



Staff Report Item 13

TO: East Bay Community Energy Board of Directors

FROM: Nick Chaset, Chief Executive Officer

SUBJECT: **Procurement Delegation and Standard Power Purchase Agreements and Confirmations (Action Item)**

DATE: February 21, 2018

Staff Recommendation

Adopt a Resolution to:

- A. Delegate authority to the CEO to enter into Approved Product transactions as defined in Appendix 6 of the Energy Risk Management Policy (ERM) in accordance with the Authorized Approved Product Transaction Limits set forth in Appendix 4 of the ERM, to secure energy supply agreements that meet power content requirements for Bright Choice and Brilliant100, to meet EBCE's approved customer discount, and to enter into such other supply arrangements for the benefit of the customers of East Bay Community Energy consistent with the requirements of the ERM;
- B. Grant the CEO authority to enter into Approved Product Transactions for a term of up to 60 consecutive months from the calendar month following the date of the transaction;
- C. Delegate authority to the CEO to execute Confirmations for Approved Product transactions, as needed, in accordance with the requirements of the ERM; and
- D. Delegate authority to CEO to execute Master Agreements with additional suppliers, as needed, in accordance with the requirements of the ERM.

Background

At the January 17, 2018 Board meeting (Item 18), the Board received copies of the EEI Master Agreement and Confirmation and "Lockbox" Agreements: Deposit Account Control Agreement, Security Agreement, Intercreditor & Agency Collateral Agreement. EBCE Staff will be working with NCPA to purchase power and enter into transactions to hedge electricity prices on an ongoing basis, as needed to fill load demand. Each of these transactions can be several million dollars and are typically transacted within 2 hours from the time prices are offered by the

supplier, to the time transaction confirmations are executed. This short time frame cannot accommodate the need to seek Board approval for each transaction and generally requires that oversight must be conducted using a different approach. The ERM Policy and Regulations that were approved on February 7, 2018, provides for internal controls including defined requirements for a) how much energy EBCE should buy and for how long, b) what types of contracts EBCE should use to buy energy, c) the types of counterparties that EBCE should buy energy from.

Discussion

Procurement Delegation:

The goal of delegating authority to the CEO to enter into energy supply contracts that conform to the ERM, as well as EBCEs rate and product content policies, is to allow EBCE to efficiently procure energy to meet its needs while ensuring that robust controls are in place to ensure that EBCE is managing energy risk, including:

- 1) Delegation to CEO ability to enter into energy supply contracts through ERM approved contracting mechanism (EEI Master Agreements and Confirmations and WSPP Agreements and Confirmations)
- 2) Delegation to CEO ability to procure energy volumes that meet time-price matrix ratios and speculation limits (i.e. no more than 115% of forecast load)
- 3) Delegation to CEO ability to enter into energy supply contracts that will meet adopted power content requirements for Bright Choice and Brilliant100.
- 4) Delegation to CEO ability to enter into energy supply contracts that meet EBCE's approved customer discount

Additionally, the proposed delegation would not include at this time authority for non-conforming energy supply agreements, including long-term power purchase agreements for renewables, which are not delegated to the CEO and must be brought to the Board of Directors for approval.

Master Agreements:

EBCE intends to rely on industry standard forms of documentation for its power supply agreements, specifically the Edison Electric Institute master power purchase and sale agreement ("EEI Master Agreement") and WSPP agreement (the "WSPP Agreement", and collectively with the EEI Master Agreement, the "Master Agreements"), using terms and conditions that have been commonly adopted by existing CCA programs. This item seeks to delegate authority to the CEO to execute additional EEI Master Agreements from time to time that are consistent with six EEI Master Agreements approved at the 2/7/18 Board of Directors' meeting, subject to such changes as the Chief Executive Officer may deem necessary or appropriate and which are consistent with the requirements of the Energy Risk Management Policy.

Confirmations: A "Confirmation" is a binding agreement between an energy purchaser and an energy supplier (e.g., an ESP) for the purchase and sale of specific quantities of specific types of energy products at specific prices and is governed by the terms and conditions of a master trading agreement, such as the Master Agreement or the WSPP Agreement. This item seeks to

delegate authority to CEO to execute Confirmation Agreements in substantially the same form as presented to the Board and with commercial terms and conditions in accordance with the requirements of the Energy Risk Management Policy, subject to such Changes to the Confirmation Agreements as the Chief Executive Officer may deem necessary or appropriate and which are consistent with the requirements of the Energy Risk Management Policy.

WSPP Confirmations:

Included in the delegation of authority for Confirmations are the WSPP Confirmations. This item seeks to delegate authority to CEO to execute WSPP (Western States Power Pool) Confirmations. EBCE is a member of WSPP, which manages power procurement agreements and WSPP Agreement represents a standardized contract for electric power sales and physical options.

One important difference between the EEI Master Agreement and the WSPP Agreement is that under the EEI Master, the parties negotiate standard provisions in the EEI Master Agreement, and then such terms will be binding upon the parties until the parties agree in writing otherwise.

Under the WSPP Agreement, the parties must include such standard provisions in each Confirmation Agreement. Therefore, ECBE has developed with the help of outside legal counsel, six basic forms of WSPP Confirmation Agreement to be provided to NCPA for use in short term energy procurement.

There are six standard confirmations related to the following specific types of transactions:

- Electric Capacity and/or Electric Energy
- Specified Source Energy
- Resource Adequacy Transaction
- Renewable Energy Credit Category 1
- Renewable Energy Credit Category 2
- Renewable Energy Credit Category 3

Fiscal Impact

The fiscal impact of executing Confirmations under the EEI Master Agreements and WSPP Agreements for Approved Product transactions will be consistent with prior representations to the Board.

Attachments

- A. Resolution Delegating Authority to Chief Executive Officer
- B. WSPP (Western States Power Pool) Agreement and copies of five proposed standard confirmations to be used in conjunction with the WSPP Agreement for the purchase of:

- a. Electric Capacity and/or Electric Energy
- b. Specified Source Energy
- c. Resource Adequacy
- d. Renewable Energy, Category 1
- e. Renewable Energy, Category 2
- f. Renewable Energy, Category 3

RESOLUTION NO. 2018-

RESOLUTION OF THE BOARD OF DIRECTORS OF EAST BAY COMMUNITY ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO ENTER INTO CERTAIN CONFIRMATION AGREEMENTS.

THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the East Bay Community Energy Authority ("East Bay Community Energy") was formed on December 1, 2016;

WHEREAS, launch of service of the community choice aggregation program is planned for June 1, 2018;

WHEREAS, East Bay Community Energy administered a competitive process to select contractors capable of providing energy, renewable energy, carbon free energy, and related products and services (the "Product") from energy generating sources that are cleaner and have a higher percentage of renewable energy than that provided by the incumbent utility and at competitive prices;

WHEREAS, East Bay Community Energy has identified six energy service providers (each, an "Energy Service Provider" or "ESP") as having competitive proposals and the ability to meet the aforementioned goals;

WHEREAS, East Bay Community Energy has negotiated a separate EEI Master Power Purchase and Sale Agreement (the "Master Agreement") with each of the following Energy Service Providers:

- Direct Energy Business Marketing, LLC ("Direct")
- Exelon Generation Company, LLC ("Constellation")
- Morgan Stanley Capital Group Inc. ("Morgan Stanley")
- Powerex Corp. ("Powerex")
- Shell Energy North America (US), L.P. ("Shell")
- TransAlta Energy Marketing (US) Inc. ("Transalta");

WHEREAS, East Bay Community Energy has negotiated certain security documents (the "Lockbox Agreements") with participating ESPs as well as River City Bank which are intended to be entered into at the same time that East Bay Community Energy enters into the Confirmation Agreements with the ESPs that are participating in the multi-party lockbox;

WHEREAS, East Bay Community Energy has negotiated a services agreement (the "Services Agreement") with Northern California Power Agency, a joint powers agency of the State of California ("NCPA");

WHEREAS, the Board of Directors of East Bay Community Energy adopted Resolution R-2018-10 on February 7, 2018, delegating authority to the Chief Executive Officer to execute each of the aforementioned Master Agreements, Lockbox Agreements

and Services Agreement and adopting the Energy Risk Management Policy (the “Energy Risk Management Policy” or “ERM”)

WHEREAS, a “Confirmation Agreement” is a binding agreement between an energy purchaser and an energy supplier (e.g., an ESP) for the purchase and sale of specific quantities of specific types of energy products at specific prices and is governed by the terms and conditions of a master trading agreement, such as the Master Agreement or the WSPP Agreement;

WHEREAS, East Bay Community Energy has negotiated a form of Confirmation Agreement with each of the ESPs under the Master Agreements;

WHEREAS, East Bay Community Energy has also established forms of Confirmation Agreements to be used from time to time in connection with the WSPP Agreement;

WHEREAS, the Board has been presented with a form of each of the Confirmation Agreements;

WHEREAS, the Board wishes to delegate to the Chief Executive Officer approval authority for Approved Product transactions (as defined in the Appendix 6 of the ERM) in accordance with the Authorized Approved Product Transaction Limits set forth in Appendix 4 of the ERM in order to secure energy supply agreements that will meet the Board’s adopted power content requirements for Bright Choice and Brilliant100, to meet EBCE’s approved customer discount, and to enter into such other supply arrangements for the benefit of the customers of East Bay Community Energy consistent with the requirements of the Energy Risk Management Policy;

