitted on the following Business Day.

16.8 Joint Effort.

The Parties acknowledge and agree that each Party and its counsel have read this Agreement in its entirety, fully understand it, and accept its terms and conditions. Accordingly, the normal rule of construction to the effect that any ambiguities are to be

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

resolved against the drafting party is not applicable and therefore shall not be employed in the interpretation of this Agreement or any amendment of it.

16.9 Relationship of the Parties.

Nothing herein is intended to create or is to be construed as creating a joint venture, partnership, agency or other taxable entity between the Parties. The rights and obligations of the Parties shall be independent of one another and shall be limited to those expressly set forth herein. Nothing herein is intended to create or is to be construed as creating a duty for Buyer to co-fund any costs related to the development, construction, operation and/or maintenance of the Facility. Seller shall bear all such costs and obligations at its sole expense.

16.10 No Third Party Beneficiary.

The Parties mutually agree that this Agreement is for their sole benefit and is not intended by them to be, in part or in whole, for the benefit of any third party.

16.11 Resolution of Disputes.

- (a) The Parties will attempt in good faith to resolve any dispute by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a "Manager"). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies that have authority to settle the dispute ("Executives"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.
- (b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.
- (c) All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

- (d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 16.11 above, refuses or does not meet within the ten (10) Business Day period specified in Section 16.11, and subject to Sections 13.6 and 16.4 of this Agreement, either Party may pursue all remedies available to it at law or in equity.

16.12 Entire Agreement.

This Agreement, when executed, shall constitute one, single integrated agreement and set forth the entire agreement by and between the Parties and supersedes any prior understandings, agreements or representations by or between the Parties, written or oral, to the extent they have related in any way to the subject matter hereof and thereof. To the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

16.13 Violation of Governmental Approvals.

Seller also agrees to defend, indemnify and hold Buyer harmless from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expense (including attorneys' fees) and causes of action of whatsoever character, including response, remedial or inspection costs and expenses, made or brought against Buyer by any federal, state or local agency, or federal or state court, with jurisdiction over the Facility, arising out of or based upon Seller's violation of any Governmental Approvals.

16.14 Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).

- (a) The Parties shall seek to agree at the time a transaction is executed whether the transaction is a "swap" (including a "trade option," as defined in CFTC Rule 32.3) or a contract excluded from the defined term "swap" or otherwise exempt from reporting. Whether or not the Parties agree, Seller shall advise the Buyer prior to the execution of such transaction if it will report the transaction as a swap or a trade option; provided, however, such a determination shall not preclude the Buyer from making its own determination, and shall not constitute an agreement by the Parties, as to whether the transaction is a swap, a trade option, or a contract excluded from the defined term "swap" or otherwise exempt from reporting. The Parties agree that Seller shall accept any obligations placed on the "reporting party" and/or the "reporting counterparty" by the DFA, except for any reporting requirement applicable to Buyer in connection with any trade options. Each Party will provide to the other Party any information reasonably

requested by such other Party to enable such other Party to comply with CFTC Regulations in connection with any swap transaction.

- (b) The Parties intend that the contract and all transactions hereunder will qualify for the forward contract exclusion as set out in CFTC Regulations. Accordingly, the Parties agree and represent that at the time they enter into the transactions under this Agreement, they intend to physically settle such transactions. Each Party further agrees, represents, and warrants that (i) it will not sever any option or optionality embedded in the contract from the contract and market it separately; (ii) if it is the Seller, it intends to deliver if any option or optionality is exercised; (iii) if it is the Buyer, it intends to take delivery if any option or optionality is exercised. Each Party agrees, represents and warrants that it is a “commercial party” for the purposes of the forward contract exclusion.
- (c) The Parties intend that any swap transaction that is or may be a commodity option for the purposes of CFTC Regulations shall qualify for the trade option exemption provided in 17 C.F.R. § 32.3. Accordingly, each Party buying or selling a commodity option agrees, represents, and warrants that, as of the time of each offer to enter into a commodity option, and each reportable event in respect of such swap transaction, any such option shall be offered only to a producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the commodity option or the products or by-products thereof, and that the entities entering into the options are doing so solely for purposes related to their business as such. With respect to transactions that are exempt under the trade option exemption, each Party will make such filings and/or reports required to be filed or reported by it under CFTC Regulations, including the CFTC Staff No-Action Relief Letter No. 13-08 dated April 5, 2013.

16.15 Standard of Review.

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a person or entity or the Federal Energy Regulatory Commission acting sua sponte shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) (the “Mobile-Sierra” doctrine).

16.16 Further Assurances.

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are commercially reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 16.16. This Agreement sets forth the entire agreement of the Parties with respect to credit, collateral, financial assurances and adequate assurances and Seller shall not have any obligation to post any other margin, credit, deposit or any other financial assurances in any form whatsoever.

16.17 Captions; Construction.

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. Any term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party.

16.18 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

[signature page follows]

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

[_____]

By: _____

Date: _____

Name: _____

Title: _____

Approved for legal form and sufficiency

By: _____

Date: _____

Name: _____

Title: _____

[_____]

By: _____

Date: _____

Name: _____

Title: _____

Approved for legal form and sufficiency

By: _____

Date: _____

Name: _____

Title: _____

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

[_____]

By: _____

Date: _____

Name: _____

Title: _____

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

SCHEDULE 1

For the purposes of this Schedule 1, the “Proposer” means FTP Power LLC (dba sPower).

Seller represents and warrants the following information and assertions made in its proposal are true and accurate as of the Execution Date:

- 1) Proposer is providing funding for the Facility.
- 2) Proposer and its contractors together have experience for the past three (3) years in scheduling, monitoring and billing for product similar to the Product through the CAISO.
- 3) The Phase I Interconnection Study or Facilities Study is complete. The Interconnection Agreement has not yet been executed with CAISO and will provide for Full Capacity Deliverability Status for the Contract Quantity.
- 4) Tenaska Power Services Co. will be the initial SC and Seller shall have the right to utilize other SCs over the term.
- 5) Seller will have rights to use the gen-tie facility.

EXHIBIT A

FORM OF ATTESTATION
Environmental Attribute Certificate and Bill of Sale

Pursuant to the Power Purchase Agreement between [] and [] (the "Agreement"), dated XXXX, [] ("Seller") hereby sells, transfers and delivers to [] ("Buyer") the Environmental Attributes associated with the generation of Energy at the Facility, as detailed in the Agreement and listed below. Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

Facility name and location:

Capacity (MW): Operational Date:
As applicable: CEC Reg. no. ___ Energy Admin. ID no. ___ CEC-RPS-ID no. ___
Dates MWh generated
_____ 20 _____

Seller further attests, warrants and represents as follows:

- (a) The information provided herein is true and correct;
(b) Its sale to Buyer is its one and only sale of the Environmental Attributes and associated Environmental Attribute reporting rights referenced herein;
(c) The Facility identified above produced and delivered to the CAISO grid the amount of Energy indicated;
(d) Seller has title to and ownership of the renewable energy credits sold hereunder; and
(e) Seller owns the Facility named above.

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

Contact Person: _____ Telephone: _____
(Seller)

Signed _____ Date _____
Name _____ Title _____

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

EXHIBIT B
[RESERVED]

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

EXHIBIT C
CONTRACT QUANTITY

Contract Year	Contract Quantity
1	44,855*
2	44,630
3	44,407
4	44,185
5	43,964
6	43,745
7	43,526
8	43,308
9	43,091
10	42,876
11	42,662
12	42,449
13	42,236
14	42,025
15	41,815
16	41,606
17	41,398
18	41,191
19	40,985
20	40,780**

* Contract Year 1 may be for a time period greater than 12 months. After the Commercial Operation Date, Seller will update the Contract Quantity for Contract Year 1 by notice to Buyer with an updated Contract Quantity amount that takes into account any days in addition to the first calendar year included in Contract Year 1.

** Contract Year 20 may be for a time period less than 12 months. After the Commercial Operation Date, Seller will update the Contract Quantity for Contract Year 20 by notice to Buyer with an updated Contract Quantity amount that takes into account the partial calendar year included in Contract Year 20.

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

EXHIBIT D

PAYMENT AND CONTACT INFORMATION

Contract representatives for the duration of the Agreement are as follows unless modified by proper notification under the Agreement

	Buyer Contact:	Seller Contact:
General Contract Notices	Power Contracts Branch Name: Address: Phone: Email:	Name: Sean McBride, General Counsel Address: 2180 South 1300 East, Suite 600 Salt Lake City, Utah 84106 Phone: 801-679-3506 Email: smcbride@spower.com
Scheduling	Pre-Scheduling Phone: E-mail:	Name: Control Room Address: 2180 South 1300 East, Suite 600 Salt Lake City, Utah 84106 Phone: 855-679-3553 Backup Phone: 801-419-4432 Email: ControlRoom@spower.com
	Real-Time Shift Senior Dispatcher Phone: Email:	Name: Control Room Address: 2180 South 1300 East, Suite 600 Salt Lake City, Utah 84106 Phone: 855-679-3553 Backup Phone: 801-419-4432 Email: ControlRoom@spower.com
Settlement	Invoicing (Primary) Phone: E-mail:	Name: Ryan Liddell, Corporate Controller Address: 2180 South 1300 East, Suite 600 Salt Lake City, Utah 84106 Phone: 801-679-3512 Email: rliddell@spower.com
	Invoicing (Alternate) Phone: E-mail:	Name: Ryan Liddell, Corporate Controller Address: 2180 South 1300 East, Suite 600 Salt Lake City, Utah 84106 Phone: 801-679-3512 Email: rliddell@spower.com
	Reconciliation Phone: E-mail:	Name: Ryan Liddell, Corporate Controller Address: 2180 South 1300 East, Suite 600 Salt Lake City, Utah 84106 Phone: 801-679-3512 Email: rliddell@spower.com
Wiring Information		

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

EXHIBIT E
SELLER'S MILESTONE SCHEDULE

Seller's Milestone Schedule		Milestone Date	
No.	Milestones	Expected	Completed
1	Files Land Use Permit applications.	8/15/2017	
2	Receives Land Use Permit.	8/15/2019	
3	Submits interconnection application.	6/4/2015	6/4/2015
4	Receives a completed System Impact Study or Phase I Interconnection Study.	1/16/2016	1/16/2016
5	Receives a completed interconnection Facility Study or Phase II Interconnection Study.	11/22/2016	11/22/2016
6	Executes an interconnection agreement and transmission/distribution service agreement, as applicable.	5/14/2017	
7	Receives FERC acceptance of interconnection agreement and transmission agreement. (Binding)	12/31/2017	
8	Receives Construction Permits.	7/3/2020	
9	Begins construction of the Generating Facility. (Binding)	8/3/2020	
10	Initial Synchronization Date.	12/17/2020	
11	Commercial Operation Date. (Binding)	12/31/2020	

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

EXHIBIT F

FACILITY AND SITE DESCRIPTION

Facility means the Antelope Expansion 3a (15 MW) project that will produce the Product for delivery to Buyer under this Agreement, as further described in greater detail below or in the below referenced documents, all incorporated into this Agreement and, if not provided below, to be provided by Seller to Buyer on or before the Execution Date, or on the next soonest date when the documents are available, as noted below:

- The name and address of the Facility and APN number:
 Name: Antelope Expansion 3
 Address: West Avenue G-8 and 110th Street West, Lancaster, CA 93536
 APNs: 3265-006-001, 3265-006-002, 3265-007-001, 3265-007-003, 3265-007-007
- A description of the Facility, including a summary of its significant components, such as Photovoltaic Modules, DC Collection System, Current Inverters, meteorological station, solar irradiance instrumentation and any other related electrical equipment:
 To be provided to Buyer by the date Seller receives Construction Permits;
- The designation system by which Seller identifies individual generating units
 To be provided to Buyer by the date Seller receives Construction Permits;
- A site plan drawing showing the general arrangement of the Facility:
 To be provided to Buyer by the date Seller receives Construction Permits;
- Single-line diagram(s) showing electrical arrangement of solar array, current inverters, inverter output transformers and interconnection service transformer
 To be provided to Buyer by the date Seller receives Construction Permits;
- A legal description of the Site, including a Site map
 See attached; and
- Longitude and latitude of the centroid of the Site:
 Latitude, Longitude: (34.725207°, -118.322885°)
- Point of Interconnection:
 Antelope 220kv substation
- Pnode:
 To be designated by CAISO

Site Legal Description

Los Angeles County APNs:

3265-006-001, 3265-006-002, 3265-007-001, 3265-007-003, 3265-007-007; provided that Seller shall be permitted to remove APNs upon prior written notice to Buyer consistent with the final design of the Facility, and Seller's updated Site Legal Description will be deemed to replace the then-existing Exhibit F, Facility and Site Description without any further action of the Parties



Los Angeles County, CA		Map Details		Map Description		
			Antelope Expansion 3 will be located on private land in Los Angeles County, California			Author: JL
						Date: 4/6/2017
			Antelope Expansion 3			Version: 1.0
						Type: Exhibit

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

EXHIBIT G

FORM OF CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [Date] among [_____] (the “Consenting Party”), [insert name of agent], as agent on behalf of the lenders party to the [Bank Document] (as defined below) (the “Assignee”) and XXXX (the “Assignor”).

WHEREAS, the Assignor and the Consenting Party have entered into a Power Purchase Agreement dated [insert PPA date] (the “Assigned Agreement”), whereby the Consenting Party has agreed to purchase renewable energy and capacity from Assignor’s solar photovoltaic facility known as the XXXX facility located in XXXX County, California (the “Project”).

WHEREAS, [describe Bank Document].

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto agree as follows:

Section 1: Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

Section 2: Consent and Agreement. (a) The Consenting Party consents to and approves the assignment of the Assigned Agreement pursuant to the [Bank Document] to (i) the Assignee as collateral security for the payment of all amounts payable by the Assignor under the [Bank Document], and (ii) any nominee, transferee, designee or assignee of, or successor to, the Assignee, which nominee, transferee, designee, assignee or successor shall either be an Experienced Operator or shall otherwise be reasonably satisfactory to the Consenting Party; and (iii) the subsequent transfer of the Assigned Agreement to any person who is either an Experienced Operator or is otherwise reasonably satisfactory to the Consenting Party in connection with the Assignee’s or any permitted successor transferee’s exercise of its rights and remedies under the [Bank Document] and related documents following the occurrence of an event of default by the Assignor under the [Bank Document] (any person to whom an assignment may be made pursuant to (ii) or (iii) of this Section 2 being referred to as “Permitted Transferee”). For purposes of the foregoing, an “Experienced Operator” means a person who, itself (or its direct or indirect owner) or by contract, is currently or has previously acted as a Scheduling Coordinator of renewable resources in the CAISO Balancing Authority Area, within the prior two (2) years, and has experience owning and/or operating and maintaining a minimum of one hundred (100) MWac of renewable energy assets, including a minimum of twenty-five (25) MWac of solar energy assets.

