

**WESTERN SYSTEM POWER POOL AGREEMENT  
CONFIRMATION LETTER - RESOURCE ADEQUACY  
BETWEEN  
[NAME OF SELLER]  
AND  
MERCED IRRIGATION DISTRICT**

This Confirmation Letter ("Confirmation") confirms the Transaction between [*name of Seller*] ("Seller") and **Merced Irrigation District**, a California irrigation district, ("Buyer"), each individually a "Party" and together the "Parties", dated as of [*Date*] (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Resource Adequacy Capacity Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western System Power Pool Agreement effective version: June 20, 2017 (the "WSPP Agreement") to which both Seller and Buyer are members, along with any amendments and annexes thereto, (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 "Alternate Capacity" means any replacement Resource Adequacy Capacity 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 having competent jurisdiction over one or both Parties or this Transaction.
- 1.3 "Balancing Authority (BA)" means the responsible entity that integrates resource plans ahead of time, maintains load interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.
- 1.4 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.5 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.6 "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 RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner.
- 1.7 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.8 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Contingent Firm RA Product" has the meaning specified in Section 3.3 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 Resource Adequacy Capacity Product (in MWs) set forth in the table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.12 "Delivery Period" has the meaning specified in Section 4.1 hereof.
- 1.13 "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.14 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Resource Adequacy Capacity Product (including any

Alternate Capacity) for such Showing Month, minus any reductions resulting from Uncontrollable Forces.

- 1.15 “Firm RA Product” has the meaning specified in Section 3.2 hereof.
- 1.16 “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. The term Governmental Body shall not include Buyer.
- 1.17 “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.18 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.19 “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 1.20 “Notification Deadline” has the meaning specified in Section 4.5 hereof.
- 1.21 “Outage” means any planned, unplanned, scheduled or unscheduled disconnection, separation, or reduction in the capacity of any Unit.
- 1.22 “RA Capacity” means capacity that qualifies to meet the requirements of TID’s Resource Adequacy Policy.
- 1.23 “RA Capacity Price” means the price specified in the RA Capacity Price Table in Section 4.9 hereof.
- 1.24 “RAR” means the resource adequacy requirements established by TID from time to time.
- 1.25 “RAR Attributes” means, with respect to a Unit any and all resource adequacy attributes, as they may be identified from time to time by the Governmental Body having jurisdiction, which can be counted toward RAR.
- 1.26 “RAR Showings” means the Buyer’s annual and monthly requirement to procure sufficient RA Capacity pursuant to TID’s Resource Adequacy Policy, and any related showings Buyer is required to provide TID.
- 1.27 “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 1.28 “Replacement Unit” means a unit other than the Unit, meeting the requirements specified in Section 4.5.
- 1.29 “Resource Adequacy (RA) Capacity Product” has the meaning specified in Article 3 hereof.
- 1.30 “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.31 “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing.
- 1.32 “Transaction” has the meaning specified in the introductory paragraph hereof.
- 1.33 “Uncontrollable Force” has the meaning set forth in Section 10 of the Master Agreement.

- 1.34 “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.
- 1.35 “WSPP Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.36 “TID” means Turlock Irrigation District.
- 1.37 “MEID/TID Power Sales Agreement” means the agreement, effective May 1, 2017, between Buyer and TID for the sale and purchase of energy, which requires Buyer to comply with the TID Resource Adequacy Policy, as it may be amended from time to time.
- 1.38 “TID Resource Adequacy Policy” means the policy adopted by TID setting forth TID’s resource adequacy requirements for the Turlock Irrigation District and/or the Turlock Irrigation District Balancing Authority Area, as it may be amended from time to time.