WHEREAS, because of the timing of the execution of the Confirmation Agreements it is infeasible to bring the final Confirmation Agreements back to the Board prior to execution, the Board also wishes to delegate to the Chief Executive Officer the authority to approve any non-material changes, additions, variations or deletions (“Changes”) to the form of Confirmation Agreements presented to the Board in connection with this resolution;

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute the Confirmation Agreements now and in the future, and enter into Master Agreements with new suppliers, consistent with the ERM; and

WHEREAS, the Board has determined that a Notice of Exemption under CEQA should be filed.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates approval authority to the Chief Executive Officer in the name and on behalf of East Bay Community Energy for Approved Product transactions (as defined in the Appendix 6 of the ERM) in accordance with the Authorized Approved Product Transaction Limits set forth in Appendix 4 of the ERM for individual transactions with a term not to extend past 60 consecutive months from the calendar month following the date of the transaction.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer in the name and on behalf of East Bay Community Energy to, from time to time, negotiate, enter into and deliver, and to do all things necessary or appropriate for the execution and delivery of, and the performance of East Bay Community Energy's obligations under, the following agreements (including any other instruments, documents, certificates and agreements executed by East Bay Community Energy in connection therewith, including the opening of bank, escrow or other similar accounts) in order to implement the Chief Executive Officer's approval authority for Approved Product transactions:

1. Confirmation Agreements in substantially the same form as presented to the Board and commercial terms and conditions in accordance with the requirements of the Energy Risk Management Policy, subject to such Changes to the Confirmation Agreements as the Chief Executive Officer may deem necessary or appropriate and which are consistent with the requirements of the Energy Risk Management Policy, with the execution and delivery of such Agreements containing any such Changes by the Chief Executive Officer to be conclusive evidence of the Chief Executive Officer's approval of such Changes; and

2. Master Agreements in substantially the same form as previously approved by the Board, subject to such Changes to the Master Agreements as the Chief Executive Officer may deem necessary or appropriate and which are consistent with the requirements of the Energy Risk Management Policy, with the execution and delivery of such Agreements containing any such Changes by the Chief Executive Officer to be conclusive evidence of the Chief Executive Officer's approval of such Changes.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that:

1. The Board has determined that (i) the approval of the Confirmation Agreements are not a project under the California Environmental Quality Act (CEQA), (ii) if the approval of the Confirmation Agreements are a project under CEQA, the Agreements do not have the potential for causing a significant impact on the environment under State CEQA Guidelines Section 15061(b)(3), and (iii) if the approval of the Confirmation Agreements are a project under CEQA, the Confirmation Agreements are categorically exempt under State CEQA Guidelines Section 15308 as actions for the protection of the environment.

2. The Board delegates authority to the Chief Executive Officer to file with the Clerk, a Notice of Exemption under CEQA.

ADOPTED AND APPROVED this ____ day of February 2018.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board

**EBCE DRAFT
2/14/2018**

CONFIRMATION AGREEMENT

This confirmation agreement (this “Confirmation”) shall confirm the agreement reached on _____, 2018, (the “Confirmation Date”) between _____ (“**Party 1**” or “Seller”) and East Bay Community Energy Authority, a California joint powers authority (“East Bay Community Energy” or “Buyer”) (herein sometimes referred to as a “Party” and collectively as the “Parties”) regarding the sale and purchase of electric capacity and/or electric energy under the terms and conditions set forth below:

Transaction Number:

Buyer:

Seller:

Trade Date:

Type of Transaction:

Term:

Delivery Period:

Contract Quantity:

Contract Price:

Delivery Point:

Scheduling Rules:

Special Terms:

**EBCE DRAFT
2/14/2018**

Governing Terms: Unless otherwise noted below, this Confirmation is governed by the terms and conditions of the WSPP Agreement dated June 20, 2017, as amended to date, along with any schedules and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. If there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern. Capitalized terms not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement.

Governing Law: This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

Confidentiality: Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

No Recourse to Members of Buyer: Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et. seq.) and is a public entity separate from its constituent members. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer’s constituent members, in connection with this Confirmation.

Credit Requirements: Notwithstanding any other provision of the Agreement, Section 27 of the Master Agreement is not applicable to, and credit support is not required for either Party under this Confirmation.

Counterparts: This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

Entire Agreement; No Oral Agreements or Modifications: This Confirmation sets forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of electric energy and/or electric capacity. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

**EBCE DRAFT
2/14/2018**

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

PARTY 1

**EAST BAY COMMUNITY ENERGY
AUTHORITY**, a California joint powers
authority

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EBCE DRAFT
2/14/2018

TRANSACTION CONFIRMATION

This Transaction Confirmation (the “Confirmation”) is entered into this ____ day of _____, 2018 (the “Effective Date”), by and between **East Bay Community Energy Authority**, a California joint powers authority, (“Purchaser”) and **Party 2** (“Seller”), each referred to herein individually as a “Party” and collectively as the “Parties” regarding the purchase and sale of the Product. Unless otherwise noted below, this Confirmation is governed by the terms and conditions of the WSPP Agreement effective as of June 20, 2017, as amended to date, along with any schedules and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement.” Terms capitalized but not defined herein shall have the meaning as set forth in the Master Agreement.

Contact Information:

Purchaser: East Bay Community Energy Authority , a California joint powers authority	Seller: Party 2
Address: 1111 Broadway, Suite 300 Oakland, CA 94607	Address:
Contact Representative: Nick Chaset	Contact Representative:
Phone: 510-670-5936	Phone:
Cell:	Cell:
Email: Nchaset@ebce.org	Email:
Settlement Contact: Nick Chaset	Settlement Contact:
Phone: 510-670-5936	Phone:
Email: Nchaset@ebce.org	Email:

Master Agreement: WSPP Agreement effective as of June 20, 2017, as amended to date, along with any schedules and amendments thereto. Any conflicts between or among the Master Agreement and this Confirmation shall be resolved in the following order of control: first, the Confirmation, and second, the Master Agreement.

Transaction: This transaction is intended to comply with AB32 and in particular section 95102(a) of the Regulation for Mandatory Reporting of Greenhouse Gas Emissions (title 17 California Code of Regulations (CCR), section 95100 et seq.) as a “Specified Source” under the regulation.

Product: WSPP Service Schedule C Firm Energy that is primarily produced by the Specified Source and/or Asset Control Supplier scheduled and delivered by Seller to Purchaser at the Delivery Point (“Specified Source Energy” or “SSE” and/or “Asset Control Supplier energy” or “ACS energy”).

Seller: **Party 2**

Purchaser: **East Bay Community Energy Authority**, a California joint powers authority

Specified Source: Any set forth on Exhibit A. Seller has the right at any time to substitute the Specified Source with any Specified Source Energy from any other resources with a 0.0 emissions factor or with ACS Energy but will require written approval from Purchaser prior to scheduling.

Delivery Period: _____, 20__ through _____, 20__

Delivery Point: TBD

Scheduling: Seller shall schedule all SSE or ACS energy on a daily prescheduled basis according to the prevailing protocols of the WECC. Specified Source and CARB ID will be represented on each NERC E-Tag. Seller will create all E-Tags.

Contract Quantity: TBD

Contract Price: \$X.XX per MWh

**Seller's Information
To be Provided to
Purchaser:**

No later than the 25th day of each calendar month during the Delivery Period, Seller shall provide Purchaser with the hourly meter data or allocation report from the Specified Source or ACS.

SSE or ACS energy delivered to Purchaser will equal the lesser of the hourly meter of the Specified Source or the hourly NERC E-Tag ("Specified Source Amount").

Purchaser agrees to pay the Contract Price for the Specified Source Amount delivered from Seller to Purchaser.

Any quantity of energy that is delivered from Seller to Purchaser, due to transmission cuts or specified source unavailability, that is not SSE or ACS energy shall be deemed "Non-Specified Source Energy", and shall be settled at a price equal to the Contract Price less \$X.XX per MWh (the "Non-Specified Source Energy Price").

Change in Law: If California ends the California Cap-and-Trade program, or a federal Judge stays the California AB32 Cap-and-Trade program and the result is that Purchaser is precluded from using the Product purchased herein as SSE or ACS energy ("Change in Law"), using commercially reasonable efforts and under the Delivery Period hereof, the Parties shall work together to attempt to maintain the intent of this Confirmation in the event of such Change in Law. Purchaser may elect to terminate this Confirmation by delivering to the Seller written notice of such termination not later than 60 days following the effective date of the Change in Law, and such notice of termination because of a Change in Law shall not be considered an Event of Default. If Purchaser does not exercise its right to terminate this Confirmation due

to a Change in Law within such 60 day period, Purchaser may not thereafter terminate this Confirmation due to that applicable Change in Law.

A termination of this Confirmation due to a Change in Law shall be effective upon the delivery of written notice therefore and thereafter:

- (i) all SSE or ACS energy not then already transferred and/or delivered by Seller to Purchaser shall be terminated and Seller shall have no obligation to make any further deliveries, and Purchaser shall have no obligation to accept any deliveries, of the Product; and
- (ii) neither Party shall have any further obligations to the other hereunder (other than for performance already completed prior to such termination).