(b) The Assignee (and any successor Permitted Transferees) shall have no rights with respect to the Assigned Agreement until the transfer thereof to Assignee or a

successor Permitted Transferee except for the Assignee's rights set forth in Sections 4, 5, 6 and 8 that shall arise as of the date of this Consent and Agreement. The Assignee's (and any successor Permitted Transferee's) rights hereunder following transfer of the Assigned Agreement to Assignee or a successor Permitted Transferee shall be subject to the conditions that (i) the Assignee, including any successor Permitted Transferees, shall have assumed in writing all of the duties and obligations of the Assignor under the Assigned Agreement arising on or after the date of such assumption, (ii) no default shall have occurred and be continuing under the Assigned Agreement except for any such default which is not personal to the Assignor and which is susceptible of being cured by the Assignee or Permitted Transferee, and has been cured or is in the process of being cured within the applicable cure period in accordance with Section 4, and (iii) any successor transferee, designee or assignee of the Assignee shall be a Permitted Transferee. The Assignee shall not be liable for the performance or observance of any of the obligations or duties of the Assignor under the Assigned Agreement, nor shall the assignment thereof give rise to any duties or obligations whatsoever on the part of the Assignee owing to the Consenting Party except that, insofar as the Assignee exercises any of its rights under the Assigned Agreement or makes any claims with respect to any payments, deliveries or other obligations under the Assigned Agreement, the terms and conditions of the Assigned Agreement, otherwise applicable in respect of such rights being exercised or such claims being made shall apply to the Assignee and require the Assignee's performance of such related obligations to the same extent as they would otherwise apply to the Assignor; provided, however, that Assignee or a successor Permitted Transferee shall have no rights with respect to the Assigned Agreement until the transfer thereof to Assignee or a successor Permitted Transferee (except for the Assignee's rights set forth in Sections 4, 5, 6 and 8 hereof that shall arise as of the date of this Consent and Agreement) and shall not exercise any rights or make any claims under the Assigned Agreement following transfer of the Assigned Agreement to Assignee or a successor Permitted Transferee until Assignee shall have complied with this Section 2(b); provided, further, however, that neither any exercise of any rights nor any making of any claims by the Assignee or any Permitted Transferee to or of the Assignee shall prejudice the rights of the Consenting Party against the Assignor in respect of any obligations or liabilities of the Assignor under the Assigned Agreement (or any offsets or claims of the Consenting Party against the Assignor thereunder) occurring prior to the time such Person shall have acquired and assumed the rights and obligations of the Assignor thereunder.

Section 3: No Current Defaults; Other Representations: The Consenting Party hereby represents and warrants to Assignee that as of the date hereof (a) each of the Assigned Agreement and this Consent and Agreement is in full force and effect and, except as set forth on Schedule A hereto, there are no amendments, modifications or supplements to the Assigned Agreement, either oral or written; (b) the Consenting Party has the requisite power and authority to execute and deliver the Assigned Agreement and this Consent and Agreement and to perform its obligations hereunder and thereunder; (c) the Assigned Agreement and the Consent and Agreement have been duly authorized, executed, and delivered by the Consenting Party and each constitutes the legal, valid and binding obligation of the Consenting

Party, enforceable in accordance with its terms except as enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, or other laws affecting the enforcement of creditors' rights generally or by general principles of equity, including the possible unavailability of specific performance or injunctive relief, regardless of whether such enforceability is considered in proceeding in equity or at law, or by principles of public policy; (d) the execution and delivery of the Assigned Agreement and the Consent and Agreement by the Consenting Party and the performance of the transactions contemplated herein and therein by the Consenting Party do not and will not (i) result in the violation by the Consenting Party of any provision of the California Constitution or any law, statute, rule or regulation, (ii) result in a default by the Consenting Party under, or any breach by the Consenting Party of, any indenture, mortgage, deed of trust, loan agreement or other evidence of indebtedness, or any agreement or instrument to which the Consenting Party is a party or by which the Consenting Party or its assets or properties are bound, or (iii) result in the violation by the Consenting Party of any judgment, order, writ, injunction or decree of any court or governmental agency or body binding upon the Consenting Party or any of its assets or properties; (e) no consent, waiver, approval, authorization or order of, or registration, filing or qualification with or declaration to ("Approvals"), any governmental agency or body is required of the Consenting Party in connection with the execution and delivery or the performance of the Agreements or the transactions contemplated therein, other than those Approvals already obtained or made by the Consenting Party and such obtained Approvals are in full force and effect; (f) there is no litigation, action, suit, investigation or proceeding pending or threatened against or affecting the Consenting Party before or by any court, administrative or regulatory agency, governmental authority, body or agency, or arbitrator which (i) could reasonably be expected to have a material adverse effect on the ability of the Consenting Party to perform its obligations under the Assigned Agreement or this Consent and Agreement, or (ii) questions the validity, binding effect or enforceability of the Assigned Agreement or this Consent and Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby; (g) the Consenting Party has not assigned, transferred, pledged or hypothecated the Assigned Agreement or any interest therein; (h) the Consenting Party has no knowledge of any default by the Assignor in any respect in the performance of any provision of the Assigned Agreement or an event or condition which would, with the giving of notice or lapse of time or both, constitute a default under the Assigned Agreement; and (i) none of the Assignor's rights under the Assigned Agreement have been expressly waived in writing by the Consenting Party. Subject to the rights of the Assignee or the Permitted Transferee under Section 4 hereof, nothing herein shall affect the Consenting Party's ability to terminate the Assigned Agreement in accordance with the express terms of the Power Purchase Agreement.

Section 4: Notice of Assignor's Default and Termination. (a) Notwithstanding anything to the contrary contained in the Assigned Agreement or in this Consent and Agreement, for so long as any loans or other obligations are outstanding under the [Bank Document] and until the same have been terminated and satisfied in full, as the case may be, the Consenting Party shall not exercise any right it may have

under the Assigned Agreement, at law or in equity, to cancel, suspend or terminate the Assigned Agreement or any of its obligations under the Assigned Agreement, other than as the result of any default or other action or omission of the Assignor; provided that the Consenting Party shall not, except as provided in the Assigned Agreement, exercise any such right that may arise as a result of a default or other act or omission of the Assignor, without giving a copy of a notice of default to the Assignee or the Permitted Transferee, simultaneously with delivering such notice to Assignor under Section 5.1 of the Assigned Agreement such notice to be coupled with an opportunity to cure any such default, action or omission, if such default, act or omission is capable of cure, within ninety (90) days after the last day of the cure period available to the Assignor in the Assigned Agreement (except with respect to payment defaults, which cure must be made within twenty (20) days after the last day of the cure period available to the Assignor in the Assigned Agreement with respect to payment defaults), such cure period to commence upon receipt of notice by the Assignee. Notwithstanding the foregoing, if possession and control of the Facility (or a foreclosure (whether judicial or nonjudicial) on the direct or indirect membership interests of the Assignor pledged to the Assignor under the [Bank Documents], as applicable) is necessary to cure any non-monetary default and Assignee has commenced foreclosure or other proceedings to obtain such possession and control within sixty (60) days after notice of the default and is diligently pursuing such proceedings, Assignee will be allowed a reasonable time, not to exceed one hundred eighty (180) days after notice of default, to complete such proceedings and cure such default. If Assignee or its Permitted Transferee is prohibited by any court order, stay or injunction, or bankruptcy or insolvency proceedings of Assignor or any direct or indirect owner of Assignor from curing such default or from commencing or prosecuting such proceedings, the foregoing time periods shall be extended by the period of such prohibition. Notwithstanding the above, to the extent a default occurs under Section 12.1(a)iii) of the Assigned Agreement, it is acknowledged and agreed that such default shall be cured by the foreclosure (whether judicial or nonjudicial) by the Assignee or its Permitted Transferee on the direct or indirect membership interests of the Assignor pledged to the Assignor under the Financing Documents.

(b) Any communications hereunder, or any notices provided herein to be given, to Assignee shall be in writing and shall be deemed to have been given (i) when presented personally to the Assignee at the address indicated below (or such other address as the Assignee may have specified by written notice delivered in accordance herewith), (ii) one (1) business day after being deposited for overnight delivery with a nationally recognized overnight courier service or such later date as demonstrated by a bona fide receipt therefor at the address indicated below (or such other address as the Assignee may have specified by written notice delivered in accordance herewith), (iii) when received by the Assignee, if deposited in a regularly maintained receptacle for the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the Assignee at the address indicated below (or such other address as the Assignee may have specified by written notice delivered in accordance herewith) or (iv) when

transmitted by telecopy to the number specified below and the receipt thereof is confirmed telephonically by the recipient, provided that such telecopy is then promptly followed by a copy of such notice delivered by a method specified in clauses (i), (ii) or (iii) immediately above.

Notice to Assignee:

Attention:

Facsimile:

No cancellation, suspension or termination of the Assigned Agreement by the Consenting Party, or any of the other actions taken by the Consenting Party under the Assigned Agreement, shall be binding upon the Assignee without such notice and the opportunity to cure during the applicable extended cure periods specified in this Section 4. If the Assignee fails to cure or rectify the effect of a default, action or omission within the extended cure periods specified in this Section 4, the Consenting Party shall have all its rights and remedies with respect to such default, action or omission as set forth in the Assigned Agreement.

Section 5: No Amendments Without Consent. The Consenting Party shall not amend the Assigned Agreement in any material respect without the Assignee's prior written consent, which consent shall not be unreasonably withheld.

Section 6: Payments to Revenue Account. Notwithstanding anything to the contrary contained in the Assigned Agreement or in this Consent and Agreement, the Consenting Party hereby agrees that until the earlier to occur of (i) the release of the Assigned Agreement from the collateral in accordance with the [Bank Documents] and (ii) the payment or other satisfaction in full of all obligations of the Borrower under the Financing Agreement, as the case may be (unless the Consenting Party is notified earlier to make payments to a different account by the Assignee), all payments to be made by the Consenting Party pursuant to the Assigned Agreement shall be made in lawful money of the United States of America, by check or in immediately available funds (after giving effect to all netting and offset provisions, if any, and all conditions precedent to such payments set forth in the Assigned Agreement) pursuant to the Assigned Agreement directly to the Assignee, for deposit into Account No. _____ at _____, or to such other person and/or at such other address or account as the Assignee may from time to time specify in writing to the Consenting Party.

Section 7: Protection of Assignee. Subject to the provisions of Section 2(b) and to the extent permitted by applicable law, in the event that either (i) any of the Assignor's interest in the Project shall be sold, assigned or otherwise transferred pursuant to the exercise of any right, power or remedy by the Assignee or pursuant to judicial

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

proceedings (other than any assignment of Assignor's interests in the Assigned Agreement made and affirmed under 11 U.S.C. 365 or under a confirmed plan of reorganization under the U.S. Bankruptcy Code), or (ii) the Assigned Agreement is rejected under Title 11, United States Code, or other similar federal or state statute and such rejection is approved by the appropriate court or is otherwise effective pursuant to such statute, and in either such case the Assignee shall have arranged for the curing of any default, action or omission under the Assigned Agreement susceptible of being cured by the Assignee or by a Permitted Transferee at any judicial or non-judicial sale, then the Consenting Party shall, within thirty (30) days after receipt by the Consenting Party of the latter of (a) of written request therefor, which request shall be made not more than thirty (30) days after the Assignee's receipt of notice of the event described in clause (i) or (ii) above, as applicable, and (b) of such information as the Consenting Party may reasonably request regarding the Permitted Transferee, including, but not limited to, information regarding the creditworthiness, identity, business practice, experience in the generation business of such Permitted Transferee, execute and deliver an agreement to the Assignee or Permitted Transferee for the remainder of the term of the Assigned Agreement, and with substantially the same terms as are contained in the Assigned Agreement. References in this Consent and Agreement to "Assigned Agreement" shall be deemed also to refer to such new agreement. Such new agreement shall not be effective unless and until such defaults under the Assigned Agreement have been cured, except for any defaults that are not capable of being cured.

Section 8: Limited Recourse. If the Assignee or any Permitted Transferee succeeds to the Assignor's rights and interests under the Assigned Agreement, whether by foreclosure or otherwise, such entity shall assume liability for the Assignor's obligations under the Assigned Agreement, but such liability shall not include any liability for claims of the Consenting Party against the Assignor arising prior to such assumption of the Assigned Agreement, except for those items cured pursuant to Section 4 herein; provided, however, that the liability of the Assignee or Permitted Transferee shall be limited to the Assignee's or such Permitted Transferee's interest in the assets and properties formerly owned by Assignor and obtained via foreclosure or other exercise of remedies under the [describe Bank Document] or related security documents.

Section 9: Acknowledgment of Assignee's Obligations and Rights. The Assignee has no obligation hereunder to extend credit to the Consenting Party at any time for any purpose solely as a result of execution and delivery of this Consent and Agreement. The Assignee shall have no obligation to the Consenting Party, and, except as otherwise set forth in this Consent and Agreement, the Consenting Party shall have no obligation to the Assignee, under the Assigned Agreement until such time as the Assignee notifies the Consenting Party in writing of the Assignee's election to assume, or cause a Permitted Transferee to assume, the Assignor's obligations under the Assigned Agreement as contemplated in Section 2 of this Consent and Agreement. If the Assignor defaults in the performance of any of its covenants to the Assignee in any of the [Bank Document], the Assignee shall have

the right under and to the extent provided for in the Security Agreement, inter alia, to (a) declare all amounts due to the Assignee under the [Bank Document] immediately due and payable, (b) take possession of the Project and complete and operate the same, (c) sell or otherwise transfer its interest in the Project to a Permitted Transferee and any Permitted Transferee at such sale shall succeed to the Assignee's rights hereunder, provided that such Permitted Transferee shall cure any defaults by the Assignor under the Assigned Agreement (capable of being cured), and assume, or cause an assignee or designee to assume, and continue to perform the Assignor's obligations under the Assigned Agreement, and (d) provided that it or any Permitted Transferee thereof agrees to be bound by the terms and conditions of the Assigned Agreement as contemplated in Section 2(b) of this Consent and Agreement, exercise all rights of the Assignor under the Assigned Agreement in accordance with the terms thereof. Without limiting the generality of the foregoing, if an event of default occurs and is continuing under any of the [Bank Document], the Assignee or any of its Permitted Transferees shall (provided that it or any Permitted Transferees agrees to be bound by the terms and conditions of the Assignment Agreement as contemplated in Section 2(b) of this Consent and Agreement), upon notice thereof to the Consenting Party, have the full right and power to enforce directly against the Consenting Party all obligations of the Consenting Party under the Assigned Agreement and otherwise to exercise all remedies of the Assignor thereunder, and to make all demands and give all notices and make all requests required or permitted to be made by the Assignor under the Assigned Agreement and the Consenting Party shall have no liability to the Assignor for acting in response to demands and requests of the Assignee. The Assignee or any of its Permitted Transferees shall have the right, but not the obligation, to perform any act, duty or obligation required of the Assignor under the Assigned Agreement at any time prior to any assumption pursuant to Section 2(b) of this Consent and Agreement, but nothing herein shall require the Assignee or any of its Permitted Transferees to cure any default, action or omission of the Assignor under the Assigned Agreement or to perform any act, duty or obligation of the Assignor under the Assigned Agreement prior to any such assumption pursuant to Section 2(b) of this Consent and Agreement.

Section 10: Binding upon Successors. All agreements, covenants, conditions and provisions of this Consent and Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of each of the parties hereto.

Section 11: Captions. The captions or headings at the beginning of each section of this Consent and Agreement are for convenience only and are not a part of this Consent and Agreement.

Section 12: Governing Law. This Consent and Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to principles of conflicts of law. The parties agree that any suit, action or other legal proceeding by or against any party with respect to or arising out of this Consent

and Agreement shall be brought in the courts of the State of California sitting in the City and County of Sacramento, California.

Section 13: Amendment. This Consent and Agreement may be modified, amended or rescinded only by writing expressly referring to this Consent and Agreement and signed by all the parties hereto.

Section 14: Assignment of Claims. If the Assignee makes any payment to the Consenting Party pursuant to this Consent and Agreement or the Assigned Agreement originally required to be made by the Assignor, the Consenting Party shall, within ten (10) days after receipt of written request therefor, execute and deliver to the Assignee an assignment of the Consenting Party's claims against the Assignor for such payment in form and substance reasonably satisfactory to the Consenting Party and the Assignee.

Section 15: Severability. Every provision of this Consent and Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity or unenforceability shall not affect the other terms and provisions hereof, which terms and provisions shall remain binding and enforceable, and to the extent possible all of such other provisions shall remain in full force and effect.

Section 16: Counterparts. This Consent and Agreement may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 17: Acknowledgement. The Consenting Party hereby acknowledges and agrees that the Assignor may collaterally assign the interconnection agreement and Shared Facilities Agreement for the Facility to the Assignee and its Permitted Transferee and the Consenting Party hereby consents to any assignment of the interconnection agreement and the Shared Facilities Agreements to the Assignee and its Permitted Transferee as a result of the exercise of remedies by the Assignee under the [Bank Documents].

IN WITNESS WHEREOF, each of the Consenting Party, Assignee and Assignor has duly executed this Consent and Agreement as of the date first above written.