**ARTICLE 2. UNIT INFORMATION**

Name	
Location	
Resource ID	
Contract Identifier	
Unit RA Capacity	
Run Hour Restrictions	

**ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT**

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, RA Capacity in the amount of the Contract Quantity established in Section 4.3. Such Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.2 or 3.3 (the “Resource Adequacy Capacity Product”). The Resource Adequacy Capacity Product does not confer to Buyer any right to the electrical output from the Unit(s), other than the right to include the RA Capacity associated with the Contract Quantity in RAR Showings, as applicable. Specifically, no energy, ancillary services, renewable attributes or environmental attributes associated with any Unit is required to be made available to Buyer as part of this Transaction. Seller retains the right to sell any RA Capacity from a Unit that is in excess of that Unit’s Contract Quantity and any RAR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

**3.1 RA Capacity**

Seller shall provide Buyer with the RA Capacity from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

**3.2  Firm RA Product**

Seller shall provide Buyer with RA Capacity from the Units in the amount of the Contract Quantity. If the Units are not available to provide all or any portion of the Contract Quantity for any reason other than Uncontrollable Forces, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, then pursuant to Section 4.4, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with Designated RA Capacity from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or be required to indemnify Buyer for any resulting costs, penalties or fines imposed by TID, pursuant to the terms of Sections 4.7 and 4.8 hereof.

**3.3  Contingent Firm RA Product**

Seller shall provide Buyer with RA Capacity from the Units in the amount of the Contract Quantity; provided, however, that if the Units are not available to provide all or a portion of the Contract Quantity on account of an Outage or Uncontrollable Forces, then Seller may provide Buyer with RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with the Designated RA Capacity, then Seller shall be liable for damages and/or be required to indemnify Buyer for costs, penalties or fines imposed by TID, pursuant to the terms of Sections 4.7 and 4.8 hereof; *provided, however*, that Seller shall not be liable for damages and/or required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if and only if Seller has provided Buyer with timely notice pursuant to Section 4.5(a) of Seller’s intent not to provide Designated RA Capacity in an amount equal to the Contract Quantity of that Showing Month.

**ARTICLE 4. DELIVERY AND PAYMENT**

**4.1 Delivery Period**

The Delivery Period shall be: [\_\_\_\_] through [\_\_\_\_], inclusive.

**4.2 Delivery Point.**

The Delivery Point for each Unit, if located in the CAISO Balancing Authority Area, is the Westley Substation. The Delivery Point for Units outside the CAISO Balancing Authority Area is the Tracy Substation.

**4.3 Contract Quantity.** The Contract Quantity for each Monthly Delivery Period shall be:

**Contract Quantity (MWs)**

**[Specify resource(s)]**

<b>Month/Year</b>	<b>RA Capacity (MWs)</b>
January [ ]	0
February [ ]	0
March [ ]	0
April [ ]	0
May [ ]	0
June [ ]	0
July [ ]	0
August [ ]	0
September [ ]	0
October [ ]	0
November [ ]	0
December [ ]	0

**4.4 Adjustments to Contract Quantity**

- (a) Planned Outages: If Seller is unable to provide the Contract Quantity for all or a portion of a Showing Month due to a Planned Outage of a Unit(s), then Seller shall have the option, but not the

obligation, upon written notice to Buyer by the Notification Deadline, to either (i) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month (provided both Parties agree to Section 3.3 Contingent Firm RA Product); or (ii) 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 RA Capacity: Seller's obligation to deliver the Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit RA Capacity as determined by the Unit's Balancing Authority or TID. If the Unit experiences such a reduction in Unit RA Capacity, 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 prior to the start of that month.
- (d) If Seller desires to use Replacement Units to provide the Contract Quantity of Resource Adequacy Capacity Product for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Resource Adequacy Capacity Product from one or more Replacement Units, with the total amount of Resource Adequacy Capacity Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the identification of the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.
- (e) If Seller fails to provide Buyer the Contract Quantity of Resource Adequacy Capacity Product or Alternate Capacity in any amount equal to the Contract Quantity of Resource Adequacy Capacity Product for a given Showing Month during the Delivery Period, then Buyer may, but shall not be required to, purchase Resource Adequacy Capacity Product from a third party, and Seller shall 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 Seller failure is for any reason other than Uncontrollable Forces.