Representations and Warranties:

Rights to Product: Seller hereby provides and conveys electric power generation from the Specified Sources to Purchaser as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to the Product, and Seller agrees to convey and hereby conveys all such Product to Purchaser as included in the delivery of the Product.

Attestations and Maintenance of Records:

Seller shall provide Purchaser with all necessary documentation required to support and verify that delivery requirements have been met according to CARB regulations, including but not limited to documentation demonstrating that the source meets the CARB requirements of a specified source.

Each Party agrees to retain and make available reasonably promptly after reasonable request all records required to be retained pursuant to Cap and Trade Regulations with respect to Specified Sources. Each party is responsible for the safe, secure, and accessible storage of their own records. Upon Purchaser's request, Seller shall provide copies of its documentation and records including all documents that Purchaser is required to maintain or provide to CARB in accordance with AB32 with respect to the original purchase. Seller shall maintain adequate records to assist Purchaser or CARB in meeting any present or future reporting, verification, transfer, registration, or retirement requirements associated with the Transaction. Nothing herein limits or waives any obligations of Seller or Purchaser to keep records or provide attestations provided in AB32.

Registration and Reporting:

Purchaser will be the importer of the SSE for purposes of the AB32 Cap-and-Trade regulations. Purchaser shall be responsible for all CARB reporting obligations

associated with importing the SSE or ACS energy pursuant to AB32 or the Cap and Trade Regulations. Such reporting does not relieve Seller from its responsibility of ensuring that the Specified Source and CARB ID are valid zero-emission resources or Asset Control System energy.

- Forward Contract:** This Agreement constitutes a sale of a nonfinancial commodity for deferred shipment or delivery that the parties intend to be physically settled and is excluded from the term “swap” as defined in the Commodity Exchange Act under 7 U.S.C. § 1a(47) and Commodities Future Trading Commission and Securities and Exchange Commission regulations under Title 17 of the Code of Federal Regulations Part 1 and Title 17 of the Code of Federal Regulations Parts 230, 240, and 241, respectively.
- True Up:** If at the end of each Calendar year the energy delivered by Seller has been less than 90% SSE or ACS energy, then the Seller will deliver an amount of California Carbon Allowances to the CITTTS account of the Purchaser, by January 31st of the following year, equal to the Deficient Volume multiplied by the then current Unspecified Resource Emissions Factor. The vintage of Allowances delivered pursuant to this section will correspond to the delivery year of the Deficient Volume.
- Governing Law:** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.
- Confidentiality:** Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).
- No Recourse to Members of Purchaser:** Purchaser is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et. seq.) and is a public entity separate from its constituent members. Purchaser will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Purchaser’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Purchaser or Purchaser’s constituent members, in connection with this Confirmation.

Credit

Requirements: Notwithstanding any other provision of the Agreement, Section 27 of the Master Agreement is not applicable to, and credit support is not required for either Party under this Confirmation.

Counterparts: This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

**Entire Agreement;
No Oral Agreements
Or Modifications:**

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

Definitions/

Interpretations: For purposes of this Confirmation, the following definitions and rules of interpretations shall apply:

“AB32” means the California Global Warming Solutions Act of 2006 and the Cap and Trade Regulations as each may be amended from time to time.

“Applicable Law” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to the California Program or any one or both of the Parties or the terms hereof.

“CAISO” means the California Independent System Operator, or its successor.

“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by CARB pursuant to the California Global Warming Solutions Act of 2006.

“CARB” means the California Air Resources Board or its regulatory successor.

“CPUC” means the California Public Utilities Commission or its regulatory successor.

“Delivery Date” means the date on which the Product is delivered from Seller to Purchaser.

“FERC” means the Federal Energy Regulatory Commission or its regulatory successor.

“Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“HE” means the hour ending.

“Off-Peak (LLH)” means all hours other than On-Peak hours.

“On-Peak (HLH)” means 6x16 (Monday through Saturday, HE 0700 – HE 2200 PPT, excluding NERC holidays).

“Specified Source” has the meaning set forth on the first page hereof.

“PPT” means Pacific prevailing time.

“Regulatorily Continuing” means the transaction complies with AB32, as amended from time to time, as of the Effective Date and the Delivery Date.

“WECC” means the Western Electricity Coordinating Council or its successor organizations.

“WSPP Service Schedule C Firm Energy” means Firm Energy as defined under Service Schedule C of the WSPP, Inc.’s WSPP Agreement effective June 20, 2017, as amended from time to time.

Please confirm that the terms and conditions stated herein accurately reflect the agreement reached by Purchaser and Seller by signing and returning by facsimile to Purchaser.

IN WITNESS WHEREOF, the Parties have signed this Confirmation effective as of the Effective Date.

East Bay Community Energy Authority, a California joint powers authority	Party 2
By:	By:
Name:	Name:
Title:	Title:

Exhibit A
SPECIFIED SOURCES

Source:	CARB ID:

**TRANSACTION CONFIRMATION
RESOURCE ADEQUACY**

This Confirmation Letter (“Confirmation”) confirms the Transaction between **Party 1** (“Seller”) and **East Bay Community Energy Authority**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties”, dated as of _____, 2018 (the “Confirmation Effective Date”) in which Seller agrees to provide to Buyer the right to the Product. Unless otherwise noted below, This Confirmation is governed by the terms and conditions of the WSP Agreement effective as of June 20, 2017, as amended to date, along with any schedules and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. If there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern. Capitalized terms not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 “Alternate Capacity” means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 “Availability Incentive Payments” is defined in the Tariff.
- 1.4 “Availability Standards” means the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 “Buyer” is defined in the introductory paragraph hereof.
- 1.6 “CAISO” means the California Independent System Operator Corporation or its successor.
- 1.7 “Capacity Replacement Price” means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the WSP Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price.”
- 1.8 “Confirmation” is defined in the introductory paragraph hereof.

- 1.9 “Confirmation Effective Date” is defined in the introductory paragraph hereof.
- 1.10 “Contract Price” means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the “RA Capacity Price Table” set forth in Section 4.9.
- 1.11 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3, which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.12 “CPUC Decisions” means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.13 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.14 “Delivery Period” is defined in Section 4.1 hereof.
- 1.15 “Delivery Point” is defined in Section 4.2 hereof.
- 1.16 “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) less any reductions to Contract Quantity made by Seller pursuant to Section 4.4 for such Showing Month.
- 1.17 “Excusable Event” means any event caused by a Planned Outage that is acceptably noticed pursuant to the Notification Deadline prescribed in Section 4.5 that excuses Seller from failure to otherwise perform its obligations under this Confirmation.
- 1.18 “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19 “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent

authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

- 1.21** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, “PG&E Other RA”, “Greater Bay Area RA”, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.23** “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. If the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25** “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, “PG&E Other RA”, “Greater Bay Area RA”, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26** “LRA” means Local Regulatory Authority as defined in the Tariff.
- 1.27** “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

- 1.28** “Monthly Delivery Period” means each calendar month during the Delivery Period and corresponds to each Showing Month.
- 1.29** “Monthly RA Capacity Payment” is defined in Section 4.9 hereof.
- 1.30** “Net Qualifying Capacity” is defined in the Tariff.
- 1.31** “Notification Deadline” is defined in Section 4.5 hereof.
- 1.32** “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.33** “Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.34** “Product” is defined in Article 3 hereof.
- 1.35** “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.36** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.
- 1.37** “RAR” means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.38** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.39** “Replacement Capacity” is defined in Section 4.7 hereof.
- 1.40** “Replacement Unit” is defined in Section 4.5.

- 1.41 “Resource Category” is as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.42 “Scheduling Coordinator” is defined in the Tariff.
- 1.43 “Seller” is defined in the introductory paragraph hereof.
- 1.44 “Showing Month” is the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.45 “Supply Plan” means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.46 “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.47 “Transaction” for purposes of this Confirmation means the transaction (as that term is used in the WSPP Agreement) that is evidenced by this Confirmation.
- 1.48 “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.49 “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.50 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.
- 1.51 “WSPP Agreement” is defined in the introductory paragraph hereof.

ARTICLE 2. UNIT INFORMATION

Name:	
Location:	
CAISO Resource ID:	
Unit SCID:	
Unit NQC:	
Unit EFC:	
Resource Type:	
Resource Category (1, 2, 3 or 4):	
Flexible RAR Category (1, 2 or 3):	
Path 26 (North or South):	
Local Capacity Area (if any, as of Confirmation Effective Date):	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	
Run Hour Restrictions:	

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity of RA Attributes, LRA Attributes, and if applicable, Flexible RA Attributes from each Unit, as further marked and specified in Section 3.1, Section 3.2 and Section 3.3 below (the “Product”), measured in MWs. The Product does not confer to Buyer any right to the electrical output from the Unit. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from the Unit in excess of the Unit’s Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 Product Attributes

- RA Attributes
- RA Attributes with Flexible RA Attributes
- LAR Attributes

- LAR Attributes with Flexible RA Attributes
- Flexible RA Attributes

3.2 Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

3.3 Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity as result of an Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period.

If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than an Excusable Event, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: _____, 20__, through _____, 20__.