[_____]

By: _____

Name:

Title:

XXXX

By: _____

Name:

Title:

Accepted and Agreed:

By: _____

Name:

Title:

By: _____

Name:

Title:

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

EXHIBIT H
QUALIFIED OPERATORS

Sustainable Power Group, LLC
Sustainable Power Services, LLC
FTP Power LLC
Signal Energy, LLC
First Solar Electric (California) Inc.
NRG Energy, Inc.
SunPower Corporation
Zachry Holdings, Inc.
Swinerton Builders, Inc.
AMEC Kamtech Inc.
Avangrid Renewables, LLC
EDF Renewable Services, Inc.
Fluor Facility and Plant Services, Inc.
Rosendin Electric, Inc.
Sustainable Power Services, LLC
Cupertino Electric, Inc.
Blattner Energy
Borrego Solar, Inc.

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

EXHIBIT I

FORM OF PERFORMANCE BOND

Bond Number: _____
Annual Premium: _____

POWER PURCHASE AGREEMENT
PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, That we, [Seller], as Principal, and _____ of _____, a corporation organized and existing under the laws of the State of _____, are held and firmly bound unto [Buyer], hereinafter called the Obligee, in the penal sum of [_____] Dollars (\$[____]) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal entered into a certain Power Purchase contract with the Obligee dated _____, which is hereby referred to and made a part hereof as if fully set forth herein.

Effective Date of Bond: _____

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the above named Principal, its successors or assigns, does and shall well and truly observe, perform, fulfill and keep its obligations as set forth in the above mentioned agreement, for which a bond must be posted, then the above obligation to be void; otherwise to remain in full force and effect.

The bond is subject, however, to the following express conditions:

FIRST: That in the event of a default on the part of the Principal, its successors or assigns, a written statement of such default with full details thereof shall be given to Surety promptly, and in any event within 30 days after the Obligee shall learn of such default, such notice to be delivered by registered mail to Surety at _____.

SECOND: That no claim, suit or action under this bond by reason of any such default shall be brought against Surety unless asserted or commenced within 60 Days after the effective date of any expiration or cancellation of this bond.

THIRD: This bond shall be automatically extended without amendment for one year from the expiry date hereof, or any future expiration date, unless at least 60 days prior to any Expiration Date we notify you in writing by registered mail that we elect not to renew this bond for any such additional period.

FOURTH: That this bond may be cancelled by Surety by 30 days' prior notice in writing from Surety to Principal and to Obligee. Such termination or cancellation shall not affect any liability incurred or accrued under this bond prior to the effective date of such termination or cancellation.

FIFTH: That no right of action shall accrue under this bond to or for the use of any person other than the Obligee, its successors and assigns.

SIXTH: The liability of the Surety shall be limited to the amount set forth and is not cumulative.

PROVIDED FURTHER, this bond shall be governed in accordance and construed in accordance with the laws of the State of California.

SEALED WITH OUR SEALS and dated this _ day of _____, _____.

[_____]

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

By:

Surety

By: Attorney-in-Fact

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

EXHIBIT J

BUYOUT OPTION

(1) Buyout Option. So long as no Event of Default with respect to Buyer has occurred and is continuing, commencing at the beginning of the twentieth (20th) Contract Year of the Delivery Period, but no later than ninety (90) days prior to the last day of such Contract Year, Buyer may deliver Notice to Seller indicating whether it elects to purchase the Facility (the "Buyout Option"). If Buyer elects to purchase the Facility, Buyer shall pay Seller for the Facility prior to the last day of such Contract Year in an amount equal to the higher of the Minimum Purchase Price (as set forth in clause (3) below) or the Fair Market Value of the Facility as of such date, as determined pursuant to clause (2) below (the "Buyout Payment"). If Buyer does not deliver such Notice by the deadline set forth above for the purchase date, Buyer will be deemed to have elected not to exercise the Buyout Option. This Agreement shall terminate on the date of the closing of the sale of the Facility to Buyer as provided in clause (4) below.

(2) Calculation of Fair Market Value. If Buyer provides Notice to Seller that it is exercising its rights under this Exhibit J, the Parties shall mutually agree upon an Independent Appraiser on or before the date that is sixty (60) days prior to the last day of the twentieth (20th) Contract Year of the Contract Term. The Independent Appraiser shall determine, at equally shared expense of Buyer and Seller, the Fair Market Value of the Facility as of the date on which the Buyout Payment is to be paid. On or prior to the date that is thirty (30) days prior to the last day of such Contract Year, the Independent Appraiser shall deliver its determination of Fair Market Value to each of Buyer and Seller. In the event that Buyer and Seller cannot agree upon a single Independent Appraiser, each Party shall contract for an Independent Appraiser at its own expense, and the Fair Market Value shall be the simple average of the determinations of the two Independent Appraisers.

(3) Minimum Purchase Price. The Minimum Purchase Price shall be:

Buyout Option Date:	Minimum Purchase Price:
Contract Year 20	\$7,125,000.00

(4) Passage of Title. Upon receipt of the Buyout Payment, the Parties shall execute all documents necessary to cause title to the Facility to pass to Buyer on an as-is, where-is, with-all-faults basis; provided, however, that Seller shall remove any encumbrances held by Seller with respect to the Facility. The Parties will reasonably cooperate to execute any such documents that may be required and regarding operational protocols should the entire twenty (20) MW capacity of the Antelope Expansion 3 generating facility not be purchased simultaneously.

(5) Assignment and Assumption of Assumed Contracts and Transferred Permits. At the closing, Seller shall assign and be released from, and Buyer shall assume, and

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

agree to pay, perform, fulfill and discharge all obligations of Seller under the Assumed Contracts and Transferred Permits, but only to the extent such obligations (i) arise after the closing, (ii) do not arise from or relate to any breach by Seller of any provision of any of such Assumed Contracts or Transferred Permits, (iii) do not arise from or relate to any event, circumstance or condition occurring or existing prior to the closing that, with notice or lapse of time, would constitute or result in a breach of any of such Assumed Contracts or Transferred Permits, and (iv) are ascertainable, in nature and amount, solely by reference to the express written terms of such Assumed Contracts or Transferred Permits. No later than thirty (30) days prior to the scheduled closing date, Seller shall provide Buyer with a list of Assumed Contracts and Transferred Permits.

(6) Consents. Seller and Buyer will make, and thereafter diligently pursue, all registrations, qualifications or filings and take all other actions necessary or appropriate to obtain any approval, consent, ratification, waiver, license, permit, certification, registration or other authorization (“**Consent**”) required to consummate the sale, assignments and transfers contemplated upon the exercise of the Buyer Option.

(7) Costs. Except as otherwise expressly provided in this Exhibit J, each of Buyer and Seller will bear its respective expenses incurred in connection with performance of its obligations under this Exhibit J and the transactions contemplated by the Buyout Option, including all fees and expenses of agents, representatives, counsel, and accountants. Buyer shall be responsible for (i) all filing and registration fees and other expenses incurred in connection with obtaining any Consent and (ii) all recording, documentary and transfer Taxes and any sales, use or other Taxes imposed against Buyer or Seller by reason of the transfer of the Facility, the Assumed Contracts and Transferred Permits to Buyer under the Buyout Option and any deficiency, interest or penalty asserted with respect thereto.

(8) Definitions. For purposes of this Exhibit J, the following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**Assumed Contracts**” means all contracts entered into by Seller or by which Seller is bound relating to the Facility.

“**Fair Market Value**” means the amount a willing buyer would pay for the Facility and all rights and interests associated therewith, in an arm’s-length transaction, to a willing seller under no compulsion to sell on the applicable closing date, taking into account all relevant facts and circumstances relating to the Facility, including operation, maintenance and insurance costs, and assuming (i) delivery of the expected generation for the then-remaining term of this Agreement (as may be adjusted due to any material casualty or other loss event, real or threatened condemnation proceeding (other than any such proceeding instituted by Buyer or on its behalf)), or other material adverse event affecting all or any portion of the Facility prior to and as of the closing date for the purchase under the Buyout Option and (ii) that the Facility is able to generate revenue for the remaining useful life of the Facility at a price per MWh equal to the then fair

market price for Energy, Capacity Rights, Resource Adequacy, Environmental Attributes and other products generated by the Facility.

“Independent Appraiser” shall be an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, experience, and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the Facility, and who specifically has prior experience valuing solar energy generating facilities. Except as may be otherwise agreed by the Seller and Buyer, the Independent Appraiser shall not be (or within three (3) years before his or her appointment have been) a director, officer, or an employee of, or directly or indirectly retained as consultant or adviser to, either Buyer or Seller or their respective Affiliates.

“Transferred Permits” means any approval, consent, waiver, exemption, variance, franchise, order, permit, authorization, notification, certification, registration, ruling, filing with, or right or license of or from a Governmental Authority relating to the Facility.

EXHIBIT K

NEGATIVE PRICE CURTAILMENT PROTOCOL

Principal Concept:

Pursuant to Section 2.3 of the Agreement, the Parties establish this mutually agreeable written protocol for negative price curtailment (the “Protocol”). The Parties agree that there is value in developing a process to facilitate a negative pricing bid strategy Protocol to capture RECs. This Protocol may be revised under a subsequent written agreement among the Parties. Capitalized terms not defined in this Exhibit K have the meanings given to them in the Agreement.

Details:

- The Protocol will be in effect each Contract Year starting at COD.
- Buyers will establish a negative price for the Economic Bid (“Floor Price”) and will communicate it to the Scheduling Coordinator and Seller representative no later than five (5) business days in advance of each month of the Contract Year. The initial Floor Price shall be deemed to be -\$10/MWh. Should Buyer fail to update the Floor Price, Seller shall use the last Floor Price communicated by Buyer.
- For each of the settlements contemplated in the three provisions below, the Parties will operate as follows:
 - For the first fifty (50) Initial Negative Intervals in which Buyer elects to curtail deliveries, either through Notice or per this Protocol, Buyer shall pay Zero Dollars (\$0).
 - In each Settlement Period in which the Day Ahead Locational Marginal Price is between Zero Dollars (\$0) and the Floor Price, Buyer will notify Seller of any desired Buyer Curtailment.
 - In each Settlement Period in which the Day Ahead Locational Marginal Price is below the Floor Price, absent instruction from Buyer to the contrary, Seller shall deem such Settlement Period to be a Buyer Curtailment.
- The Parties may modify this curtailment protocol from time to time to ensure that the economic benefits and costs are consistent with the Parties’ expectations under this Agreement.

Acknowledged and agreed:

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

EXHIBIT L

SAMPLE CALCULATION OF AMOUNTS DUE FOR EACH SETTLEMENT INTERVAL FOR PURPOSES OF CALCULATING THE MONTHLY PAYMENT

Sample 2.3(b)

If the CAISO Settlement Price = \$25/MWh, and:
Facility Energy = 7 MWh
Contract Price = \$36.87 / MWh
Then, the amount payable to Seller for purposes of determining the Monthly Payment pursuant to Section 2.3(d) = 7 MWh * (\$36.87/MWh – \$25/MWh) = \$83.09

Sample 2.3(b)

If the CAISO Settlement Price is negative \$15/MWh, and:
The current Settlement Interval is not an Initial Negative Interval, and:
Facility Energy = 7 MWh
Contract Price = \$36.87/MWh; and
Buyer elects to take energy under negative pricing conditions;
Then the amount payable to Seller for purposes of determining the Monthly Payment pursuant to Section 2.3(d) = 7 MWh * (\$36.87/MWh + \$15/MWh) = \$363.09

Sample 2.3(b)

If the CAISO Settlement Price is negative \$15/MWh, and:
The current Settlement Interval is not an Initial Negative Interval, and:
Facility Energy = 7 MWh
Contract Price = \$36.87/MWh; and
Buyer issues curtailment instruction to Seller;
Then the amount payable to Seller for purposes of determining the Monthly Payment pursuant to Section 2.3(d) = 7 MWh * \$36.87/MWh = \$258.09

Sample 2.3(c)

If the CAISO Settlement Price is negative \$25/MWh, and:
The current Settlement Interval is an Initial Negative Interval, and:
Facility Energy = 7 MWh
Contract Price = \$36.87/MWh
Then the amount payable to Seller for purposes of determining the Monthly Payment pursuant to Section 2.3(d) = \$0.00 whether or not there is any Facility Energy

Sample 2.4(c)

If the CAISO Settlement Price = \$50.00/MWh, and:
Facility Energy = 7 MWh

Attachment: S Power Agreement (2760 : APPROVE POWER PURCHASE AGREEMENT WITH S POWER)

Contract Price = \$36.87 / MWh

Then, the amount payable to Buyer for purposes of determining the Monthly Payment pursuant to Section 2.3(d) = 7 MWh * (\$50.00 - \$36.87/MWh) = \$91.91



Report to City Council

TO: Mayor and City Council

FROM: Marshall Eyerman, Chief Financial Officer

AGENDA DATE: October 17, 2017

TITLE: HISTORICAL PRESERVATION UPDATE

RECOMMENDED ACTION

Recommendation:

1. Receive and file the background information on the City's historical assets of the fire engine and Red Cross building.
2. Approve the designated use and restriction of the City's Cultural Preservation Fund as set forth in the staff report.

SUMMARY

This report has been prepared to provide a historical summary on the City's historical fire engine, Red Cross Building and the City's Cultural Preservation Fund.

DISCUSSION

Antique Fire Engine

The City's historical 1948 Dodge Fire Engine's (Engine) history goes back to its initial days of serving both March Air Force Base (MAFB) and the area that is now the City of Moreno Valley. The Engine was initially acquired for use by MAFB and later used by the Sunnymead Volunteer Fire Department until around 1970 when it was taken out of service and stored at MAFB. Around 1983, Vi Hamner then President of the Moreno Valley Historical Society and the Cultural Preservation Advisory Committee, learned that MAFB wanted to donate the Engine. Through some coordinated efforts, the fire engine was stored at the City's Yard, which occurred following the incorporation of the City.

Over the years there had been some questions over the ownership of the Engine. In order to determine ownership, an initial request was made in 1995 by the City to the

Department of Motor Vehicles (DMV) for a title search of the then current registered owner of the Engine. As no ownership records were received, a memo was sent in November 2002 from the Interim Fire Chief to the City Manager wherein it was communicated that there was a need for the City to request registration and title of the Engine in order to make it available for parades and for Fire Department functions, including training activities for the Moreno Valley Explorer Post 946.

In January of 2003, following an additional request to the DMV the Fire Captain at Station 6 received information on the last registered owner of the fire engine. The owner was identified as April and Robert Purdy, 1st Air Force from Perris CA. The Fire Department staff at that time was directed to contact the last registered owner, but were unsuccessful in locating the prior owner. Following proper DMV requirements, acquisition of the Engine by the City occurred on April 22, 2003 when the City acquired legal title and registration.

Over the years, the Engine has been almost completely restored to its original condition through the personal efforts and financial support of Fire Department staff. General cleaning of the Engine continues to be routinely performed by the Fire Department staff and Explorers. Due to years of sweat equity by Fire Department staff, the Fire Department has requested the City maintain continued ownership of the Engine, but allow for the display of and parade usage of the Engine to continue to highlight the history of the City. The Moreno Valley Historical Society has requested that the Fire Engine be put on display at a future museum.

The Engine has been stored at Fire Station 6 (Towngate) over the past couple years and the Fire Department plans to relocate the Engine to the Moreno Beach Fire Station 58. This location serves two Fire Explorer Posts that can continue to support the maintenance and cleaning of the Engine.

The Engine currently requires some mechanical work to get it back into full running condition. To provide these repairs, the Fire Department is wishing to raise funds to perform the necessary work and to have the Engine running for future parades.

American Red Cross Building

Constructed in approximately 1943, the American Red Cross Building located on an approximately 0.6 acre site at the corner of Riverside Drive and Short Street, south of N Street and west of 3rd Street at March Field Park on March Air Force Base (MAFB) is located adjacent to the registered locally designated historical March Field Historic District site. The World War II era building was used by local Red Cross Volunteers to serve MAFB soldiers. Following the World War II, the building continued to be utilized by MAFB for various purposes until the building became abandoned and left to fall into disrepair.