#### **4.6 Delivery of Product**

Seller shall provide Buyer with the RA Capacity for each Showing Month in the amount set forth in the table shown in Section 4.3.

#### **4.7 Damages for Failure to Provide RA Capacity**

If Seller fails to provide Buyer with the Designated RA Capacity for any Showing Month, and such failure is not excused as the result of Uncontrollable Forces, 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 RA Capacity having equivalent to the Designated RA Capacity not provided by Seller ("Replacement Capacity"). Buyer may enter into purchase transactions for Replacement Capacity with one or more third parties to replace any portion of the Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

- (b) Seller shall pay to Buyer at the time set forth in Section 21 of the WSPP Agreement, (i) the damages specified in Section 21.3 of the WSPP Agreement, and (ii) any damages, penalties, fines, or other costs imposed on Buyer by TID. If Seller fails to pay these damages, penalties, fines, or other costs, then Buyer may offset those damages, penalties, fines, or other costs owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Section 28 of the WSPP Agreement.

**4.8 Indemnities for Failure to Deliver Contract Quantity**

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by TID, resulting from any of the following:

- (a) Seller’s failure to provide any portion of the Designated RA Capacity and such failure is not the result of Uncontrollable Forces;
- (f) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.3, 4.4 and 4.5

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 or may pursue any other available remedies, including but not limited to arbitration or litigation.

**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. Each Unit’s Monthly RA Capacity Payment shall be equal to the product of (a) the applicable RA Capacity 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 RA Capacity that was not delivered, pursuant to Section 4.4. RA Capacity Price shall be determined as follows:

**RA CAPACITY PRICE TABLE**

<b>Contract Month/Year</b>	<b>RA Capacity Price (\$/kW-month)</b>
January [ ]	\$0.00
February [ ]	\$0.00
March [ ]	\$0.00
April [ ]	\$0.00
May [ ]	\$0.00
June [ ]	\$0.00
July [ ]	\$0.00
August [ ]	\$0.00
September [ ]	\$0.00
October [ ]	\$0.00

Contract Month/Year	RA Capacity Price (\$/kW-month)
November [ ]	\$0.00
December [ ]	\$0.00

**4.10 Allocation of Other Payments and Costs**

- (a) If the Unit is called upon by TID to meet its generation requirements for Buyer, the Seller shall be compensated in the following manner:
  - (i) If the Unit resides in the CAISO Balancing Authority Area: The Seller will be compensated per that Unit’s CAISO Masterfile for all applicable costs depending on the Unit’s operating condition at the time it is called upon by TID. Energy shall be compensated at the PNode price for that Unit for energy produced on behalf of Buyer pursuant to this Agreement.
  - (ii) If the Unit resides in any other Balancing Authority Area: The Seller shall be compensated at the following energy rate as determined by that Unit’s operating characteristics:  
 \$XX.XX/MWh (Supporting documentation from Seller required)
- (b) Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement

**ARTICLE 5. TID REQUIREMENTS**

During the Delivery Period, except to the extent any Unit is affected by an event of Uncontrollable Forces that results in a partial or full Outage of that Unit, Seller shall allow TID to import each Unit’s Contract Quantity and the associated energy, in compliance with the MEID/TID Power Sales Agreement and the TID Resource Adequacy Policy, and shall perform all, or cause the Unit’s Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the MEID/TID Power Sales Agreement and the TID Resource Adequacy Policy that are associated with the sale of 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 provisions of the MEID/TID Power Sales Agreement and the TID Resource Adequacy Policy, including any penalties or fines imposed on Seller or the Unit’s Scheduling Coordinator, owner, or operator for such noncompliance.

**ARTICLE 6. OTHER BUYER AND SELLER COVENANTS**

**6.1 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 Showing. 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 TID or any other Governmental Body responsible for administering the applicable RAR Showing under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing all information requested by TID or other Governmental Body of competent jurisdiction to administer the applicable RAR, to demonstrate for each month of the Delivery Period that the Contract Quantity can be delivered by Seller to the TID Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the “deliverability” standards established by TID or other Governmental Body of competent jurisdiction.