4.2 Delivery Point

The Delivery Point for each Unit is the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity (MWs)	
Contract Month	RAR Contract Quantity (MWs)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

4.4 Adjustments to Contract Quantity

- (a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of the Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) Reductions in Unit NQC and/or Unit EFC: Seller’s obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract

Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The “Notification Deadline” in respect of a Showing Month shall be twenty (20) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a “Replacement Unit”), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than five days (5) before the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of the Product description in Article 3 and notice provisions in this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.
- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit’s Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written

confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Confirmation, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer the following damages in lieu of damages specified in Section 21.3 of the WSPP Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to Section 9 of the WSPP Agreement.
- (c) In the event that Seller fails, or fails to cause a Unit's Scheduling Coordinator, to notify Buyer of a Planned Outage with respect to such Unit in accordance with Section 4.5(a), Seller agrees that it shall reimburse Buyer for the backstop capacity costs, if any, charged to Buyer by the CAISO due to Seller's failure to provide such notice, provided that the amount that Seller is required to reimburse pursuant to this Section 4.7(c) shall in no event exceed the amount actually charged to Buyer by the CAISO pursuant to the Tariff for such failure.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4 and requests from Buyer pursuant to Section 4.6(b)(i), Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a non-Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Article 3, Section 4.4 and Section 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE TABLE

Contract Month	RAR Capacity Price (\$/kW-month)
January	\$X.XX
February	\$X.XX
March	\$X.XX
April	\$X.XX

Contract Month	RAR Capacity Price (\$/kW-month)
May	\$X.XX
June	\$X.XX
July	\$X.XX
August	\$X.XX
September	\$X.XX
October	\$X.XX
November	\$X.XX
December	\$X.XX

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above).

In accordance with Section 4.9 of this Confirmation and Sections 9 and 28 of the WSPP Agreement, all such Buyer revenues actually received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, owner, or operator, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Section 28 of the WSPP Agreement against any future

amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. [RESERVED]

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and

- (b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.

7.2 Seller Representations and Warranties

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of the Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In addition to the rights and obligations in Section 30 of the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder. Notwithstanding anything in this Confirmation to the contrary, to the extent any end user to which Buyer re-sells the Product ("End User") defaults (however defined) under its agreement to purchase the Product from Buyer ("End User Purchase Agreement") and such End User Purchase Agreement terminates as a result, Buyer may terminate this Confirmation upon notice to Seller and neither Party shall have any further liability to the other Party except that Buyer shall remain liable for any payment obligations owing to Seller hereunder with respect to accrued but unpaid

amounts for Products delivered prior to termination, but only to the extent that Buyer has received such payments from End User pursuant to the End User Purchase Agreement. Buyer agrees to promptly assign to Seller any and all claims that Buyer may have against End User relating to such End User's default under the End User Purchase Agreement by entering into documentation mutually agreeable to the Parties which is reasonably necessary to effectuate such assignment of claims.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ARTICLE 12. GENERAL PROVISIONS

12.1 Governing Law

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

12.2 No Recourse to Members of Buyer

Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et. seq.) and is a public entity separate from its constituent members. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer's constituent members, in connection with this Confirmation.

12.3 Credit Requirements

Notwithstanding any other provision of the Agreement, Section 27 of the Master Agreement is not applicable to, and credit support is not required for either Party under this Confirmation.

12.4 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

12.5 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

PARTY 1

**EAST BAY COMMUNITY ENERGY
AUTHORITY, A CALIFORNIA JOINT
POWERS AUTHORITY**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EBCE DRAFT
2/14/2018

Transaction Confirmation

This Transaction Confirmation (the “Confirmation”) is entered into this ____ day of _____, 2018 (the “Effective Date”), by and between **East Bay Community Energy Authority, a California joint powers authority**, (“Purchaser”) and **Party 2** (“Seller”), each referred to herein individually as a “Party” and collectively as the “Parties” regarding the purchase and sale of Portfolio Content Category 1 Product [**Defined Product Type**] RECs (“the Product”) pursuant to the terms and conditions contained herein. The Master Agreement, WSPP Service Schedule R and this Confirmation shall be collectively referred to herein as the “Agreement” and supersede and replace any prior oral or written confirmation regarding the Transaction (as defined below). Terms capitalized but not defined herein shall have the meaning as set forth in the Master Agreement, WSPP Service Schedule R or the CAISO Tariff.

Contact Information:

Seller:	Purchaser: East Bay Community Energy Authority, a California joint powers authority
Address:	Address: 1111 Broadway, Suite 300 Oakland, CA 94607
Contract Representative:	Contract Representative: Nick Chaset
Phone:	Phone: 510-670-5936
Email:	Email: Nchaset@ebce.org
Settlements Contact:	Settlements Contact: Nick Chaset
Phone:	Phone: 510-670-5936
Email:	Email: Nchaset@ebce.org

Master Agreement: WSPP Agreement effective June 20, 2017, as amended to date, including; WSPP Service Schedule R. Any conflicts between the Master Agreement and the Confirmation shall be resolved in the following order of control: first, the Confirmation; and second, the Master Agreement.

Transaction: Seller owns or procures Seller’s Entitlement Interest in the output of certain generating facilities, which are identified in this Confirmation, each of which qualifies as an eligible renewable energy resource (“ERR”) during the Delivery Term (as defined below) under the California RPS (as defined below), as codified at California Public Utilities Code Section 399.11, et seq., and Seller desires to sell to Purchaser, and Purchaser desires to accept from Seller, Product produced by such generating facilities pursuant to the terms and conditions set forth herein.

Product: [**Defined Product Type**] RECs as such is described under Section **R-XYZ** of WSPP Service Schedule R. More specifically subject to Eligibility, Transfer of RECS, and Change of Law Provisions, the Product shall comply with

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Section 399.16(b)(1)(A) Portfolio Content Category Product 1, as defined by CPUC Decision 11-12-052, consisting of Service Schedule B Energy and associated Green Attributes, including RECs, produced during the Delivery Term by the Projects listed herein, each of which is: (i) certified as an ERR for the California RPS and registered with WREGIS, and (ii) from which Seller is entitled, pursuant to its agreements, to Seller's Entitlement Interest of the output of the Energy and associated Green Attributes, and such output is used to source the Product delivered hereunder during the Delivery Term (collectively, the "Generating Facilities"). The Product shall include Energy and associated RECs, but does not include any other non-renewable and environmental attributes (e.g., Ancillary Services or Resource Adequacy Capacity).

Seller: **Party 1**

Purchaser: **East Bay Community Energy Authority, a California joint powers authority**

Delivery Term: _____, 20__ through _____, 20__.

Generating Facilities: Identified Below and further defined in Exhibit A.

Facility Name	Resource ID	WREGIS ID	Seller's Entitlement Interest	CEC Certification No.	Estimated Annual Generation (MWh)
Resource 1	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 2	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 3	XXXX	WXXXX	X.X%	XXXX	XXXX
Total					XXXX

Delivery Points: Each Generating Facilities' respective Point of Interconnection with the CAISO Balancing Authority Area.

Scheduling: Seller or Seller's designee shall schedule and deliver the Energy portion of the Product, on behalf of Purchaser, to the CAISO at the applicable Delivery Point, in accordance with the requirements and the prevailing protocols of the WECC and CAISO Tariff.

Contract Quantity: Product generation from **X.X%** of Seller's Entitlement Interest generated from the Generating Facilities. The amount of Product delivered from Seller to Purchaser during any applicable dispatch interval during the

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Delivery Term of the Transaction shall be limited to Seller's Entitlement Interest in the output of each Generating Facility listed herein.

Contract Price: The Contract Price for Energy ("Energy Contract Price") shall be equal to the CAISO Locational Marginal Price calculated at the Delivery Point PNode per megawatt hour (as the same may be netted in accordance with the *Payment* section below).

The Contract Price for each REC produced and transferred from Seller to Purchaser ("REC Contract Price") shall be equal to **\$XX.XX**.

Eligibility: Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Purchaser qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009] The aggregate "commercially reasonable efforts" expenditures for Eligibility, Transfer of RECS, and Change of Law Provisions (Section R-5.2.2(b)) are limited to the Capped Amount.

Transfer of RECs: Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Term of this Agreement the Renewable Energy Credits transferred to Purchaser conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1, Non-modifiable. D.11-01-025]

Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2, Non-modifiable. D.11-01-025]

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Purchaser warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

The Transfer of RECs shall be made in accordance with the rules and regulations of WREGIS. For each month during the Delivery Term, Seller shall transfer RECs from its WREGIS account to Purchaser's WREGIS account within ten (10) Business Days of creation of the RECs. Purchaser's WREGIS account ID is _____.

Vintage: Calendar Year 20__.

Payment: Energy: To simplify the scheduling and settlement process based on the current CAISO market scheduling and settlement protocols, whereby CAISO will pay the Seller for the value of the Energy produced and delivered by the Generating Facilities at the Delivery Point on behalf of Purchaser, the Parties agree that Seller shall schedule and deliver an amount of Energy consistent with the Contract Quantity during the Delivery Period with and to the CAISO at the Delivery Point(s), and Seller shall receive payment for the Energy from the CAISO for such delivery based on the CAISO Locational Marginal Price. Consequently, and consistent with applicable netting provisions of the Master Agreement, Purchaser and Seller hereby agree to net the payment for Energy Seller receives from the CAISO against the Contract Price, such that the net payment Seller shall receive from Purchaser shall be calculated as follows:

Payment Due from Purchaser to Seller = Delivered and Accepted Contract Quantity * REC Contract Price.