In 1995, the City's Community Services District ("CSD") made an application to the National Park Service for a public benefit transfer of Federal Surplus Properties at March Air Force Base for public park/recreational purposes. Among the facilities listed

in the application was the Red Cross building. On November 6, 1995, the CSD's application was approved by the National Park Service. A portion of March Air Force Base closed as a military installation on March 31, 1996 and on April 1, 1996, the CSD received an interim lease for all applied for facilities, including the Red Cross building.

In 1999, the City entered into a sublease with the Moreno Valley Museum Foundation (MVMF) for a term of 5 years with the option to extend the term for an additional three, five year extensions. According to the sublease, the Moreno Valley Museum Foundation was to be responsible for all costs to renovate the facility and provide for on-going maintenance and operating costs associated with the Red Cross building. No record has been located to demonstrate that the tenant lease was renewed after the first 5 year term and it appears that the MVMF may no longer be in existence. Present day observations of the facility find that no renovations appear to have been completed by the MVMF.

In 2007, with the approval of Resolution CSD No. 2007-05, a Resolution of the Moreno Valley Community Services District Approving the Property Transfer of Parcel I-2 at the Former March Air Force Base Under Early Transfer Authority, the CSD approved the property transfer and acquired ownership of the Red Cross building property. The deed for March Field Park designates the Red Cross Building as a historic structure and requires written permission from the California State Historic Preservation Officer (SHPO) or its designated representative for any actions that would affect the integrity or appearance of the facility.

The Red Cross building is in dire shape, in need of asbestos and lead paint remediation along with a substantial list of other structural repairs and ADA improvements for the restrooms, doors, etc. In 2016, a quote was obtained for hazardous contaminate remediation in the amount of \$87,299. Additional costs would need to be incurred for remodeling, utility connections, permit fees, etc. Those costs are conservatively estimated at an additional \$100,000 to \$250,000.

Based on recent requests, the City has examined the use of parks funds to rehabilitate the building and to develop a new park, but due to the location of the property outside of the City's boundaries and Federal land use restrictions, current parks funding may not be used. The City shall continue to seek grant or endowment funding for remediation of the building and will continue to work with the Environmental and Cultural Preservation Board and the Historical Society for potential future uses of the site, including potentially a future museum for the City. With any potential successful conversion to a museum, the site may also house the City's historic fire engine.

Cultural Preservation Fund

The City has previously established a Cultural Preservation Fund of approximately \$120,000 primarily from the prior sale of the Old Moreno School building. These funds are currently held in trust to be used for the establishment of a future museum or the display of Moreno Valley historical treasures within the City. The City shall continue to

review the use of these funds through the Environmental and Historical Preservation Board.

ALTERNATIVES

1. Approve the Recommended Actions to receive and file the background information on the City's historical assets and designated use and restrictions of the City's Cultural Preservation Fund as set forth in this staff report. *This will establish a record of the City's historical assets and preserve the funding designation for use of the City's Cultural Preservation Fund.*
2. Do not approve the Recommended Actions to receive and file the background information on the City's historical assets and designated use and restrictions of the City's Cultural Preservation Fund as set forth in this staff report. *This alternative will not allow establishment of the historical asset record nor insure preservation of the funding designation for use of the City's Cultural Preservation Fund.*

FISCAL IMPACT

No fiscal impact based on the current actions presented in the staff report.

NOTIFICATION

N/A

PREPARATION OF STAFF REPORT

Prepared By:
Sharon Goodale-Sharp
Management Analyst

Department Head Approval:
Marshall E. Eyerman
Chief Financial Officer/City Treasurer

CITY COUNCIL GOALS

Community Image, Neighborhood Pride and Cleanliness. Promote a sense of community pride and foster an excellent image about our City by developing and executing programs which will result in quality development, enhanced neighborhood preservation efforts, including home rehabilitation and neighborhood restoration.

CITY COUNCIL STRATEGIC PRIORITIES

1. Economic Development
2. Public Safety
3. Library
4. Infrastructure
5. Beautification, Community Engagement, and Quality of Life
6. Youth Programs

ATTACHMENTS

None

APPROVALS

Budget Officer Approval	<u>✓ Approved</u>	9/19/17 9:25 AM
City Attorney Approval	<u>✓ Approved</u>	9/19/17 9:19 AM
City Manager Approval	<u>✓ Approved</u>	10/02/17 4:02 PM



Report to City Council

TO: Mayor and City Council

FROM: Martin Koczanowicz, City Attorney
Allen Brock, Community Development Director

AGENDA DATE: October 17, 2017

TITLE: RESOLUTION EXTENDING ORDINANCE 916 BANNING ALL COMMERCIAL CANNABIS ACTIVITY IN THE CITY

RECOMMENDED ACTION

Recommendation: Staff recommends that the City Council adopt Resolution 2017- , extending the existing ban on commercial cannabis activity, till permanent regulations can be adopted.

SUMMARY

This report recommends adoption of Resolution 2017- , which would extend the current urgency Ordinance, banning all commercial cannabis activity in City of Moreno Valley. This extension would provide sufficient amount of time for staff to finalize and for Council to consider and adopt permanent cannabis regulations in the City, consistent with whatever direction is provided by Council during the October 10th workshop.

DISCUSSION

In anticipation of passage of Proposition 65, on November 1st, 2016 City Council adopted urgency Ordinance 916, which banned both medical and non-medical commercial cannabis activity in the City. The ban was installed in order to provide time for staff to present and City Council to consider what type of regulations would be installed in Moreno Valley on permanent basis.

The Ordinance was then extended from its original sunset date to October 31st, 2017, to provide time for District 4 seat to be filled in the June 2017 election and to have full Council deliberate on this important issue.

Due to summer recess and other scheduling issues, the study session on the subject originally considered for mid-summer had to be rescheduled to October 10th, 2017.

Also several priority projects (i.e. Amazon HQ2, Mayor's Challenge) impacted staff schedules and workload. Another extension of Ordinance 916 is necessary in order to provide time for processing any type of regulations that the City Council deems appropriate. Whether a ban or a regulatory scheme, which allows some commercial cannabis uses in certain areas of the City, time will be needed to evaluate and process Municipal Code amendments to put such regulations into place.

Failure to extend the Ordinance would put the City in a position where State regulations could preempt any future Code amendments.

Staff recommends October 31st, 2018 as the new sunset date, with the provision that when new regulations are adopted and effective prior to that time, that date would no longer be in effect.

ALTERNATIVES

1. Adopt Resolution 2017 - , extending the current cannabis ban till October 31st, 2018 or the effective date of any new regulations, whichever comes first. *Staff recommends this alternative as it allows the City to retain local control over the commercial cannabis industry and provides time for any regulations to be considered, vetted and adopted.*
2. Do not adopt the Resolution and risk loss of local control over cannabis regulations. *Staff does not recommend this alternative.*

FISCAL IMPACT

There is no anticipated Fiscal impact from the recommended alternative. Failure to adopt the extension could have fiscal consequences to the City in unfunded compliance with State regulations which would be applicable in the City.

NOTIFICATION

Agenda was posted in accordance with the Brown Act.

PREPARATION OF STAFF REPORT

Prepared By:
Martin D. Koczanowicz
City Attorney

Department Head Approval: NA

Concurred By:
Allen Brock
Community Development Director

CITY COUNCIL GOALS

Public Safety. Provide a safe and secure environment for people and property in the community, control the number and severity of fire and hazardous material incidents, and provide protection for citizens who live, work and visit the City of Moreno Valley.

Community Image, Neighborhood Pride and Cleanliness. Promote a sense of community pride and foster an excellent image about our City by developing and executing programs which will result in quality development, enhanced neighborhood preservation efforts, including home rehabilitation and neighborhood restoration.

CITY COUNCIL STRATEGIC PRIORITIES

- 1. Economic Development
- 2. Public Safety
- 3. Library
- 4. Infrastructure
- 5. Beautification, Community Engagement, and Quality of Life
- 6. Youth Programs

ATTACHMENTS

- 1. Reso Extending Ord916 till0618

APPROVALS

Budget Officer Approval	<u>✓ Approved</u>	10/11/17 11:30 AM
City Attorney Approval	<u>✓ Approved</u>	10/11/17 2:39 PM
City Manager Approval	<u>✓ Approved</u>	10/12/17 4:05 PM

RESOLUTION NO. 2017-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, EXTENDING THE SUNSET DATE OF ORDINANCE 916 AND THE BAN ON COMMERCIAL CANNABIS ACTIVITY IN THE CITY TILL JUNE 30, 2018

WHEREAS, On November 1st, 2016 City Council duly adopted Urgency Ordinance No. 916, to ban all commercial cannabis activity in the City of Moreno Valley; and

WHEREAS, by its own terms the Ordinance 916 was to sunset on April 30th, 2017, unless otherwise extended by City Council’s action; and

WHEREAS, City Council did extend the term of the Ordinance to sunset on October 30th, 2017; and

WHEREAS, due to the complexity of the potential commercial cannabis regulations, changes in City Council study session schedule and staff workload additional time is needed to finalize Council’s direction regarding commercial cannabis activity provided to staff during the October 10th, 2017 study session; and

WHEREAS, the conditions giving rise to the need for a ban until regulations are established continue to exists in form of various illegal commercial cannabis businesses attempting to establish in the City without any regulation; and

WHEREAS, for the reasons stated above City Council has determined that it is in the best interests of the City of Moreno Valley that the City Council extend the Sunset Date of Ordinance No. 916 and the ban on commercial cannabis activity till October 31st, 2018.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

1. Consistent with Section 4 of Ordinance No. 916 the Sunset Date of the Ordinance No. 916 is hereby extended to October 31st, 2018, or until an ordinance establishing permanent regulations of cannabis in City limits becomes effective, whichever comes first.

APPROVED AND ADOPTED this 17th day of October 2017.

Attachment: Reso Extending Ord916 till0618 [Revision 1] (2833 : RESOLUTION EXTENDING ORDINANCE 916 BANNING ALL COMMERCIAL

Mayor of the City of Moreno Valley

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

RESOLUTION JURAT

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF MORENO VALLEY)

I, Jane Halstead, City Clerk of the City of Moreno Valley, California, do hereby certify that Resolution No. 2017- __ was duly and regularly adopted by the City Council of the City of Moreno Valley at a regular meeting thereof held on the 17th day of October, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(Council Members, Mayor Pro Tem and Mayor)

CITY CLERK

(SEAL)



Report to City Council

TO: Mayor and City Council

FROM: Rick C. Hartmann, Acting Public Works Director

AGENDA DATE: October 17, 2017

TITLE: PUBLIC HEARING FOR TWO NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM MAIL BALLOT PROCEEDINGS

RECOMMENDED ACTION

Recommendations: That the City Council:

1. Conduct the Public Hearing and accept public testimony for the mail ballot proceedings for Moreno Valley Gateway and Brodiaea Industrial Center to approve the National Pollutant Discharge Elimination System (NPDES) maximum commercial/industrial regulatory rate to be applied to the property tax bill(s).
2. Direct the City Clerk to count the returned NPDES ballots.
3. Verify and accept the results of the mail ballot proceedings as maintained by the City Clerk on the Official Tally Sheet.
4. Receive and file the Official Tally Sheet with the City Clerk's office.
5. If approved, authorize and impose the NPDES maximum commercial/industrial regulatory rate to the Assessor's Parcel Numbers mentioned in this report.

SUMMARY

The action before the City Council is to conduct a Public Hearing for two National Pollutant Discharge Elimination System (NPDES) mail ballot proceedings. This process to accept two parcels into the City's NPDES funding program affects two (2) property owners, not the general citizens or taxpayers of the City.

The City requires property owners of development projects to mitigate the cost of certain impacts created by the proposed development, such as the cost of complying with the

state and federal NPDES requirements. As a condition of approval, the property owner is required to provide a funding source to offset those costs. The City offers a program to assist property owners in satisfying the funding requirement. After a property owner approves the City's NPDES rate through a mail ballot proceeding, the City can levy the rate on the annual property tax bill of the authorized parcel(s). Attachment 1 outlines the steps to participate in the City's NPDES funding program.

The revenue generated by this program provides an ongoing funding source to monitor pollution control of storm water runoff into municipally owned drainage facilities, lessening the financial impact of compliance with the state and federal requirements on the general taxpayer in Moreno Valley.

The two property owners participating in tonight's Public Hearing are Moreno Valley Gateway and Brodiaea Industrial Center. Moreno Valley Gateway is approved to construct a 77 space parking lot on the north side of Resource Way, west of Frederick Street. Brodiaea Industrial Center is approved to construct a 99,978 square foot warehouse distribution building on the southwest corner of Brodiaea Avenue and Heacock Street (collectively, the "Property Owners"). The Property Owners have requested the City conduct a mail ballot proceeding, which if approved, will satisfy the condition of approval to provide a funding source for NPDES program.

DISCUSSION

The Clean Water Act of 1987 established requirements for the discharge of Urban Runoff from Municipal Separate Storm Sewer Systems under the NPDES program. The Santa Ana Regional Water Quality Control Board administers the NPDES program through the issuance of a Permit. The NPDES program requires public agencies to obtain coverage under the Permit to discharge urban storm water runoff from municipally owned drainage facilities, including streets, highways, storm drains, and flood control channels. The City's current NPDES Permit requires all new development projects comply with storm water management requirements.

As a condition of approval for development projects, the Land Development Division (Public Works Department) requires property owners to provide a funding source to support activities for the NPDES program requirements. The City Council adopted the NPDES residential regulatory rate on June 10, 2003, and the NPDES commercial/industrial regulatory rate on January 10, 2006. Revenue received from the rate supports the increased compliance activities related to the development. It also reduces the financial impact to the General Fund to maintain compliance with the unfunded requirements of the Permit. The City's storm water management activities include annual and periodic facility inspections for site design, NPDES permit compliance, and implementation of Best Management Practices and maintenance for specified facilities.

The Property Owners are required to provide a funding source for the NPDES program as a condition of approval of their development project(s). Detailed parcel information for the properties subject to the condition of approval is listed in the following table.

Property Owner/Project	Assessor's Parcel Number(s)	Location	FY 2017/18 NPDES Maximum Rate(s)
Moreno Valley Gateway PEN17-0011	297-220-010	north of Resource Way and west of Frederick St.	\$236.86/parcel commercial/industrial
Brodiaaea Industrial Center PEN16-0100	297-170-078	southwest corner of Brodiaaea St. and Heacock St.	\$236.86/parcel commercial/industrial

The Property Owners have two (2) options to satisfy the condition of approval:

- 1) Approve the NPDES rate and authorize the City to collect the rate on the annual Riverside County property tax bill through participation in a mail ballot proceeding; or
- 2) Fund an endowment.

The Property Owners have decided to have the NPDES rate applied to the annual property tax bill. Before the City can levy the NPDES rate on the property tax bill, the Property Owners must first approve it and authorize the City to levy it on the annual property tax bill through a mail ballot proceeding. A mail ballot proceeding is a legally required process to approve new charges, or an increase to existing charges, on property tax bills (Proposition 218). The Property Owners were mailed a notice and a ballot to cast their vote (Attachment 2 and 3). The notice provides the purpose and amount of the charge and the potential annual inflationary adjustment. The City is required to provide the Property Owners with 45 days to review the notice and an opportunity to address the City Council. The Property Owners will have an opportunity to address the City Council during the public comment portion of the Public Hearing. The ballots are due to the City Clerk prior to the close of the Public Hearing. At the close of the Public Hearing, the ballots can be opened and counted, and results announced.

A property owner's approval of the NPDES annual rate and authorization for the City to levy it on the annual property tax bill satisfies their condition of approval. In the event a property owner does not return their ballot, does not approve the ballot, or returns an invalid ballot (unmarked or unsigned), this condition of approval will remain unsatisfied and may delay the development. The ballot for each mail ballot proceeding will be counted separately to determine if the property owner approved inclusion of their respective property(ies) in the NPDES program.

This action meets the Strategic Plan Priorities by managing and maximizing Moreno Valley's public infrastructure to ensure an excellent quality of life, develop and implement innovative, cost effective infrastructure maintenance programs, public facilities management strategies, and capital improvement programming and project delivery.