- (g) 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 Federal Energy Regulatory Commission, TID, or other Governmental Body of competent jurisdiction to administer the applicable RAR so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date; provided, that neither Party shall be obligated to enter into any such amendment.

Each Party further represents to the other Party, as of the Confirmation date hereof, and of each delivery of capacity and/or energy in connection with such transaction, that:

- (a) It is not relying upon any representations of the other Party other than those expressly set forth in the WSPP Agreement, the Master Agreement, and any Confirmation or written guarantee of the obligations of such other Party.
- (b) It has entered into the WSPP Agreement, the Master Agreement, and any Confirmations thereof as a principal (and not as an advisor, agent, broker or in any other capacity, fiduciary or otherwise), and has made its trading and investment decisions based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the other Party, with a full understanding of the material terms and ability to assume the risks of the same.

## **6.2 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, TID, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (h) 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 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;
- (i) No portion of the Contract Quantity has been committed by Seller in order to satisfy energy, RAR or analogous obligations, ancillary services or any other sale to an entity other than Buyer in any non-CAISO market;
- (j) The owner or operator of each 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;
- (k) The owner or operator of each Unit is obligated to comply with Applicable Laws and TID's Resource Adequacy Policy, relating to RA Capacity;
- (l) The aggregation of all amounts of applicable RAR Attributes that have been sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (m) With respect to the RA Capacity provided under this Confirmation, Seller shall comply with Applicable Laws, including the TID Resource Adequacy Policy, relating to RA Capacity;
- (n) 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 TID Resource Adequacy Policy;
- (i) Seller acknowledges that Buyer has provided and Seller has received and reviewed the MEID/TID Power Sales Agreement and TID Resource Adequacy Policy, and understands TID's



resource adequacy requirements as applied to MID under the MEID/TID Power Sales Agreement.

**6.3 Additional Representations and Warranties**

Each Party represents, warrants and covenants to the other Party that:

- (a) Each Party possesses the necessary corporate, governmental and legal authority, right and power to enter into and agree to the Master Agreement and this Confirmation and to perform each and every duty imposed, and that the Parties' agreement to buy and sell power under the Master Agreement and this Confirmation represents a contract. Each Party also warrants and represents to the other that each of its representatives executing or agreeing through a Confirmation to a transaction under the Master Agreement is authorized to act on its behalf.
- (b) Each Party warrants and represents that entering into this Confirmation and associated Master Agreement does not violate or conflict with any law applicable to it, any order or judgment of any court or other agency of government applicable to it or any agreement to which it is a party, and that the Master Agreement and this Confirmation constitute a legal, valid and binding obligation enforceable against such Party in accordance with the terms of such agreements.

**ARTICLE 7. CONFIDENTIALITY**

In addition to the rights and obligations in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body having jurisdiction or TID in order to support its applicable RAR Showings, 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.

The Parties acknowledges that Merced Irrigation District is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. Merced Irrigation District acknowledges that the other party may submit information to Merced Irrigation District that the other party considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). The other party acknowledges that Merced Irrigation District may submit to the other party information that Merced Irrigation District considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Contract ("Requestor") for production, inspection and/or copying of information by a Disclosing Party as Confidential Information, the Receiving Party as soon practical but within three (3) business days of receipt of the request, shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed on the cover page of the Contract. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

**ARTICLE 8. BUYER'S RE-SALE OF PRODUCT**

Buyer may re-sell all or a portion of the Resource Adequacy Capacity Product hereunder.

**ARTICLE 9. MARKET BASED RATE AUTHORITY**

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission 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,

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made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

[Notice provisions to be updated as appropriate with identity of Seller.]

**This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.**

**The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.**

**[Seller]**

**Merced Irrigation District**

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

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

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

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

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

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