RECs: Purchaser shall pay Seller for transferred RECs within (10) Business Days of receipt of Seller's invoice subsequent to the transfer of RECs. The invoices issued by Seller hereunder shall include a statement detailing the RECs conveyed via WREGIS (i.e., Project Name, Vintage Month, CEC RPS ID, Contract Quantity and REC Contract Price).

**Environmental
Attributes:**

All Attributes. The Product is a Resource Contingent Bundled REC sourced from the Generating Facilities. The Parties agree that the Product will be sourced only from the specific Generating Facilities identified in the Confirmation with no substitutions.

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**Applicable
Program:**

State of California Renewable Portfolio Standard Program (hereinafter referred to as “California RPS”, “Renewables Portfolio Standards” or “RPS Program”), as codified at California Public Utilities Code Section 399.11, *et seq.*, and requiring that a specified percentage of a load-serving entity’s retail sales should be supplied with electricity generated by eligible ERRs.

Tracking System:

RECs associated with the Product shall be tracked using WREGIS. In addition to any audit rights that Purchaser may have under the Master Agreement, Seller shall, upon Purchaser’s reasonable request, provide documentation which may include meter data as recorded by a CAISO certified meter, sufficient to demonstrate that the Product has been conveyed and delivered, in accordance with the terms of this Confirmation.

**Representations and
Warranties:**

Each Party represents and warrants to the other (i) that it is an “eligible commercial entity” and “eligible contract participant” within the meaning of the Commodity Exchange Act; (ii) this transaction has been subject to individual negotiation by the Parties; and, (iii) all necessary steps have been taken to allow the Green Attributes to be transferred to Purchaser to be tracked in WREGIS.

Seller further represents and warrants to Purchaser that:

- (i) Seller has the right to sell the Product and holds the rights to Seller’s Entitlement Interest in all Product from the Generating Facilities;
- (ii) Seller has not sold the Product or any Green Attribute of the Product to be transferred to Purchaser to any other person or entity;
- (iii) Energy and Green Attributes to be purchased and sold pursuant to this Confirmation are not committed to another party;
- (iv) Seller represents and warrants that electricity from the Generating Facilities is available to be procured by Purchaser, and Seller is not currently selling and will not sell the electricity produced by the Generating Facilities back to the Generating Facilities;
- (v) the Product is free and clear of all liens or other encumbrances; and

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(vi) it will cooperate and work with Purchaser, the CEC, and/or the CPUC to provide any documentation required by the CPUC or CEC to support the Product's classification as a Portfolio Content Category 1 Product as set forth in California Public Utilities Code Section 399.16(b)(1)(A).

Furthermore, Seller hereby sells and conveys all Green Attributes associated with the Product produced from the Generating Facilities (other than resource adequacy attributes and ancillary services) to Purchaser as part of the Portfolio Content Category 1 Product being delivered.

**Change in Law
Provisions:**

The Product shall be Regulatorily Continuing requiring that Seller make commercially reasonable efforts to obtain compliance with Changes in Law in the California RPS, provided that such costs should not be greater than **\$X.XX** (the "Capped Amount"). This provision shall not apply to any Product that was Delivered and Accepted prior to any Change in Law if such Product complies with the California RPS that existed when it was Delivered and Accepted.

This Confirmation is executed for the express purposes of complying with the California RPS and Section 399.16(b)(1)(A) of the California Public Utilities Code. The Parties acknowledge that the CEC and/or CPUC may be modifying mandatory contract language, altering the procurement and product qualification rules, and updating the relevant RPS Eligibility Guidebook in a manner consistent with that legislation. If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Transaction becomes impossible or impracticable, or otherwise revokes or eliminates the California RPS or language required to conform to the California RPS, the Parties hereto agree to negotiate in good faith to amend this Confirmation to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement.

**Reporting
Obligation:**

Purchaser shall have no responsibility (whether regulatory or financial) for greenhouse gas emissions associated with the Product, and any such obligation shall be fulfilled by or at the direction of Seller at its own cost.

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Review: To monitor compliance with this Confirmation, each Party reserves the right to review during normal business hours and at its own expense, for up to two (2) years following delivery of the Product under this Confirmation, and with reasonable advance notice to the other Party, and to the extent that such other Party is in possession of such information, information required to verify that the Product sold under this Confirmation was not otherwise sold by Seller to a third party.

Confidentiality: Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Except as provided in this *Confidentiality* section and the California Public Records Act and subject to and without limiting Section R-7, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to persons investing in, providing funding to or acquiring it or its affiliates, and to its and the foregoing persons' respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, Governmental Authority or agency having jurisdiction over a Party, including the California Public Records Act, that Party may release Confidential Information, or a portion thereof, as required by the Applicable Law, statute, ordinance, decision, order or regulation. A Party may disclose Confidential Information to accountants in connection with audits. In the event a Party is required to release Confidential Information, such Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses), at its sole cost, to cause the recipient of the Confidential Information to treat such information in a confidential manner, and to prevent such information from being disclosed or otherwise becoming part of the public domain. Parties acknowledge that Purchaser is obligated to provide Confidential Information to the CPUC and CEC for regulatory compliance purposes for the California RPS program, and Seller waives the prior notice requirement and authorizes such disclosures to the CPUC and CEC.

**Applicable Law/
Governing Law:**

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of

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conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17, Applicable Law, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009].

**FERC Standard of
Review; Mobile-
Sierra Waiver:**

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely 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) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).

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Forward Contract: This Confirmation constitutes a sale of a nonfinancial commodity for deferred shipment or delivery that the parties intend to be physically settled and is excluded from the term “swap” as defined in the Commodity Exchange Act under 7 U.S.C. § 1a(47) and the regulations of the Commodity Future Trading Commission and Securities and Exchange Commission, with further reference to 77 Fed. Reg. 48233-35.

**Amendments
To The Master
Agreement:**

Assignment. Section 14, Transfer of Interest in Agreement, of the WSPP Agreement shall for purposes of this Confirmation be deleted in its entirety and replaced with the following: “Neither Party shall transfer, assign or sell its rights as set forth in this Confirmation, to any third party without first obtaining the prior written consent of the other Party. Notwithstanding the foregoing, no such consent shall be required to the extent that the transfer or sale occurs (i) to an affiliate of a Party by operation of law, through merger or acquisition, or as the result of the sale or transfer of all or substantially all of the transferring Party’s assets, and the resulting entity’s creditworthiness is equal to or higher than that of such Party as of the Effective Date of this Confirmation, or (ii) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Confirmation is to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any, as of the Effective Date of this Confirmation.”

Confidentiality. Section 30, Confidentiality, of the WSPP Agreement is amended for purposes of this Confirmation by inserting at the end of Section 30.1(6) prior to the semicolon the following: “or to Deliver RECs pursuant to the requirements of WREGIS”.

**No Recourse to
Members of
Purchaser:**

Purchaser is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et. seq.) and is a public entity separate from its constituent members. Purchaser will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Purchaser’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of

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Purchaser or Purchaser's constituent members, in connection with this Confirmation.

Credit

Requirements: Notwithstanding any other provision of the Agreement, Section 27 of the Master Agreement is not applicable to, and credit support is not required for either Party under this Confirmation.

Counterparts: This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

**Entire Agreement;
 No Oral Agreements
 Or Modifications:**

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

Definitions/

Interpretations: For purposes of the Confirmation, the following definitions and rules of interpretations shall apply:

"Applicable Law" means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders or any Governmental Authority or arbitrator that apply to RPS or any one or both of the Parties or the terms hereof.

"CAISO" means the California ISO.

"CAISO Tariff" means the CAISO FERC Electric Tariff.

"Confidential Information" means all oral and written information exchanged between the Parties with respect to the subject matter of this Agreement. The following information does not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by either Party on a non-confidential basis prior to this Agreement; and (c) information that becomes available to

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either Party on a non-confidential basis from a source other than the other Party if such source was not subject to any prohibition against disclosing the information to such Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facilities, and its avoided emission of pollutants. Green Attributes include but are not limited to RECs, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) 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 the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, including but not limited to 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 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 a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Generating Facilities, (ii) production tax credits associated with the construction or operation of the Generating Facilities and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Generating Facilities for compliance with local, state, or federal operating and/or air quality permits. If the Generating Facilities are biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Purchaser with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Generating Facilities.

“Point of Interconnection” means the physical point at which a Generating Facility interconnects to the CAISO Balancing Authority Area.

“WECC” means the Western Electricity Coordinating Council or its successor organizations.

“WREGIS” mean the Western Renewable Energy Generation Information System, or its successor organization.

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The Parties agree that the terms and conditions stated herein accurately reflect the agreement reached by the Purchaser and Seller.

IN WITNESS WHEREOF, the Parties have signed the Confirmation effective as of the Effective Date.