ALTERNATIVES

1. Conduct the Public Hearing and upon its close, count and verify the returned ballots and accept the results. *Staff recommends this alternative as it will satisfy each project's condition of approval if the property owner approves their respective ballot.*
2. Open the Public Hearing and continue it to a future regular City Council meeting. *Staff does not recommend this alternative as it will delay announcement of the ballot results and may delay project development.*
3. Do not conduct the Public Hearing. *Staff does not recommend this alternative as it will delay the Property Owners from satisfying the condition of approval and may delay project development. Additional costs will be incurred to restart the 45-day noticing period.*
4. Do not conduct the Public Hearing at this time but reschedule it to a date certain during a regular City Council meeting. *Staff does not recommend this alternative as it may delay project development and will incur additional costs to restart the 45-day noticing period.*

FISCAL IMPACT

The fiscal year (FY) 2017/18 NPDES maximum commercial/industrial regulatory rate is \$236.86 per parcel, and any division thereof. The NPDES maximum regulatory rate for FY 2018/19 and each subsequent fiscal year is subject to an annual inflationary adjustment, provided the City Council approves such increase each year. The annual increase cannot exceed the annual inflationary adjustment without approval of the property owners subject to the charge.

Revenue received from the NPDES rate is restricted and can only be used within the storm water management program. This revenue offsets storm water management program expenses, which reduces financial impacts to the General Fund and maintains compliance with the unfunded requirements of the Permit. The NPDES rate is only applied to the property tax bills of parcels wherein their property owners have previously provided approval.

NOTIFICATION

The ballot documents were mailed to the Property Owners at least 45-days in advance of the Public Hearing. The documents included a notice to the property owner, map of the project area, NPDES ballot, NPDES commercial/industrial rate schedule, instructions for marking and returning the ballot, and a postage paid return envelope addressed to the City Clerk.

Newspaper advertising for the October 17, 2017 Public Hearing was published in The Press-Enterprise on September 28, 2017 and again on October 5, 2017.

PREPARATION OF STAFF REPORT

Prepared by:
Isa Rojas
Management Analyst

Department Head Approval:
Rick C. Hartmann
Acting Public Works Director

Concurred by:
Candace E. Cassel
Special Districts Division Manager

Concurred by:
Michael Lloyd
Engineering Division Manager/Assistant City Engineer

CITY COUNCIL GOALS

Advocacy. Develop cooperative intergovernmental relationships and be a forceful advocate of City policies, objectives, and goals to appropriate external governments, agencies and corporations.

Revenue Diversification and Preservation. Develop a variety of City revenue sources and policies to create a stable revenue base and fiscal policies to support essential City services, regardless of economic climate.

CITY COUNCIL STRATEGIC PRIORITIES

- 1. Economic Development
- 2. Public Safety
- 3. Library
- 4. Infrastructure
- 5. Beautification, Community Engagement, and Quality of Life
- 6. Youth Programs

See the Discussion section above for details of how this action supports the City Council's Strategic Priorities.

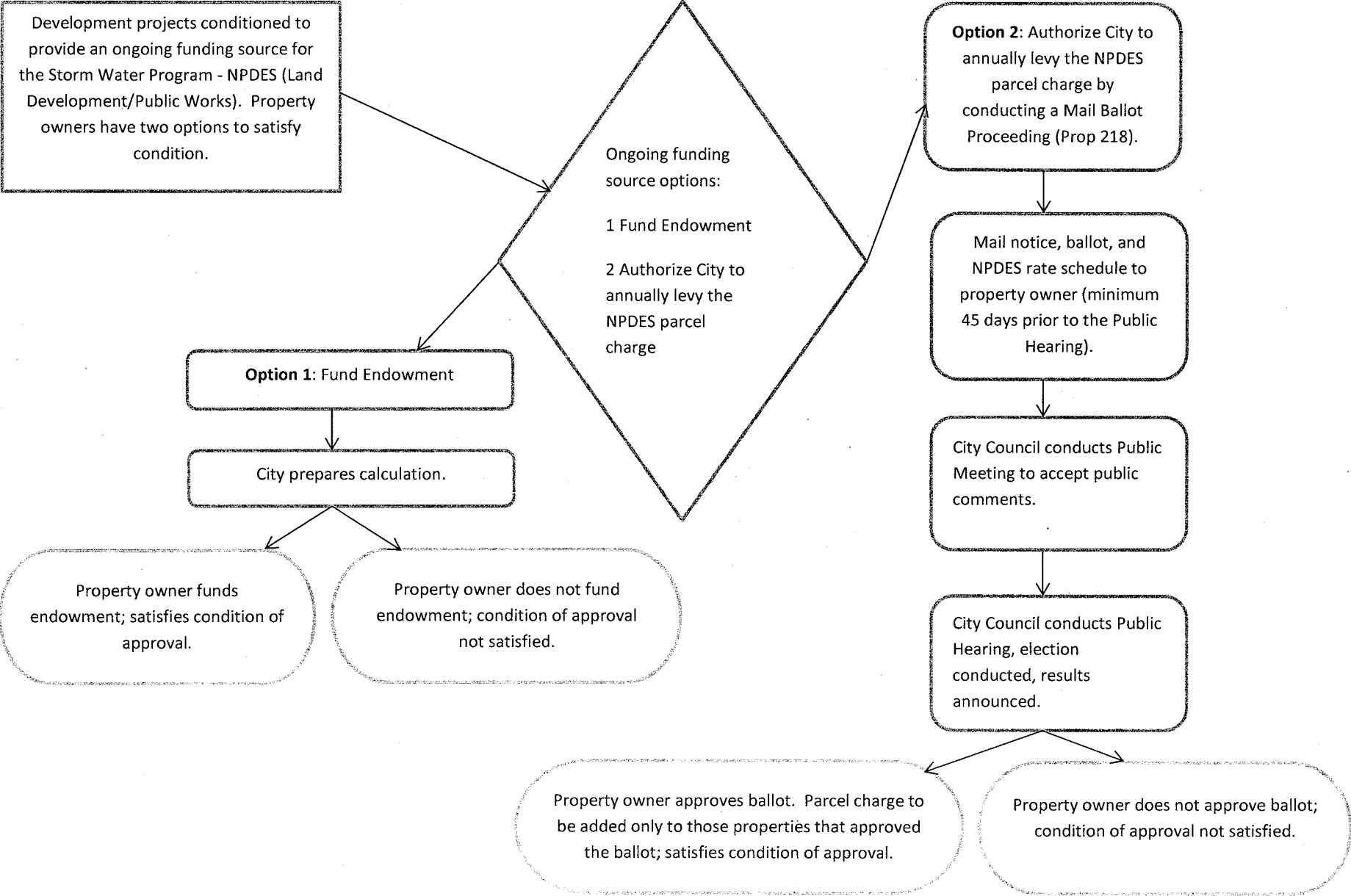
ATTACHMENTS

- 1. Flowchart
- 2. Ballot Documents for Moreno Valley Gateway
- 3. Ballot Documents for Brodiaea Industrial Center

APPROVALS

Budget Officer Approval	<u> ✓ Approved </u>	9/20/17 3:26 PM
City Attorney Approval	<u> ✓ Approved </u>	9/20/17 4:28 PM
City Manager Approval	<u> ✓ Approved </u>	10/05/17 8:44 AM

Process Flow for Property Owners/Developers to Satisfy Funding Requirement for the Storm Water Program



This process flow is simplified for illustration purposes. Contact the Special Districts Division at 951.413.3480 for the detailed process.

November 12, 2014

Attachment: Flowchart (2786 : PUBLIC HEARING FOR TWO NATIONAL POLLUTANT DISCHARGE

TEL: 951.413.3480
 FAX: 951.413.3498
 WWW.MOVAL.ORG



14331 FREDERICK STREET, SUITE 2
 P. O. BOX 88005
 MORENO VALLEY, CA 92552-0805

August 31, 2017

Moreno Valley Gateway
 c/o Logan Law, ALC
 Attn: Garfield Logan
 19800 MacArthur Blvd. Ste. 300
 Irvine, CA 92612

NOTICE TO PROPERTY OWNER - MAIL BALLOT PROCEEDING FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) MAXIMUM COMMERCIAL/INDUSTRIAL REGULATORY RATE FOR APN 297-220-010

******* OFFICIAL BALLOT ENCLOSED *******

Introduction

In November of 1996, California voters passed Proposition 218 (“The Right to Vote on Taxes Act”). As a result, any new or proposed increase in a property-related charge requires approval by the property owner of record. In compliance with Proposition 218 legislation, the City of Moreno Valley Special Districts Division is conducting a mail ballot proceeding to provide the owner of Assessor’s Parcel Number (APN) 297-220-010 the opportunity to express support for or opposition to the approval of the NPDES Maximum Commercial/Industrial Regulatory Rate and services. Approval of the NPDES Maximum Commercial/Industrial Regulatory Rate through a mail ballot proceeding fulfills Land Development Division’s Condition of Approval to provide a funding source for the NPDES financial program.

Background

The Clean Water Act of 1987 established requirements for the discharge of Urban Runoff from Municipal Separate Storm Sewer Systems under the National Pollution Discharge Elimination System (NPDES) Program. The NPDES Program is administered by the Santa Ana Regional Water Quality Control Board through the issuance of a Permit. The City’s current NPDES Permit mandates all new development projects comply with storm water management activities. The NPDES Program requires public agencies to obtain coverage under the Permit to discharge urban storm water runoff from municipally owned drainage facilities, including streets, highways, storm drains, and flood control channels.

Services Provided

In compliance with the Federal Clean Water Act, the City of Moreno Valley shall provide annual and periodic facility inspections for site design, NPDES permit compliance, and Best Management Practices implementation and maintenance for specified facilities.

How is the Amount of the Charge Determined?

Each fiscal year (FY), the City of Moreno Valley determines the type of services necessary to

Attachment: Ballot Documents for Moreno Valley Gateway (2786 : PUBLIC HEARING FOR TWO NATIONAL POLLUTANT DISCHARGE

comply with NPDES Permit requirements and levies the rate applicable for that service, not to exceed the rate previously approved by the property owner.

Proposed Charge

For FY 2017/18, the NPDES Maximum Commercial/Industrial Regulatory Rate is \$236.86 per parcel. The total amount of the NPDES rates levied for FY 2017/18 for the program as a whole was \$474,654.22.

Annual Adjustment

Beginning in FY 2018/19, the NPDES Maximum Commercial/Industrial Regulatory Rate will be subject to an annual adjustment based on the percentage change calculated for the previous year in the Los Angeles-Riverside-Orange County Regional Consumer Price Index for All Urban Consumers, as published by the Department of Labor’s Bureau of Labor Statistics.

Duration of the Charge

Upon approval of the NPDES Maximum Commercial/Industrial Regulatory Rate, the annual levy amount will be assessed to APN 297-220-010 (and any division thereof) and shall be placed on the Riverside County property tax bill or included as a monthly charge on a utility bill. The NPDES Maximum Commercial/Industrial Regulatory Rate will be levied each following year at the proposed rate, which includes an annual inflation adjustment.

Public Hearing

To provide information concerning this mail ballot proceeding the City has scheduled a Public Hearing, which will be held at the **Moreno Valley City Hall Council Chamber located at 14177 Frederick Street, Moreno Valley.**

<p style="text-align: center;"><u>Public Hearing</u> Tuesday, October 17, 2017 6:00 P.M. (Or As Soon Thereafter As The Matter May Be Called)</p>

Tabulation of the returned ballot will commence after the close of the public testimony portion of the Public Hearing. Any ballot received shall be tabulated under the direction of the City Clerk in compliance with the City’s Policy for Conducting Mail Ballot Proceedings Policy #1.12.

Effect if the Charge is Approved

Approval of the NPDES Maximum Commercial/Industrial Regulatory Rate will be confirmed if the ballot is marked in favor of the NPDES rate. Approving the NPDES Maximum Commercial/Industrial Regulatory Rate through a mail ballot proceeding will fulfill the Land Development Division’s Condition of Approval to provide an ongoing funding source for the NPDES financial program.

Effect if the Charge is Not Approved

Not approving the NPDES Maximum Commercial/Industrial Regulatory Rate to meet state and federally mandated NPDES Permit requirements will not satisfy the Land Development Division’s Condition of Approval to provide a funding source for the NPDES financial program. If the returned ballot is marked “No”, the NPDES rate will not be levied on the property tax bill.

Attachment: Ballot Documents for Moreno Valley Gateway (2786 : PUBLIC HEARING FOR TWO NATIONAL POLLUTANT DISCHARGE

Effect if the Ballot is Deemed Invalid or Incomplete

Not marking the corresponding box on the ballot in support of or opposition to the proposed program and annual rate and/or not signing the ballot will result in an invalid ballot. In order to satisfy the Land Development Division's Condition of Approval by placement of the NPDES rate on the annual property tax bill, the mail ballot proceeding and 45-day noticing period will need to start over. Reinitiating the process will require payment of the mail ballot proceeding fee.

For More Information

If you have any questions about the mail ballot proceeding process, please contact Jennifer Terry, Senior Management Analyst, with the City's Special Districts Division at 951.413.3505 or via email at JenniferT@moval.org during the City's business hours.

Questions regarding the NPDES financial program, the annual rate, or the Land Development Division's Conditions of Approval should be directed to the Land Development Division at 951.413.3120 or via email at landdevelopment@moval.org during the City's business hours.

The City's business hours are Monday through Thursday from 7:30 a.m. to 5:30 p.m. and Friday from 7:30 a.m. to 4:30 p.m.

Completing Your Ballot

Please follow the instructions below to complete and return your ballot. Procedures for the completion, return, and tabulation of the ballot are also on file in the City Clerk's office.






1. Mark the enclosed ballot in support of or opposition to the proposed program and annual rate **by placing a mark in the corresponding box.** Ballots received without a designated vote will be considered invalid.
2. Sign your name on the ballot. Ballots received without signature(s) will be considered invalid *and will not be counted.*
3. Mail or personally deliver your completed ballot in a sealed envelope to the City Clerk's office, 14177 Frederick Street, Moreno Valley, California, 92553. For your convenience, a postage-paid envelope has been included for return of the ballot.
4. Ballot(s) must be **received** by the City Clerk prior to the close of the public testimony portion of the Public Hearing scheduled for **Tuesday, October 17, 2017**, at the Moreno Valley City Hall Council Chamber. The Public Hearing will be held at 6:00 p.m. or as soon thereafter as the matter may be called. Ballots received after the close of the Public Hearing cannot be legally counted.

Ballot Marks

Appropriate ballot markings include any one of the following for either the YES/Approved or NO/Not Approved blank box:

- A check mark substantially inside a box;
- An X mark substantially inside a box;

Attachment: Ballot Documents for Moreno Valley Gateway (2786 : PUBLIC HEARING FOR TWO NATIONAL POLLUTANT DISCHARGE

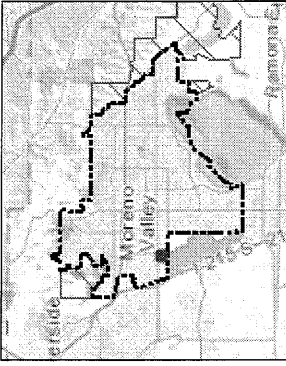
-  A dot or oval mark substantially inside a box;
-  A completely shaded or filled mark substantially inside a box;
-  A line, single or dashed, or combination of lines, through the box area. Lines may be any one of the following marks: horizontal, vertical, or diagonal. The mark may either run from side to side or corner to corner. All valid lines must be substantially within the box area and not marking any part of another blank box on the ballot;
-  A circle around the box and/or associated clause; or
-  A square or rectangle around the box and/or associated clause.

Balloting marks shall not extend past one box area into any portion of another nor surround the perimeter or any portion of more than one box area. Markings that extend past one box area into any portion of another or surround the perimeter or any portion of more than one box area shall be considered invalid and not counted.

Ballot Mark Revisions (Changes): An error or desire to revise (change) a selection made on the ballot may be completed and returned any time **prior** to the conclusion of public testimony at the Public Hearing. **The revision must be initialed by the record owner(s) of property. Initials must be clearly printed and placed at the right top corner of the revised selection.**

Attachment: Ballot Documents for Moreno Valley Gateway (2786 : PUBLIC HEARING FOR TWO NATIONAL POLLUTANT DISCHARGE

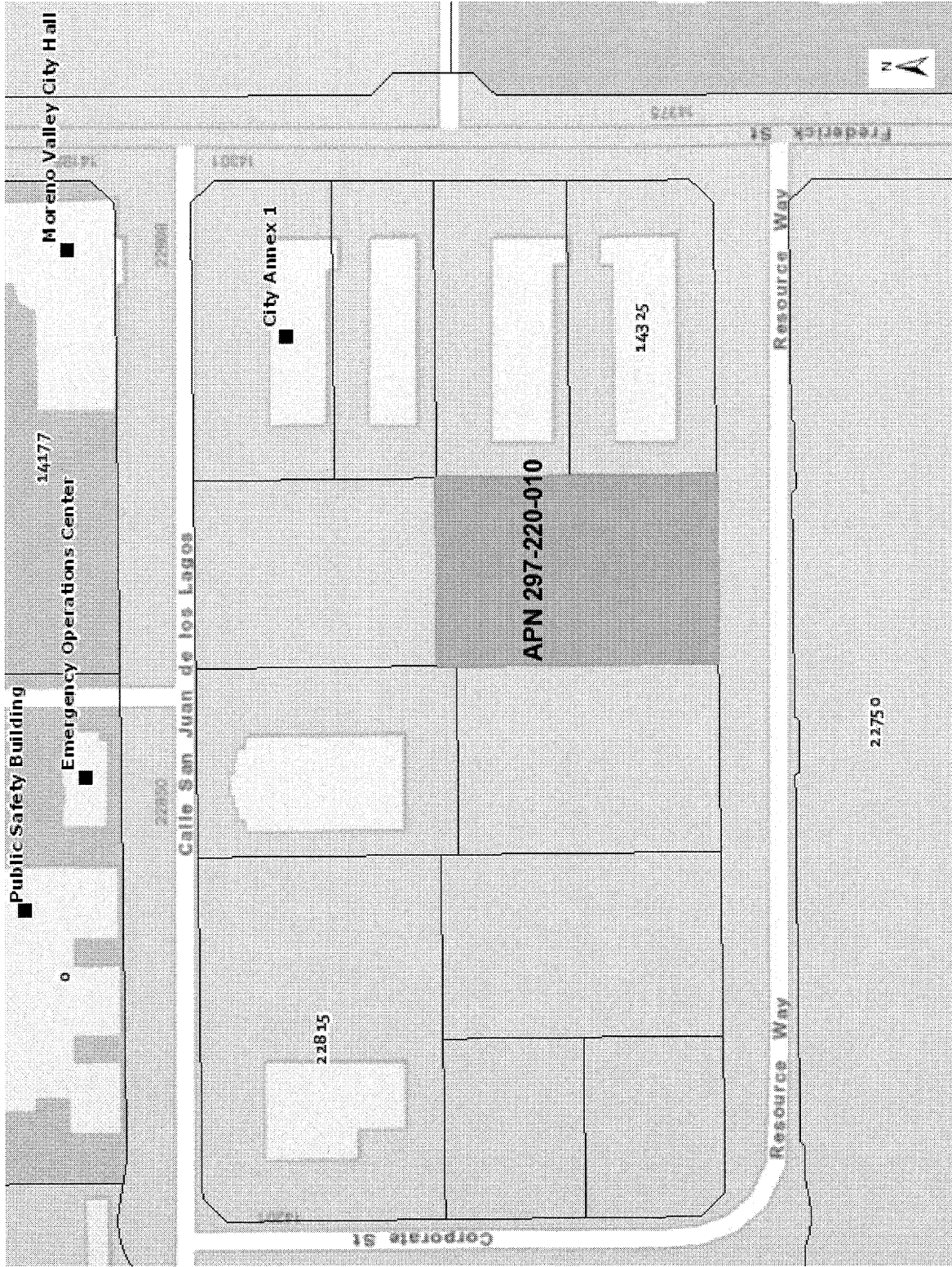
Moreno Valley Gateway PEN17-0011



Legend

- Public Facilities
 - Public Facilities
 - ★ Fire Stations
- Parcels
 - Parcels
- City Boundary
 - ▭ City Boundary
- Sphere of Influence
 - ▨ Sphere of Influence

Notes



DISCLAIMER: The information shown on this map was compiled from the City of Moreno Valley GIS and Riverside County GIS. The land base and facility information on this map is for display purposes only and should not be relied upon without independent verification as to its accuracy. Riverside County and City of Moreno Valley will not be held responsible for any claims, losses or damages resulting from the use of this map.

315.5 0 157.74 315.5 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere

Print Date: 8/22/2017

Attachment: Ballot Documents for Moreno Valley Gateway (2786 : PUBLIC HEARING FOR TWO NATIONAL POLLUTANT DISCHARGE

COMMON INTEREST, COMMERCIAL, INDUSTRIAL AND QUASI-PUBLIC USE NPDES RATE SCHEDULE
 Adopted by the City Council on January 10, 2006

LEVEL 1		LEVEL II	
NPDES Administration <i>(Not covered by CSA 152)</i>		Site Design, Source Control and Treatment Control BMPs Monitoring and Maintenance	
Costs associated with personnel, administration and management of the storm water management program. Administrative tasks include development and filing of various stormwater reports and data collection and management. Level I is levied on all parcels conditioned for the NPDES Rate Schedule.		Costs associated with stormwater and non-stormwater runoff monitoring, inspection of the project's site design, source control and treatment control BMPs; evaluation of site stormwater compliance activities, review of site-specific technical reports and treatment control BMP maintenance records.	
Fiscal Year (FY) 2005/2006 - Base Year Calculation, subject to an annual inflation factor based on the Los Angeles-Riverside-Orange County Regional Consumer Price Index for All Urban Consumers, as published by the Department of Labor's Bureau of Labor Statistics		Fiscal Year (FY) 2005/2006 - Base Year Calculation, subject to an annual inflation factor based on the Los Angeles-Riverside-Orange County Regional Consumer Price Index for All Urban Consumers, as published by the Department of Labor's Bureau of Labor Statistics	
PARCEL RATE	Per Month \$3.45	Per Year \$41.42	Per Month \$16.29
PARCEL RATE	Per Month \$3.45	Per Year \$41.42	Per Year \$195.44

Inflation Factor Adjustments

- FY 2006/2007 - 4.5% = (\$33.00 & \$158.00)
- FY 2007/2008 - 3.1% = (\$34.00 & \$163.00)
- FY 2008/2009 - 4.2% = (\$35.00 & \$170.00)
- FY 2009/2010 - no change = (\$35.00 & \$170.00)
- FY 2010/2011 - no change = (\$35.00 & \$170.00)
- FY 2011/2012 - 3.8% = (\$36.00 & \$176.00)
- FY 2012/2013 - 2.7% = (\$37.00 & \$181.00)
- FY 2013/2014 - 2.0% = (\$38.00 & \$185.00) rounded to the nearest dollar
- FY 2014/2015 - 1.14% = (\$39.52 & \$186.49) Pursuant to City Council approval on June 10, 2014.
- FY 2015/2016 - 0.73% = (\$39.81 & \$187.85)
- FY 2016/2017 - 2.03% = (\$40.62 & \$191.66)
- FY 2017/2018 - 1.97% = (\$41.42 & \$195.44)

**OFFICIAL MAIL BALLOT for Assessor's Parcel Number (APN)
297-220-010 National Pollutant Discharge Elimination System (NPDES)
Maximum Commercial/Industrial Regulatory Rate**

YES* — as property owner of APN 297-220-010, **I approve** the NPDES Maximum Commercial/Industrial Regulatory Rate and services. For fiscal year (FY) 2017/18, the NPDES Maximum Commercial/Industrial Regulatory Rate is \$236.86 per parcel. Upon approval of the maximum regulatory rate, the annual levy amount shall be placed on the annual Riverside County property tax bill or included as a monthly charge on a utility bill. Beginning FY 2018/19, the maximum regulatory rate will be subject to an annual adjustment based on the percentage change calculated for the previous year in the Los Angeles-Riverside-Orange County Regional Consumer Price Index for All Urban Consumers, as published by the Department of Labor's Bureau of Labor Statistics. The City shall provide annual and periodic facility inspections for site design, NPDES permit compliance, and Best Management Practices implementation and maintenance for specified facilities.

NO** — as property owner of APN 297-220-010, **I do not approve** the NPDES Maximum Commercial/Industrial Regulatory Rate and services. I understand that not approving the NPDES Maximum Commercial/Industrial Regulatory Rate to fund state and federally mandated NPDES Permit requirements will not satisfy the project's Conditions of Approval. The NPDES maximum commercial/industrial regulatory rate will not be levied on the annual Riverside County property tax bill.

YES*	NO**	Weighted Ballot Count*	Fiscal Year 2017/18 NPDES Maximum Commercial/Industrial Regulatory Rate per Parcel
<input type="checkbox"/>	<input type="checkbox"/>	1	\$236.86

*Each Assessor's Parcel Number equals 1 Weighted Ballot.

This ballot must be received by the City Clerk of the City of Moreno Valley prior to the close of the public testimony portion of the Public Hearing to be held on October 17, 2017, at the Moreno Valley City Hall Council Chamber, 14177 Frederick Street, Moreno Valley, California. The Public Hearing will be held at 6:00 p.m. or as soon thereafter as the matter may be called.

PROPERTY OWNER SIGNATURE DATE

Please remember to mark the appropriate box, sign and date the ballot, and return to the City Clerk's office in the enclosed envelope prior to the close of the public testimony portion of the October 17, 2017 Public Hearing.

Ballot(s) deemed invalid or incomplete will be discarded and a new process must be initiated in order to place the charge on the annual Riverside County property tax bill, which includes payment of the mail ballot fee.

TEL: 951.413.3480
 FAX: 951.413.3498
 WWW.MOVAL.ORG



14331 FREDERICK STREET, SUITE 2
 P. O. BOX 88005
 MORENO VALLEY, CA 92552-0805

August 31, 2017

Brodiaea Industrial Center
 c/o Core5
 Attn: Charlotte Hunter
 1230 Peachtree St. NE 3560
 Atlanta, GA 30309

NOTICE TO PROPERTY OWNER - MAIL BALLOT PROCEEDING FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) MAXIMUM COMMERCIAL/INDUSTRIAL REGULATORY RATE FOR APN 297-170-078

******* OFFICIAL BALLOT ENCLOSED *******

Introduction

In November of 1996, California voters passed Proposition 218 (“The Right to Vote on Taxes Act”). As a result, any new or proposed increase in a property-related charge requires approval by the property owner of record. In compliance with Proposition 218 legislation, the City of Moreno Valley Special Districts Division is conducting a mail ballot proceeding to provide the owner of Assessor’s Parcel Number (APN) 297-170-078 the opportunity to express support for or opposition to the approval of the NPDES Maximum Commercial/Industrial Regulatory Rate and services. Approval of the NPDES Maximum Commercial/Industrial Regulatory Rate through a mail ballot proceeding fulfills Land Development Division’s Condition of Approval to provide a funding source for the NPDES financial program.

Background

The Clean Water Act of 1987 established requirements for the discharge of Urban Runoff from Municipal Separate Storm Sewer Systems under the National Pollution Discharge Elimination System (NPDES) Program. The NPDES Program is administered by the Santa Ana Regional Water Quality Control Board through the issuance of a Permit. The City’s current NPDES Permit mandates all new development projects comply with storm water management activities. The NPDES Program requires public agencies to obtain coverage under the Permit to discharge urban storm water runoff from municipally owned drainage facilities, including streets, highways, storm drains, and flood control channels.

Services Provided

In compliance with the Federal Clean Water Act, the City of Moreno Valley shall provide annual and periodic facility inspections for site design, NPDES permit compliance, and Best Management Practices implementation and maintenance for specified facilities.

How is the Amount of the Charge Determined?

Each fiscal year (FY), the City of Moreno Valley determines the type of services necessary to comply with NPDES Permit requirements and levies the rate applicable for that service, not to

exceed the rate previously approved by the property owner.

Proposed Charge

For FY 2017/18, the NPDES Maximum Commercial/Industrial Regulatory Rate is \$236.86 per parcel. The total amount of the NPDES rates levied for FY 2017/18 for the program as a whole was \$474,654.22.

Annual Adjustment

Beginning in FY 2018/19, the NPDES Maximum Commercial/Industrial Regulatory Rate will be subject to an annual adjustment based on the percentage change calculated for the previous year in the Los Angeles-Riverside-Orange County Regional Consumer Price Index for All Urban Consumers, as published by the Department of Labor’s Bureau of Labor Statistics.

Duration of the Charge

Upon approval of the NPDES Maximum Commercial/Industrial Regulatory Rate, the annual levy amount will be assessed to APN 297-170-078 (and any division thereof) and shall be placed on the Riverside County property tax bill or included as a monthly charge on a utility bill. The NPDES Maximum Commercial/Industrial Regulatory Rate will be levied each following year at the proposed rate, which includes an annual inflation adjustment.

Public Hearing

To provide information concerning this mail ballot proceeding the City has scheduled a Public Hearing, which will be held at the **Moreno Valley City Hall Council Chamber located at 14177 Frederick Street, Moreno Valley.**

Public Hearing
Tuesday, October 17, 2017
6:00 P.M.
(Or As Soon Thereafter As The
Matter May Be Called)

Tabulation of the returned ballot will commence after the close of the public testimony portion of the Public Hearing. Any ballot received shall be tabulated under the direction of the City Clerk in compliance with the City’s Policy for Conducting Mail Ballot Proceedings Policy #1.12.

Effect if the Charge is Approved

Approval of the NPDES Maximum Commercial/Industrial Regulatory Rate will be confirmed if the ballot is marked in favor of the NPDES rate. Approving the NPDES Maximum Commercial/Industrial Regulatory Rate through a mail ballot proceeding will fulfill the Land Development Division’s Condition of Approval to provide an ongoing funding source for the NPDES financial program.

Effect if the Charge is Not Approved

Not approving the NPDES Maximum Commercial/Industrial Regulatory Rate to meet state and federally mandated NPDES Permit requirements will not satisfy the Land Development Division’s Condition of Approval to provide a funding source for the NPDES financial program. If the returned ballot is marked “No”, the NPDES rate will not be levied on the property tax bill.

Attachment: Ballot Documents for Brodiaea Industrial Center (2786 : PUBLIC HEARING FOR TWO NATIONAL POLLUTANT DISCHARGE

Effect if the Ballot is Deemed Invalid or Incomplete

Not marking the corresponding box on the ballot in support of or opposition to the proposed program and annual rate and/or not signing the ballot will result in an invalid ballot. In order to satisfy the Land Development Division’s Condition of Approval by placement of the NPDES rate on the annual property tax bill, the mail ballot proceeding and 45-day noticing period will need to start over. Reinitiating the process will require payment of the mail ballot proceeding fee.

For More Information

If you have any questions about the mail ballot proceeding process, please contact Jennifer Terry, Senior Management Analyst, with the City’s Special Districts Division at 951.413.3505 or via email at JenniferT@moval.org during the City’s business hours.

Questions regarding the NPDES financial program, the annual rate, or the Land Development Division’s Conditions of Approval should be directed to the Land Development Division at 951.413.3120 or via email at landdevelopment@moval.org during the City’s business hours.

The City’s business hours are Monday through Thursday from 7:30 a.m. to 5:30 p.m. and Friday from 7:30 a.m. to 4:30 p.m.

Completing Your Ballot

Please follow the instructions below to complete and return your ballot. Procedures for the completion, return, and tabulation of the ballot are also on file in the City Clerk’s office.