East Bay Community Energy Authority, a California joint powers authority	Party 2
By:	By:
Name:	Name:
Title:	Title:

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EXHIBIT A

Unit Name:
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type:

Unit Name:
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type:

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Transaction Confirmation

This Transaction Confirmation (the “Confirmation”) is entered into this ____ day of _____, 2018 (the “Effective Date”), by and between **East Bay Community Energy Authority**, a California joint powers authority, (“Purchaser”) and **Party 2** (“Seller”), each referred to herein individually as a “Party” and collectively as the “Parties” regarding the purchase and sale of Portfolio Content Category 2 Product [**Defined Product Type**] RECs (“the Product”) pursuant to the terms and conditions contained herein. The Master Agreement, WSPP Service Schedule R and this Confirmation shall be collectively referred to herein as the “Agreement” and supersede and replace any prior oral or written confirmation regarding the Transaction (as defined below). Terms capitalized but not defined herein shall have the meaning as set forth in the Master Agreement, WSPP Service Schedule R or the CAISO Tariff.

Contact Information:

Seller:	Purchaser: East Bay Community Energy Authority, a California joint powers authority
Address:	Address: 1111 Broadway, Suite 300 Oakland, CA 94607
Contract Representative:	Contract Representative: Nick Chaset
Phone:	Phone: 510-670-5936
Email:	Email: Nchaset@ebce.org
Settlements Contact:	Settlements Contact: Nick Chaset
Phone:	Phone: 510-670-5936
Email:	Email: Nchaset@ebce.org

Master Agreement: WSPP Agreement effective June 20, 2017, as amended to date, including; WSPP Service Schedule R. Any conflicts between the Master Agreement and the Confirmation shall be resolved in the following order of control: first, the Confirmation; and second, the Master Agreement.

Transaction: Seller owns or procures Seller’s Entitlement Interest in the output of certain generating facilities, which are identified in this Confirmation, each of which qualifies as an eligible renewable energy resource (“ERR”) during the Delivery Term (as defined below) under the California RPS (as defined below), as codified at California Public Utilities Code Section 399.11, et seq., and Seller desires to sell to Purchaser, and Purchaser desires to accept from Seller, Product produced by such generating facilities pursuant to the terms and conditions set forth herein.

Product: [**Defined Product Type**] RECs as such is described under Section **R-XYZ** of WSPP Service Schedule R. More specifically subject to Eligibility, Transfer of RECS, and Change of Law Provisions, the Product shall comply with

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Section 399.16(b)(2) Portfolio Content Category Product 2, as defined by CPUC Decision 11-12-052, consisting of Service Schedule B Energy and associated Green Attributes, including RECs, produced during the Delivery Term by the Projects listed herein, each of which is: (i) certified as an ERR for the California RPS and registered with WREGIS, and (ii) from which Seller is entitled, pursuant to its agreements, to Seller's Entitlement Interest of the output of the Energy and associated Green Attributes, and such output is used to source the Product delivered hereunder during the Delivery Term (collectively, the "Generating Facilities"). The Product shall include Energy and associated RECs, but does not include any other non-renewable and environmental attributes (e.g., Ancillary Services or Resource Adequacy Capacity).

Seller: **Party 1**

Purchaser: **East Bay Community Energy Authority, a California joint powers authority**

Delivery Term: _____, 20__ through _____, 20__.

Generating Facilities: Identified Below and further defined in Exhibit A.

Facility Name	Resource ID	WREGIS ID	Seller's Entitlement Interest	CEC Certification No.	Estimated Annual Generation (MWh)
Resource 1	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 2	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 3	XXXX	WXXXX	X.X%	XXXX	XXXX
Total					XXXX

Delivery Points: **TBD**

Scheduling: Seller or Seller's designee shall schedule and deliver the Energy portion of the Product, on behalf of Purchaser, to the CAISO at the applicable Delivery Point, in accordance with the requirements and the prevailing protocols of the WECC and CAISO Tariff.

Contract Quantity: Product generation from **X.X%** of Seller's Entitlement Interest generated from the Generating Facilities. The amount of Product delivered from Seller to Purchaser during any applicable dispatch interval during the Delivery Term of the Transaction shall be limited to Seller's Entitlement Interest in the output of each Generating Facility listed herein.

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Contract Price: The Contract Price for Energy (“Energy Contract Price”) shall be equal to the CAISO Locational Marginal Price calculated at the Delivery Point PNode per megawatt hour (as the same may be netted in accordance with the *Payment* section below).

The Contract Price for each REC produced and transferred from Seller to Purchaser (“REC Contract Price”) shall be equal to **\$XX.XX**.

Eligibility: Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Purchaser qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009] The aggregate “commercially reasonable efforts” expenditures for Eligibility, Transfer of RECS, and Change of Law Provisions (Section R-5.2.2(b)) are limited to the Capped Amount.

Transfer of RECs: Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Term of this Agreement the Renewable Energy Credits transferred to Purchaser conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1, Non-modifiable. D.11-01-025]

Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2, Non-modifiable. D.11-01-025]

Purchaser warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western

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Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

The Transfer of RECs shall be made in accordance with the rules and regulations of WREGIS. For each month during the Delivery Term, Seller shall transfer RECs from its WREGIS account to Purchaser's WREGIS account within ten (10) Business Days of creation of the RECs. Purchaser's WREGIS account ID is _____.

Vintage: Calendar Year 20__.

Payment: Energy: To simplify the scheduling and settlement process based on the current CAISO market scheduling and settlement protocols, whereby CAISO will pay the Seller for the value of the Energy produced and delivered by the Generating Facilities at the Delivery Point on behalf of Purchaser, the Parties agree that Seller shall schedule and deliver an amount of Energy consistent with the Contract Quantity during the Delivery Period with and to the CAISO at the Delivery Point(s), and Seller shall receive payment for the Energy from the CAISO for such delivery based on the CAISO Locational Marginal Price. Consequently, and consistent with applicable netting provisions of the Master Agreement, Purchaser and Seller hereby agree to net the payment for Energy Seller receives from the CAISO against the Contract Price, such that the net payment Seller shall receive from Purchaser shall be calculated as follows:

Payment Due from Purchaser to Seller = Delivered and Accepted Contract Quantity * REC Contract Price.

RECs: Purchaser shall pay Seller for transferred RECs within (10) Business Days of receipt of Seller's invoice subsequent to the transfer of RECs. The invoices issued by Seller hereunder shall include a statement detailing the RECs conveyed via WREGIS (i.e., Project Name, Vintage Month, CEC RPS ID, Contract Quantity and REC Contract Price).

**Environmental
Attributes:**

All Attributes. The Product is a Resource Contingent Bundled REC sourced from the Generating Facilities. The Parties agree that the Product will be sourced only from the specific Generating Facilities identified in the Confirmation with no substitutions.

**Applicable
Program:**

State of California Renewable Portfolio Standard Program (hereinafter referred to as "California RPS", "Renewables Portfolio Standards" or "RPS

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Program”), as codified at California Public Utilities Code Section 399.11, *et seq.*, and requiring that a specified percentage of a load-serving entity’s retail sales should be supplied with electricity generated by eligible ERRs.

Tracking System: RECs associated with the Product shall be tracked using WREGIS. In addition to any audit rights that Purchaser may have under the Master Agreement, Seller shall, upon Purchaser’s reasonable request, provide documentation which may include meter data as recorded by a CAISO certified meter, sufficient to demonstrate that the Product has been conveyed and delivered, in accordance with the terms of this Confirmation.

Representations and Warranties:

Each Party represents and warrants to the other (i) that it is an “eligible commercial entity” and “eligible contract participant” within the meaning of the Commodity Exchange Act; (ii) this transaction has been subject to individual negotiation by the Parties; and, (iii) all necessary steps have been taken to allow the Green Attributes to be transferred to Purchaser to be tracked in WREGIS.

Seller further represents and warrants to Purchaser that:

- (i) Seller has the right to sell the Product and holds the rights to Seller’s Entitlement Interest in all Product from the Generating Facilities;
- (ii) Seller has not sold the Product or any Green Attribute of the Product to be transferred to Purchaser to any other person or entity;
- (iii) Energy and Green Attributes to be purchased and sold pursuant to this Confirmation are not committed to another party;
- (iv) Seller represents and warrants that electricity from the Generating Facilities is available to be procured by Purchaser, and Seller is not currently selling and will not sell the electricity produced by the Generating Facilities back to the Generating Facilities;
- (v) the Product is free and clear of all liens or other encumbrances; and
- (vi) it will cooperate and work with Purchaser, the CEC, and/or the CPUC to provide any documentation required by the CPUC or CEC

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to support the Product's classification as a Portfolio Content Category 2 Product as set forth in California Public Utilities Code Section 399.16(b)(2).

Furthermore, Seller hereby sells and conveys all Green Attributes associated with the Product produced from the Generating Facilities (other than resource adequacy attributes and ancillary services) to Purchaser as part of the Portfolio Content Category 2 Product being delivered.

**Change in Law
Provisions:**

The Product shall be Regulatorily Continuing requiring that Seller make commercially reasonable efforts to obtain compliance with Changes in Law in the California RPS, provided that such costs should not be greater than **\$X.XX** (the "Capped Amount"). This provision shall not apply to any Product that was Delivered and Accepted prior to any Change in Law if such Product complies with the California RPS that existed when it was Delivered and Accepted.

This Confirmation is executed for the express purposes of complying with the California RPS and Section 399.16(b)(2) of the California Public Utilities Code. The Parties acknowledge that the CEC and/or CPUC may be modifying mandatory contract language, altering the procurement and product qualification rules, and updating the relevant RPS Eligibility Guidebook in a manner consistent with that legislation. If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Transaction becomes impossible or impracticable, or otherwise revokes or eliminates the California RPS or language required to conform to the California RPS, the Parties hereto agree to negotiate in good faith to amend this Confirmation to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement.

**Reporting
Obligation:**

Purchaser shall have no responsibility (whether regulatory or financial) for greenhouse gas emissions associated with the Product, and any such obligation shall be fulfilled by or at the direction of Seller at its own cost.

Review:

To monitor compliance with this Confirmation, each Party reserves the right to review during normal business hours and at its own expense, for up to two (2) years following delivery of the Product under this Confirmation, and with reasonable advance notice to the other Party, and

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to the extent that such other Party is in possession of such information, information required to verify that the Product sold under this Confirmation was not otherwise sold by Seller to a third party.

Confidentiality:

Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Except as provided in this *Confidentiality* section and the California Public Records Act and subject to and without limiting Section R-7, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to persons investing in, providing funding to or acquiring it or its affiliates, and to its and the foregoing persons' respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, Governmental Authority or agency having jurisdiction over a Party, including the California Public Records Act, that Party may release Confidential Information, or a portion thereof, as required by the Applicable Law, statute, ordinance, decision, order or regulation. A Party may disclose Confidential Information to accountants in connection with audits. In the event a Party is required to release Confidential Information, such Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses), at its sole cost, to cause the recipient of the Confidential Information to treat such information in a confidential manner, and to prevent such information from being disclosed or otherwise becoming part of the public domain. Parties acknowledge that Purchaser is obligated to provide Confidential Information to the CPUC and CEC for regulatory compliance purposes for the California RPS program, and Seller waives the prior notice requirement and authorizes such disclosures to the CPUC and CEC.

**Applicable Law/
Governing Law:**

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17, Applicable Law, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009].

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**FERC Standard of
Review; Mobile-
Sierra Waiver:**

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely 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) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).

Forward Contract:

This Confirmation constitutes a sale of a nonfinancial commodity for deferred shipment or delivery that the parties intend to be physically settled and is excluded from the term “swap” as defined in the Commodity Exchange Act under 7 U.S.C. § 1a(47) and the regulations of the Commodity Future Trading Commission and Securities and Exchange Commission, with further reference to 77 Fed. Reg. 48233-35.

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**Amendments
To The Master
Agreement:**

Assignment. Section 14, Transfer of Interest in Agreement, of the WSPP Agreement shall for purposes of this Confirmation be deleted in its entirety and replaced with the following: “Neither Party shall transfer, assign or sell its rights as set forth in this Confirmation, to any third party without first obtaining the prior written consent of the other Party. Notwithstanding the foregoing, no such consent shall be required to the extent that the transfer or sale occurs (i) to an affiliate of a Party by operation of law, through merger or acquisition, or as the result of the sale or transfer of all or substantially all of the transferring Party’s assets, and the resulting entity’s creditworthiness is equal to or higher than that of such Party as of the Effective Date of this Confirmation, or (ii) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Confirmation is to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any, as of the Effective Date of this Confirmation.”

Confidentiality. Section 30, Confidentiality, of the WSPP Agreement is amended for purposes of this Confirmation by inserting at the end of Section 30.1(6) prior to the semicolon the following: “or to Deliver RECs pursuant to the requirements of WREGIS”.

**No Recourse to
Members of
Purchaser:**

Purchaser is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et. seq.) and is a public entity separate from its constituent members. Purchaser will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Purchaser’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Purchaser or Purchaser’s constituent members, in connection with this Confirmation.

**Credit
Requirements:**

Notwithstanding any other provision of the Agreement, Section 27 of the Master Agreement is not applicable to, and credit support is not required for either Party under this Confirmation.

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Counterparts: This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

**Entire Agreement;
No Oral Agreements
Or Modifications:**

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

Definitions/

Interpretations: For purposes of the Confirmation, the following definitions and rules of interpretations shall apply:

“Applicable Law” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders or any Governmental Authority or arbitrator that apply to RPS or any one or both of the Parties or the terms hereof.

“CAISO” means the California ISO.

“CAISO Tariff” means the CAISO FERC Electric Tariff.

“Confidential Information” means all oral and written information exchanged between the Parties with respect to the subject matter of this Agreement. The following information does not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by either Party on a non-confidential basis prior to this Agreement; and (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not subject to any prohibition against disclosing the information to such Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facilities, and its avoided emission of pollutants. Green Attributes include but are not limited to RECs, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided

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emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, including but not limited to 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 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 a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Generating Facilities, (ii) production tax credits associated with the construction or operation of the Generating Facilities and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Generating Facilities for compliance with local, state, or federal operating and/or air quality permits. If the Generating Facilities are biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Purchaser with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Generating Facilities.

"WECC" means the Western Electricity Coordinating Council or its successor organizations.

"WREGIS" mean the Western Renewable Energy Generation Information System, or its successor organization.

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The Parties agree that the terms and conditions stated herein accurately reflect the agreement reached by the Purchaser and Seller.

IN WITNESS WHEREOF, the Parties have signed the Confirmation effective as of the Effective Date.

East Bay Community Energy Authority, a California joint powers authority	Party 2
By:	By:
Name:	Name:
Title:	Title:

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EXHIBIT A

Unit Name:
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type:

Unit Name:
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type:

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Transaction Confirmation

This Transaction Confirmation (the “Confirmation”) is entered into this ____ day of _____, 2018 (the “Effective Date”), by and between **East Bay Community Energy Authority**, a California joint powers authority, (“Purchaser”) and **Party 2** (“Seller”), each referred to herein individually as a “Party” and collectively as the “Parties” regarding the purchase and sale of Portfolio Content Category 3 Product [**Defined Product Type**] RECs (“the Product”) pursuant to the terms and conditions contained herein. The Master Agreement, WSPP Service Schedule R and this Confirmation shall be collectively referred to herein as the “Agreement” and supersede and replace any prior oral or written confirmation regarding the Transaction (as defined below). Terms capitalized but not defined herein shall have the meaning as set forth in the Master Agreement, WSPP Service Schedule R or the CAISO Tariff.

Contact Information:

Seller:	Purchaser: East Bay Community Energy Authority, a California joint powers authority
Address:	Address: 1111 Broadway, Suite 300 Oakland, CA 94607
Contract Representative:	Contract Representative: Nick Chaset
Phone:	Phone: 510-670-5936
Email:	Email: Nchaset@ebce.org
Settlements Contact:	Settlements Contact: Nick Chaset
Phone:	Phone: 510-670-5936
Email:	Email: Nchaset@ebce.org

Master Agreement: WSPP Agreement effective June 20, 2017, as amended to date, including; WSPP Service Schedule R. Any conflicts between the Master Agreement and the Confirmation shall be resolved in the following order of control: first, the Confirmation; and second, the Master Agreement.

Transaction: Seller owns unbundled RECs produced from certain generating facilities, which are identified in this Confirmation, each of which qualifies as an eligible renewable energy resource (“ERR”) during the Delivery Term (as defined below) under the California RPS (as defined below), as codified at California Public Utilities Code Section 399.11, et seq., and Seller desires to sell to Purchaser, and Purchaser desires to accept from Seller, Product produced by such generating facilities pursuant to the terms and conditions set forth herein.

Product: [**Defined Product Type**] RECs as such is described under Section **R-XYZ** of WSPP Service Schedule R. More specifically subject to Eligibility, Transfer of RECS, and Change of Law Provisions, the Product shall comply with

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Section 399.16(b)(3) Portfolio Content Category 3 Product, as defined by CPUC Decision 11-12-052, consisting of unbundled RECs produced by the Projects listed herein, each of which is: (i) certified as an ERR for the California RPS and registered with WREGIS, and (ii) from which Seller is entitled, pursuant to its agreements, to Seller's Entitlement Interest of the output of the Energy and associated Green Attributes, and such output is used to source the Product delivered hereunder (collectively, the "Generating Facilities"). The Product shall include unbundled RECs, but does not include any other non-renewable and environmental attributes (e.g., Ancillary Services or Resource Adequacy Capacity).

Seller: **Party 1**

Purchaser: **East Bay Community Energy Authority, a California joint powers authority**

Delivery Term: _____, 20__ through _____, 20__.

Generating Facilities: Identified Below and further defined in Exhibit A.

Facility Name	Resource ID	WREGIS ID	Seller's Entitlement Interest	CEC Certification No.	Estimated Annual Generation (MWh)
Resource 1	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 2	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 3	XXXX	WXXXX	X.X%	XXXX	XXXX
Total					XXXX

Delivery Points: **TBD**

Contract Quantity: **TBD**

Contract Price: The Contract Price for each REC produced and transferred from Seller to Purchaser ("REC Contract Price") shall be equal to **\$XX.XX**.

Eligibility: Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Purchaser qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution

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of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009] The aggregate “commercially reasonable efforts” expenditures for Eligibility, Transfer of RECS, and Change of Law Provisions (Section R-5.2.2(b)) are limited to the Capped Amount.