1. Mark the enclosed ballot in support of or opposition to the proposed program and annual rate **by placing a mark in the corresponding box.** Ballots received without a designated vote will be considered invalid.
2. Sign your name on the ballot. Ballots received without signature(s) will be considered invalid *and will not be counted.*
3. Mail or personally deliver your completed ballot in a sealed envelope to the City Clerk’s office, 14177 Frederick Street, Moreno Valley, California, 92553. For your convenience, a postage-paid envelope has been included for return of the ballot.
4. Ballot(s) must be **received** by the City Clerk prior to the close of the public testimony portion of the Public Hearing scheduled for **Tuesday, October 17, 2017**, at the Moreno Valley City Hall Council Chamber. The Public Hearing will be held at 6:00 p.m. or as soon thereafter as the matter may be called. Ballots received after the close of the Public Hearing cannot be legally counted.

Ballot Marks

Appropriate ballot markings include any one of the following for either the YES/Approved or NO/Not Approved blank box:

- A check mark substantially inside a box;
- An X mark substantially inside a box;

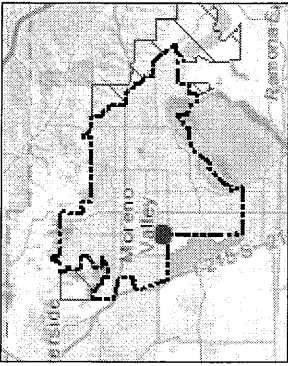
Attachment: Ballot Documents for Brodiaea Industrial Center (2786 : PUBLIC HEARING FOR TWO NATIONAL POLLUTANT DISCHARGE

-  A dot or oval mark substantially inside a box;
-  A completely shaded or filled mark substantially inside a box;
-  A line, single or dashed, or combination of lines, through the box area. Lines may be any one of the following marks: horizontal, vertical, or diagonal. The mark may either run from side to side or corner to corner. All valid lines must be substantially within the box area and not marking any part of another blank box on the ballot;
-  A circle around the box and/or associated clause; or
-  A square or rectangle around the box and/or associated clause.

Balloting marks shall not extend past one box area into any portion of another nor surround the perimeter or any portion of more than one box area. Markings that extend past one box area into any portion of another or surround the perimeter or any portion of more than one box area shall be considered invalid and not counted.

Ballot Mark Revisions (Changes): An error or desire to revise (change) a selection made on the ballot may be completed and returned any time **prior** to the conclusion of public testimony at the Public Hearing. **The revision must be initialed by the record owner(s) of property. Initials must be clearly printed and placed at the right top corner of the revised selection.**

Brodiaea Business Center PEN16-0100



Legend

- Public Facilities
- Public Facilities
- Fire Stations
- Parcels
- City Boundary
- Sphere of Influence

Notes

DISCLAIMER: The information shown on this map was compiled from the City of Moreno Valley GIS and Riverside County GIS. The land base and facility information on this map is for display purposes only and should not be relied upon without independent verification as to its accuracy. Riverside County and City of Moreno Valley will not be held responsible for any claims, losses or damages resulting from the use of this map.

631.0 0 315.48 631.0 Feet

Print Date: 8/29/2017

WGS_1984_Web_Mercator_Auxiliary_Sphere

COMMON INTEREST, COMMERCIAL, INDUSTRIAL AND QUASI-PUBLIC USE NPDES RATE SCHEDULE
 Adopted by the City Council on January 10, 2006

LEVEL 1		LEVEL II	
NPDES Administration (Not covered by CSA 152)		Site Design, Source Control and Treatment Control BMPs Monitoring and Maintenance	
Costs associated with personnel, administration and management of the storm water management program. Administrative tasks include development and filing of various stormwater reports and data collection and management. Level I is levied on all parcels conditioned for the NPDES Rate Schedule.		Costs associated with stormwater and non-stormwater runoff monitoring, inspection of the project's site design, source control and treatment control BMPs; evaluation of site stormwater compliance activities, review of site-specific technical reports and treatment control BMP maintenance records.	
Fiscal Year (FY) 2005/2006 - Base Year Calculation, subject to an annual inflation factor based on the Los Angeles-Riverside-Orange County Regional Consumer Price Index for All Urban Consumers, as published by the Department of Labor's Bureau of Labor Statistics			
PARCEL RATE	Per Month	Per Year	PARCEL RATE
	\$3.45	\$41.42	\$16.29
			\$195.44

Inflation Factor Adjustments

- FY 2006/2007 - 4.5% = (\$33.00 & \$158.00)
- FY 2007/2008 - 3.1% = (\$34.00 & \$163.00)
- FY 2008/2009 - 4.2% = (\$35.00 & \$170.00)
- FY 2009/2010 - no change = (\$35.00 & \$170.00)
- FY 2010/2011 - no change = (\$35.00 & \$170.00)
- FY 2011/2012 - 3.8% = (\$36.00 & \$176.00)
- FY 2012/2013 - 2.7% = (\$37.00 & \$181.00)
- FY 2013/2014 - 2.0% = (\$38.00 & \$185.00) rounded to the nearest dollar
- FY 2014/2015 - 1.14% = (\$39.52 & \$186.49) Pursuant to City Council approval on June 10, 2014.
- FY 2015/2016 - 0.73% = (\$39.81 & \$187.85)
- FY 2016/2017 - 2.03% = (\$40.62 & \$191.66)
- FY 2017/2018 - 1.97% = (\$41.42 & \$195.44)

**OFFICIAL MAIL BALLOT for Assessor's Parcel Number (APN)
297-170-078 National Pollutant Discharge Elimination System (NPDES)
Maximum Commercial/Industrial Regulatory Rate**

YES* — as property owner of APN 297-170-078, **I approve** the NPDES Maximum Commercial/Industrial Regulatory Rate and services. For fiscal year (FY) 2017/18, the NPDES Maximum Commercial/Industrial Regulatory Rate is \$236.86 per parcel. Upon approval of the maximum regulatory rate, the annual levy amount shall be placed on the annual Riverside County property tax bill or included as a monthly charge on a utility bill. Beginning FY 2018/19, the maximum regulatory rate will be subject to an annual adjustment based on the percentage change calculated for the previous year in the Los Angeles-Riverside-Orange County Regional Consumer Price Index for All Urban Consumers, as published by the Department of Labor's Bureau of Labor Statistics. The City shall provide annual and periodic facility inspections for site design, NPDES permit compliance, and Best Management Practices implementation and maintenance for specified facilities.

NO** — as property owner of APN 297-170-078, **I do not approve** the NPDES Maximum Commercial/Industrial Regulatory Rate and services. I understand that not approving the NPDES Maximum Commercial/Industrial Regulatory Rate to fund state and federally mandated NPDES Permit requirements will not satisfy the project's Conditions of Approval. The NPDES maximum commercial/industrial regulatory rate will not be levied on the annual Riverside County property tax bill.

YES*	NO**	Weighted Ballot Count*	Fiscal Year 2017/18 NPDES Maximum Commercial/Industrial Regulatory Rate per Parcel
<input type="checkbox"/>	<input type="checkbox"/>	1	\$236.86

*Each Assessor's Parcel Number equals 1 Weighted Ballot.

This ballot must be received by the City Clerk of the City of Moreno Valley prior to the close of the public testimony portion of the Public Hearing to be held on October 17, 2017, at the Moreno Valley City Hall Council Chamber, 14177 Frederick Street, Moreno Valley, California. The Public Hearing will be held at 6:00 p.m. or as soon thereafter as the matter may be called.

PROPERTY OWNER SIGNATURE DATE

Please remember to mark the appropriate box, sign and date the ballot, and return to the City Clerk's office in the enclosed envelope prior to the close of the public testimony portion of the October 17, 2017 Public Hearing.

Ballot(s) deemed invalid or incomplete will be discarded and a new process must be initiated in order to place the charge on the annual Riverside County property tax bill, which includes payment of the mail ballot fee.



Report to City Council

TO: Mayor and City Council

FROM: Thomas M. DeSantis, Assistant City Manager

AGENDA DATE: October 17, 2017

TITLE: PROPOSED LEGISLATIVE ADVOCACY PLATFORM - 2018

RECOMMENDED ACTION

Recommendation:

1. Approve the proposed City Legislative Platform for 2018.

SUMMARY

This report recommends City Council approval of the amended 2018 Legislative Platform. The Legislative Platform outlines the City's position on priority issues and provides a comprehensive approach to allow staff to take immediate action on pressing legislation under City Council direction.

DISCUSSION

The City Council amends the Legislative Platform for each legislative session. The Platform establishes legislative priorities and serves as a vehicle for the City to pursue regional, state, and federal legislative objectives in the most efficient and effective manner. The Platform provides City officials and staff with direction to engage in advocacy efforts on bills that are of critical importance to the City, precluding the need to agendize each individual bill under consideration. The legislative priorities are identified by category to encompass the objectives of the City Council and the interests of the City of Moreno Valley. Platform categories include:

1. Community and Economic Development – To support activities that promote job creation and economic growth.
2. Environment and Public Health – To safeguard the environment and promote

public health to create a more sustainable community.

3. Fiscal Responsibility – To maintain a balanced budget and ensure that assets and resources are properly managed and deployed in a prudent, efficient manner.
4. Livability - To enhance quality of life by supporting effective education programs, strengthening the City's neighborhoods, enhancing community services and facilities, and promoting arts and culture.
5. Local Control – To preserve local governance and protect local government revenue.
6. Public Safety – To promote the general safety of all City residents.
7. Public Utilities – To preserve the local rate-making authority of municipally-owned utilities and promote voluntary compliance with California Energy Commission reporting.
8. Transportation Infrastructure and Mobility – To cultivate a city with safe, appealing, efficient, motor and non-motor transportation infrastructure to attract and retain small and large businesses, new entertainment and recreation, and residents, and to support growth in the goods movement industry.

As proposed, the draft 2018 Legislative Platform reflects the Council's objectives as outlined in the *Momentum MoVal* strategic plan: Economic Development; Public Safety; Library; Infrastructure; Beautification, Community Engagement and Quality of Life; and Youth Programs.

ALTERNATIVES

1. Approve the proposed City Legislative Platform for 2018. *Staff recommends this alternative as it will allow staff to take immediate action on pressing legislation under City Council direction.*
2. Do not approve the proposed City Legislation Platform and provide further direction to staff.

FISCAL IMPACT

No fiscal impact at this time.

PREPARATION OF STAFF REPORT

Department Head Approval:
Thomas M. DeSantis
Assistant City Manager

CITY COUNCIL GOALS

Advocacy. Develop cooperative intergovernmental relationships and be a forceful advocate of City policies, objectives, and goals to appropriate external governments, agencies and corporations.

Revenue Diversification and Preservation. Develop a variety of City revenue sources and policies to create a stable revenue base and fiscal policies to support essential City services, regardless of economic climate.

Public Safety. Provide a safe and secure environment for people and property in the community, control the number and severity of fire and hazardous material incidents, and provide protection for citizens who live, work and visit the City of Moreno Valley.

Public Facilities and Capital Projects. Ensure that needed public facilities, roadway improvements, and other infrastructure improvements are constructed and maintained.

Positive Environment. Create a positive environment for the development of Moreno Valley's future.

Community Image, Neighborhood Pride and Cleanliness. Promote a sense of community pride and foster an excellent image about our City by developing and executing programs which will result in quality development, enhanced neighborhood preservation efforts, including home rehabilitation and neighborhood restoration.

CITY COUNCIL STRATEGIC PRIORITIES

- 1. Economic Development
- 2. Public Safety
- 3. Library
- 4. Infrastructure
- 5. Beautification, Community Engagement, and Quality of Life
- 6. Youth Programs

ATTACHMENTS

- 1. Legislative Platform 2018

APPROVALS

Budget Officer Approval	<u>✓ Approved</u>	10/05/17 11:55 AM
City Attorney Approval	<u>✓ Approved</u>	10/05/17 4:11 PM
City Manager Approval	<u>✓ Approved</u>	10/05/17 4:12 PM

CITY OF MORENO VALLEY LEGISLATIVE ADVOCACY PLATFORM 2018



2017/2018 Legislative Session



Attachment: Legislative Platform 2018 (2815 : LEGISLATIVE ADVOCACY PLATFORM - 2018)

**CITY OF MORENO VALLEY
LEGISLATIVE ADVOCACY PLATFORM
2018**

PURPOSE

The Legislative Platform outlines the City's position on priority issues and provides a comprehensive approach to allow staff to take immediate action on pressing legislation under City Council direction. The Platform establishes legislative priorities and serves as a vehicle for the City to pursue regional, state, and federal legislative objectives in the most efficient and effective manner.

LEGISLATIVE PLATFORM

The City Council approves Moreno Valley's Legislative Platform. The Platform enables swift action by City officials and staff to engage in advocacy efforts on bills that are of particular importance to the City. If the proposed legislation falls within the guidelines of the Legislative Platform, City staff prepares a letter for the Mayor's signature to express the City's position (support, oppose, seek amendments). Proposed positions on any bill or issue that are not addressed in the City's Platform may be placed on an agenda for consideration by the City Council.

The statements expressed in the approved Platform reflect City Council policy. This platform supplements existing City Council established goals and policies in various documents, including the City's General Plan as well as the *Momentum MoVal* Strategic Plan. Legislative priorities are identified by category to encompass the objectives of the City Council and the interests of the City of Moreno Valley. Statements and actions by City officials, staff, and legislative advocates will conform to policy positions herein whenever acting on behalf of the City. If positions expressed by individual City Council members are inconsistent with the adopted Platform, such positions are deemed individual opinions, and do not reflect or alter the policy of the City Council. In order to maintain consistency for the City's advocacy efforts, Council Members speaking on behalf of the City should only reference the existing legislative platform and not provide positions or opinions unless specifically directed by the City Council in a public meeting. Council members speaking on behalf of themselves as individuals should make it clear that they are not speaking on behalf of the City or City Council.

- A. Community:** Support activities which enhance quality of life for Moreno Valley residents.
1. Support legislation and funding to strengthen the capability of local agencies to prepare, adopt and implement plans for responsible growth,

**CITY OF MORENO VALLEY
LEGISLATIVE ADVOCACY PLATFORM
2018**

- development, zoning, and annexations.
2. Support measures that clarify and streamline the California Environmental Quality Act (CEQA) to reduce the time and cost of compliance while ensuring that the environment is adequately protected and preserving local control.
 3. Support CEQA reform that protects our natural environment while precluding frivolous lawsuits that exploit the lack of adequate safeguards against misuse of CEQA regulations.
 4. Support legislation that reduces the time period in which lawsuits may be filed to challenge a certified Environmental Impact Report (EIR).
 5. Support legislation that would require the party or parties that file a challenge to an EIR or NEPA certification to bear all costs associated with the lawsuit when such challenges do not prevail.
 6. Support State legislation to establish a new, locally-controlled economic development funding program to fill the void created by the elimination of redevelopment agencies.
 7. Support State legislation to establish a new, locally-controlled affordable housing funding program to fill the void created by the elimination of redevelopment housing set-asides.
 8. Support legislation that reimburses the City for all costs associated with meeting State and Federal mandates.
 9. Support federal legislation that would appropriate funding to expand both active and reserve operations and the addition of necessary flight crews at March Air Reserve Base (March ARB).
 10. Support federal legislation that would increase the joint services use of March ARB and oppose legislation that would reduce the joint services use of March ARB or eliminate the base entirely.
 11. Support reform of the Endangered Species Act (Act) to include the following elements:
 - a. Mandates must be fully funded by the legislative body that imposes them;
 - b. All economic impacts of the Act should be considered before revising and/or amending the Act;
 - c. Mitigation required by the Act should be incentive-based; and

**CITY OF MORENO VALLEY
LEGISLATIVE ADVOCACY PLATFORM
2018**

- d. Habitat Preservation should focus upon multiple species, as opposed to creating single species habitats.
- 12. Support reform measures for housing law that:
 - a. Streamline state approval of housing elements;
 - b. Set reasonable minimum performance standards for all local governments.
- B. Economic Development:** Support job creation, business attraction, and business expansion to create prosperity for Moreno Valley businesses and residents. Oppose legislative proposals or executive actions that hinder in our community's economic growth.
 - 1. Support creation and enhancement of tools and resources to facilitate economic development.
 - 2. Support elimination of barriers to development of commercial, industrial, housing, and brownfield redevelopment.
 - 3. Oppose measures that would unnecessarily increase Moreno Valley business' exposure to litigation.
 - 4. Support legislation that will enhance Moreno Valley's jobs climate and help local businesses thrive.
 - 5. Support full funding for workforce and career and technical education.
 - 6. Support improved business access to capital via avenues such as regulations, small business financing programs, and access to private loans.
- C. Environment and Public Health:** Improve the environment and promote public health to create a more sustainable community.
 - 1. Support revisions to grant eligibility requirements to allow funding to upgrade water systems serving disadvantaged communities – to preclude violations of drinking water standards/regulations.
 - 2. Support legislation that provides resources and funding to local governments for the implementation SB 375 and SB 32.
 - 3. Support the Bay Delta Conservation Plan, its processes, and funding.

**CITY OF MORENO VALLEY
LEGISLATIVE ADVOCACY PLATFORM
2018**

4. Support legislation to fund storm water infrastructure improvements and compliance with storm water quality regulations.
 5. Support legislation which clarifies SB 218 language to make it clear that storm water facilities are not sewer systems under SB 218 requirements.
 6. Support funding for programs that reduce waste sent to landfills.
 7. Oppose waste management requirements that would put local jurisdictions at risk of not meeting their AB 939 waste diversion requirements or that create additional unfunded mandates.
 8. Support legislation that funds the increase of the urban forest canopy and its preservation.
 9. Support state and federal funding for residential, business, and municipal energy efficiency projects.
 10. Support state and federal climate change legislation and programs that are practical, incentive-based and cost effective for businesses, residents, and local government.
 11. Oppose legislation that would burden local governments with excessive costs and/or impractical requirements.
 12. Support state legislation and regulatory initiatives to strengthen local government's ability to set local policies relating to "sustainability," including, but not limited to, building standards and land use planning.
 13. Support legislation and funding to create a sustainable and stable water supply, encourage conservation of water resources and reduce urban runoff pollution.
 14. Promote local control over land use, to include the ability to make decisions regarding secondary residential units which can greatly affect the character of neighborhoods.
- D. Fiscal Responsibility:** Maintain a balanced budget and ensure that assets and resources are properly safeguarded and appropriated in a prudent, efficient manner.
1. Oppose efforts to exempt Internet telephonic services from local taxes and fees applicable to other telephone services.
 2. Support legislation that preserves local authority to regulate Voice over Internet Protocol (VoIP) services and collect any applicable revenues.
 3. Support workers compensation reform to reduce the exposure of

**CITY OF MORENO VALLEY
LEGISLATIVE ADVOCACY PLATFORM
2018**

- employers to frivolous claims.
4. Support legislation to retain local sales tax revenues in their communities of origin.
 5. Oppose legislation that will further erode local governments' ability to collect sales tax revenues.
 6. Support efforts to simplify the collection of sales taxes nationwide and provide an equitable method for collecting sales taxes for Internet and catalog sales.
 7. Support legislation that will provide the City with equitable compensation for revenues lost due to any miscalculation of property taxes by the County Auditor-Controller.
 8. Support legislation that will restore City revenues lost through state actions.
 9. Support statewide reorganization of municipal financing to achieve equity among cities and provide a broad tax base for cities.
 10. Support legislation that will clarify the implementation of Proposition 218 and protect existing City revenues.
 11. Oppose any actions by the State to further reduce City revenues unless fully offset by either equal relief of mandates or equalized supplementation with other stable revenues.
 12. Oppose local government financing reform that will result in an overall reduction of tax revenues to the City.
 13. Support concept of "block grant" vs. categorical grants in order to reduce administrative costs.
 14. Support regulatory reform that simplifies grant accounting standards to minimize administrative costs.
 15. Oppose mandates for cities to pay fees for county services beyond what is paid by unincorporated area residents for such services (e.g., booking fees, property tax administrative fees).
 16. Oppose legislation that would establish a standard utility user's tax for all jurisdictions, which would be lower than the tax rate approved by Moreno Valley voters.
 17. Support continuation of Gas Tax funding for local transportation projects.

**CITY OF MORENO VALLEY
LEGISLATIVE ADVOCACY PLATFORM
2018**

18. Support permanent removal of "maintenance of effort" requirements when grant or program funding is reduced in any way.
19. Oppose legislation that would limit the City's ability to hold contractors accountable for their work product, such as retention of progress payments.
20. Support legislation that would make the debarment process more reasonable and protect cities from non-performing and unethical contractors.
21. Support legislation that allows cities to select other than the low bidder for public works projects.
22. Oppose the imposition of new fees upon municipal utilities.
23. Oppose Federal or State legislation that would have a negative impact on local government's ability to issue tax exempt financing.

E. Livability: Enhance quality of life by supporting effective education programs, strengthening the City's neighborhoods, safeguarding community services and facilities, and promoting arts and culture.

1. Oppose state budget reductions that will reduce Community Services District revenues.
2. Support funding for childcare, including after-school programs.
3. Support legislation that would provide funding for recreation and youth programs.
4. Support legislation and funding for the construction, rehabilitation and maintenance of public facilities, parks and open space.
5. Support legislation and funding for policies and programs that promote the overall health and wellness of families, veterans, seniors and youth in the City.
6. Support legislation that provides additional funding to train and re-train individuals to enhance the local workforce by matching jobseeker skills with job opportunities.
7. Support State legislation to strengthen local government's ability to set local policies relating to homelessness.
8. Support legislation which provides additional funding for homelessness solutions.

**CITY OF MORENO VALLEY
LEGISLATIVE ADVOCACY PLATFORM
2018**

F. Local Control: Preserve local governance and protect government revenue.

1. Support legislation that strengthens Home Rule and oppose legislation that preempts local authority.
2. Support application of the Brown Act to the State Legislature to the same extent that it applies to local government.
3. Oppose state legislation mandating binding arbitration.
4. Oppose any legislation that would grant, to the State or County, any zoning or other land use controls in municipalities.
5. Support efforts to establish local control over placement of group homes within the City and require the state to disclose to cities the categories of placements that include sex offenders who would be placed in the homes.
6. Oppose any legislation or regulations which would limit local government's review process and collection of fees for placement of communication facilities within public rights of way, specifically small cell facilities.
7. Support legislation which preserves local authority to regulate wireless telecommunication facilities or other uses on public property and collect any applicable revenues.

G. Public Safety: Promote the general safety of all City residents.

1. Support legislation that increases the minimum distance between schools and sites where registered sex offenders can reside.
2. Support legislation that prohibits any sex offender from residing with a child who was a victim of a sex offender.
3. Support legislation which increases criminal penalties for crimes associated with mail theft.
4. Oppose any legislation imposing fines and penalties versus corrective action notices for minor safety violations.
5. Support legislation that increases penalties for traffic violations in school zones.
6. Support measures that would establish tougher penalties for graffiti vandals and strengthen cities' ability to be compensated for damages.

**CITY OF MORENO VALLEY
LEGISLATIVE ADVOCACY PLATFORM
2018**

7. Support legislation that increases public safety through educational initiatives.
8. Support legislation that increases public safety through state and federal block grants.
9. Support legislation to prohibit the manufacture, import, sale and use of dangerous synthetic substances, including those that mimic marijuana, methamphetamine and heroin.
10. Oppose legislation to expand “early release” for low-risk serious and violent offenders without an increase in sustained funding to ensure responsible supervision by parole agents and for local agencies that provide post-release supervision.
11. Support legislation to conduct an independent study of the true impact of AB 109, Prop 47 and Prop 57 on crime throughout the state, including an analysis of FBI Crime Reports both before and after the passage of those statutory changes took effect.
12. Support legislation and funding to assist local law enforcement in reducing crimes not limited to illicit drugs, burglary, assault, domestic violence, and sobriety checkpoints.
13. Support legislation to grant more local control for cities to regulate zoning for massage therapy businesses.

H. Public Utilities: Preserve the local rate-making authority of municipally-owned utilities and promote voluntary compliance with CEC reporting.

1. Support legislation that establishes and preserves the role of cities in energy decisions for municipal utilities, including activities relating to electricity generation, supply, demand and conservation.
2. Oppose legislation that preempts the authority and self-regulatory principles of municipal utilities.
3. Support legislation that requires cost-effective, technologically feasible, and technology neutral criteria for the procurement of additional renewable energy resources or energy storage.
4. Support efforts to include Distributed Generation (customer sited generation) as a “Category 1” renewable resource.
5. Support efforts to include out-of-state renewable resources including wind, solar, and geothermal facilities as part of a utility’s renewable resource portfolio to comply with the State’s renewable energy mandates.

**CITY OF MORENO VALLEY
LEGISLATIVE ADVOCACY PLATFORM
2018**

6. Oppose legislation that attempts to tax municipal revenue bonds necessary to fund the investment in critical electric utility infrastructure.
 7. Support measures that ensure rates are designed to reflect the cost of serving customers and make certain all customers are treated fairly and the needs of the community are met.
 8. Support efforts to develop and implement appropriate financial assistance (incentives) of cost-effective energy conservation and energy efficiency programs.
- I. Transportation Infrastructure and Mobility:** Cultivate a city with safe, appealing and efficient motor and non-motor transportation infrastructure to attract and retain small and large businesses, new entertainment and recreation, and residents, and to support growth in the goods movement industry.
1. Support efforts to improve the roadway and aesthetics along State Route 60 between Interstate 215 and Interstate 10.
 2. Support State Route 60 Improvements east of Interstate 215. The increase of commerce and economic growth requires improved highways in and around Moreno Valley and through the “Badlands.”
 3. Support increased roadway connectivity between Moreno Valley and neighboring jurisdictions, particularly in the City’s northern and eastern ends, to support economic development activity in Moreno Valley.
 4. Support legislation to increase funding for jurisdictions to repair, maintain, and replace state and local transportation infrastructure.
 5. Support legislation that increases the safety of the transportation system for motorized and non-motorized users.
 6. Support privatization of Caltrans projects to allow rapid construction of priority projects.
 7. Oppose legislation that would eliminate or restrict the use of Riverside County State Improvement Transportation Funds, federal transportation funding, Measure A, or Gas Tax funding for local transportation projects.
 8. Support efforts to establish a high speed rail route along the Interstate 215 corridor in concert with the cities of San Bernardino, Riverside, and other nearby cities.
 9. Support external funding for the mitigation and construction of the Cactus Drainage Channel.



Report to City Council

TO: Mayor and City Council

FROM: Martin Koczanowicz, City Attorney
Pat Jacquez-Nares, City Clerk

AGENDA DATE: October 17, 2017

TITLE: RESOLUTION AMENDING COUNCIL MEETING RULES OF PROCEDURE CONFLICT OF INTEREST SECTION 5.5.5

RECOMMENDED ACTION

Recommendations: That the City Council:

Adopt Resolution 2017 - which would delete subsections 5.5.5.4 (campaign contribution disclosure) and 5.5.5.5 (governmental entity employment disclosure) from the Rules of Procedure.

SUMMARY

This report recommends adoption of a Resolution which would delete two subsections of the Rules of Procedure that require disclosure of campaign contributions and governmental entity employment. These subsections were adopted by the prior City Council at their last meeting. The requirements of disclosure are duplicative of existing law and non-compliance carries no consequences, as there are no enforcement methods available to the City Council.

DISCUSSION

At the November 29th 2016 Council Meeting the outgoing Council adopted revisions to the Rules of Procedure for Council Meetings by adding two subsection to the Conflict of Interest Section.

First, subsection 5.5.5.4 required that any Council Member that received direct campaign contributions of \$500.00 or more (or indirect contribution of \$500 or more over the last 48 months) from a party that has a matter pending before the City Council, disclose such contribution(s) before deliberating on the item. No recusal is required.

Detailed campaign contribution disclosure is already mandate by state law through FPPC Form 460 which has to be filed by every candidate. The completed form is available for review by the public.

Second addition, subsection 5.5.5.5, required the Council Member to disclose his/hers employment with a governmental agency when any pending council action could have a material effect on such governmental agency. The state law in Gov. Code Section 82030(b)(2), exempts any salary or reimbursements received from a Federal, State or local governmental agency, from the definition of reportable income, thus excluding it from the Conflict of Interest provisions, which require a recusal.

Since the Resolution was adopted by the Council in November of 2016, there have been no disclosures made under either section by any Council Member. Since neither of these disclosures are required under state law, there is no way of mandating compliance and no consequences to non-compliance with those sections of the Rules of Procedures.

ALTERNATIVES

1. Adopt Resolution 2017- ____, which would delete subsections 5.5.5.4 and 5.5.5.5 from the City Council Rules of Procedures.
2. Do not adopt Resolution 2017- ____ and leave the Rules of Procedure in their current composition.

FISCAL IMPACT

There are no fiscal impacts anticipated from either alternative.

NOTIFICATION

Agenda was posted in accordance with the Brown Act.

PREPARATION OF STAFF REPORT

Prepared By:
Martin D. Koczanowicz
City Attorney

Concurred By:
Pat Jacquez - Nares
City Clerk

CITY COUNCIL GOALS

None

CITY COUNCIL STRATEGIC PRIORITIES

- 1. Economic Development
- 2. Public Safety
- 3. Library
- 4. Infrastructure
- 5. Beautification, Community Engagement, and Quality of Life
- 6. Youth Programs

ATTACHMENTS

- 1. Resolution Amending 5.5.5 of CCRules and Procedure

APPROVALS

Budget Officer Approval	<u>✓ Approved</u>	10/03/17 11:06 AM
City Attorney Approval	<u>✓ Approved</u>	10/05/17 9:33 AM
City Manager Approval	<u>✓ Approved</u>	10/05/17 3:53 PM

RESOLUTION 2017 - ___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY AMENDING THE CONFLICT OF INTEREST AND DISCLOSURE SECTION 5.5.5 OF THE RULES OF PROCEDURE FOR COUNCIL MEETINGS AND RELATED FUNCTIONS AND ACTIVITIES

WHEREAS, in November of 2016 City Council added Subsections 5.5.5.4 and 5.5.5.5 to the Rules of Procedure for Council Meetings and related functions and activities; and

WHEREAS, the two added subsections required that Council Members disclose campaign contributions and governmental agency employment prior to deliberating on any items that would have material effect on the contributor or the employer; and

WHEREAS, Government Code Section 82030(b)(2) provides that salary and reimbursement for expenses received from a federal, state or local government agency is exempt from the definition of "income" as used in Government Code Section 87103(c), thus not requiring disclosure or recusal; and

WHEREAS, campaign contributors and the contributed amounts are already disclosed to the public during the campaign process through Form 460 and other FPPC requirements; and

WHEREAS, the requirement to disclose contained in subsections 5.5.5.4 and 5.5.5.5 cannot be enforced by the City Council and failure to disclose by any Council member carries no penalty or consequence.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Moreno Valley as follows:

Section 1. Recitals

That the Recitals set forth above are true and correct.

Section 2. Amendment to 5.5.5 "Conflict of Interest and Disclosure"

That Subsection 5.5.5 titled "Conflict of Interest and Disclosure" of Section 5.5 titled "Decorum and Order – Council Members" of the "Rules of Procedure for Council Meetings and Related Functions and Activities" shall be amended to add Section 5.5.5.5 as follows:

Subsections 5.5.5.4 and 5.5.5.5 shall be deleted in their entirety.

Section 3. Severability

That the City Council declares that, should any provision, section, paragraph, sentence or word of this Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Resolution as hereby adopted shall remain in full force and effect.

Section 4. Repeal of Conflicting Provisions

That all the provisions heretofore adopted by the City or the City Council that are in conflict with the provisions of this Resolution are hereby repealed.

Section 5. Effective Date.

That this Resolution shall take effect upon its adoption.

Section 6. Certification.

That the City Clerk shall certify to the passage of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2017.

CITY OF MORENO VALLEY

Dr. Yxstian Gutierrez, Mayor

ATTEST:

Pat Jacques-Nares, City Clerk

APPROVED AS TO FORM:

Martin D. Koczanowicz, City Attorney

Attachment: Resolution Amending 5.5.5 of CCRules and Procedure (2788 : RESOLUTION AMENDING COUNCIL MEETING RULES OF