Transfer of RECs: Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Term of this Agreement the Renewable Energy Credits transferred to Purchaser conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1, Non-modifiable. D.11-01-025]

Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2, Non-modifiable. D.11-01-025]

Purchaser warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

The Transfer of RECs shall be made in accordance with the rules and regulations of WREGIS. For each month during the Delivery Term, Seller shall transfer RECs from its WREGIS account to Purchaser’s WREGIS account within ten (10) Business Days of creation of the RECs. Purchaser’s WREGIS account ID is _____.

Vintage: Calendar Year 20__.

Payment: Payment Due from Purchaser to Seller = Delivered and Accepted Contract Quantity * REC Contract Price.

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RECs: Purchaser shall pay Seller for transferred RECs within (10) Business Days of receipt of Seller's invoice subsequent to the transfer of RECs. The invoices issued by Seller hereunder shall include a statement detailing the RECs conveyed via WREGIS (i.e., Project Name, Vintage Month, CEC RPS ID, Contract Quantity and REC Contract Price).

**Environmental
Attributes:**

All Attributes. The Product is a Resource Contingent Bundled REC sourced from the Generating Facilities. The Parties agree that the Product will be sourced only from the specific Generating Facilities identified in the Confirmation with no substitutions.

**Applicable
Program:**

State of California Renewable Portfolio Standard Program (hereinafter referred to as "California RPS", "Renewables Portfolio Standards" or "RPS Program"), as codified at California Public Utilities Code Section 399.11, *et seq.*, and requiring that a specified percentage of a load-serving entity's retail sales should be supplied with electricity generated by eligible ERRs.

Tracking System:

RECs associated with the Product shall be tracked using WREGIS. In addition to any audit rights that Purchaser may have under the Master Agreement, Seller shall, upon Purchaser's reasonable request, provide documentation which may include meter data as recorded by a CAISO certified meter, sufficient to demonstrate that the Product has been conveyed and delivered, in accordance with the terms of this Confirmation.

**Representations and
Warranties:**

Each Party represents and warrants to the other (i) that it is an "eligible commercial entity" and "eligible contract participant" within the meaning of the Commodity Exchange Act; (ii) this transaction has been subject to individual negotiation by the Parties; and, (iii) all necessary steps have been taken to allow the Green Attributes to be transferred to Purchaser to be tracked in WREGIS.

Seller further represents and warrants to Purchaser that:

- (i) Seller has the right to sell the Product and holds the rights to Seller's Entitlement Interest in all Product from the Generating Facilities;
- (ii) Seller has not sold the Product or any Green Attribute of the Product to be transferred to Purchaser to any other person or

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- entity;
- (iii) Unbundled RECs to be purchased and sold pursuant to this Confirmation are not committed to another party;
 - (iv) the Product is free and clear of all liens or other encumbrances;
and
 - (v) it will cooperate and work with Purchaser, the CEC, and/or the CPUC to provide any documentation required by the CPUC or CEC to support the Product's classification as a Portfolio Content Category 3 Product as set forth in California Public Utilities Code Section 399.16(b)(3).

Furthermore, Seller hereby sells and conveys all Green Attributes associated with the Product produced from the Generating Facilities (other than resource adequacy attributes and ancillary services) to Purchaser as part of the Portfolio Content Category 3 Product being delivered.

**Change in Law
Provisions:**

The Product shall be Regulatorily Continuing requiring that Seller make commercially reasonable efforts to obtain compliance with Changes in Law in the California RPS, provided that such costs should not be greater than **\$X.XX** (the "Capped Amount"). This provision shall not apply to any Product that was Delivered and Accepted prior to any Change in Law if such Product complies with the California RPS that existed when it was Delivered and Accepted.

This Confirmation is executed for the express purposes of complying with the California RPS and Section 399.16(b)(3) of the California Public Utilities Code. The Parties acknowledge that the CEC and/or CPUC may be modifying mandatory contract language, altering the procurement and product qualification rules, and updating the relevant RPS Eligibility Guidebook in a manner consistent with that legislation. If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Transaction becomes impossible or impracticable, or otherwise revokes or eliminates the California RPS or language required to conform to the California RPS, the Parties hereto agree to negotiate in good faith to amend this Confirmation to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement.

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**Reporting
Obligation:**

Purchaser shall have no responsibility (whether regulatory or financial) for greenhouse gas emissions associated with the Product, and any such obligation shall be fulfilled by or at the direction of Seller at its own cost.

Review:

To monitor compliance with this Confirmation, each Party reserves the right to review during normal business hours and at its own expense, for up to two (2) years following delivery of the Product under this Confirmation, and with reasonable advance notice to the other Party, and to the extent that such other Party is in possession of such information, information required to verify that the Product sold under this Confirmation was not otherwise sold by Seller to a third party.

Confidentiality:

Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Except as provided in this *Confidentiality* section and the California Public Records Act and subject to and without limiting Section R-7, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to persons investing in, providing funding to or acquiring it or its affiliates, and to its and the foregoing persons' respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, Governmental Authority or agency having jurisdiction over a Party, including the California Public Records Act, that Party may release Confidential Information, or a portion thereof, as required by the Applicable Law, statute, ordinance, decision, order or regulation. A Party may disclose Confidential Information to accountants in connection with audits. In the event a Party is required to release Confidential Information, such Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses), at its sole cost, to cause the recipient of the Confidential Information to treat such information in a confidential manner, and to prevent such information from being disclosed or otherwise becoming part of the public domain. Parties acknowledge that Purchaser is obligated to provide Confidential Information to the CPUC and CEC for regulatory compliance purposes for the California RPS program, and Seller waives the prior notice requirement and authorizes such disclosures to the CPUC and CEC.

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**Applicable Law/
Governing Law:**

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17, Applicable Law, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009].

**FERC Standard of
Review; Mobile-
Sierra Waiver:**

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely 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) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the

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“public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).

Forward Contract: This Confirmation constitutes a sale of a nonfinancial commodity for deferred shipment or delivery that the parties intend to be physically settled and is excluded from the term “swap” as defined in the Commodity Exchange Act under 7 U.S.C. § 1a(47) and the regulations of the Commodity Future Trading Commission and Securities and Exchange Commission, with further reference to 77 Fed. Reg. 48233-35.

**Amendments
To The Master
Agreement:**

Assignment. Section 14, Transfer of Interest in Agreement, of the WSPP Agreement shall for purposes of this Confirmation be deleted in its entirety and replaced with the following: “Neither Party shall transfer, assign or sell its rights as set forth in this Confirmation, to any third party without first obtaining the prior written consent of the other Party. Notwithstanding the foregoing, no such consent shall be required to the extent that the transfer or sale occurs (i) to an affiliate of a Party by operation of law, through merger or acquisition, or as the result of the sale or transfer of all or substantially all of the transferring Party’s assets, and the resulting entity’s creditworthiness is equal to or higher than that of such Party as of the Effective Date of this Confirmation, or (ii) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Confirmation is to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any, as of the Effective Date of this Confirmation.”

Confidentiality. Section 30, Confidentiality, of the WSPP Agreement is amended for purposes of this Confirmation by inserting at the end of Section 30.1(6) prior to the semicolon the following: “or to Deliver RECs pursuant to the requirements of WREGIS”.

**No Recourse to
Members of
Purchaser:**

Purchaser is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et. seq.) and is a public entity separate from its constituent members. Purchaser will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Purchaser’s constituent members, or the

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officers, directors, advisors, contractors, consultants or employees of Purchaser or Purchaser's constituent members, in connection with this Confirmation.

Credit

Requirements: Notwithstanding any other provision of the Agreement, Section 27 of the Master Agreement is not applicable to, and credit support is not required for either Party under this Confirmation.

Counterparts: This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

**Entire Agreement;
No Oral Agreements
Or Modifications:**

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

Definitions/

Interpretations: For purposes of the Confirmation, the following definitions and rules of interpretations shall apply:

"Applicable Law" means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders or any Governmental Authority or arbitrator that apply to RPS or any one or both of the Parties or the terms hereof.

"CAISO" means the California ISO.

"CAISO Tariff" means the CAISO FERC Electric Tariff.

"Confidential Information" means all oral and written information exchanged between the Parties with respect to the subject matter of this Agreement. The following information does not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by either Party on

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a non-confidential basis prior to this Agreement; and (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not subject to any prohibition against disclosing the information to such Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facilities, and its avoided emission of pollutants. Green Attributes include but are not limited to RECs, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) 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 the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, including but not limited to 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 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 a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Generating Facilities, (ii) production tax credits associated with the construction or operation of the Generating Facilities and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Generating Facilities for compliance with local, state, or federal operating and/or air quality permits. If the Generating Facilities are biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Purchaser with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Generating Facilities.

“WECC” means the Western Electricity Coordinating Council or its successor organizations.

“WREGIS” mean the Western Renewable Energy Generation Information System, or its successor organization.

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The Parties agree that the terms and conditions stated herein accurately reflect the agreement reached by the Purchaser and Seller.

IN WITNESS WHEREOF, the Parties have signed the Confirmation effective as of the Effective Date.

East Bay Community Energy Authority, a California joint powers authority	Party 2
By:	By:
Name:	Name:
Title:	Title:

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EXHIBIT A

Unit Name:
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type:

Unit Name:
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type: