

CONFIRMATION LONG-TERM CONTRACT FOR PCC3 RECS

THIS CONFIRMATION FOR LONG-TERM CONTRACT FOR PCC3 RECS (this “Confirmation”) is entered into this 30th day of June, 2020 (“Effective Date”), by and between California Choice Energy Authority, a California joint powers authority on behalf of City of Pomona, a California municipal corporation and charter city d/b/a Pomona Choice Energy (“CalChoice” or “Buyer”) and Sierra Pacific Industries (“SPI” or “Seller”), each referred to herein individually as a “Party” and collectively as the “Parties”, regarding the purchase and sale of the Product (as defined below) under the terms and conditions herein (the “Transaction”). Capitalized terms used in this Confirmation and not defined herein have the meaning assigned thereto in the Master Agreement or Schedule R (each as defined below). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement.”

WHEREAS, Buyer is subject to Section 399.13(b) of the California Public Utilities Code, which requires all California load-serving entities (LSEs) to meet sixty-five percent (65%) of their California Renewables Portfolio Standard (RPS) obligations with supply contracts of ten years or longer.

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Confirmation and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

Master Agreement: This Confirmation shall be governed by the terms and conditions of the WSPP Agreement, version dated January 25, 2020, promulgated by WSPP, Inc. (the “Master Agreement”), such terms and conditions are incorporated by reference as if fully set forth in this Confirmation, including but not limited to Schedule R of the Master Agreement (“Schedule R”). The Master Agreement, including Schedule R, shall govern this REC Transaction, except as modified in this Confirmation. References herein to sections in Schedule R shall appear, for example, as “Section R-2.3.4”. References in Schedule R to “Renewable Energy Facility” shall be interpreted as references to a Project (as defined below in this Confirmation).

Product: As used herein, “Product” shall mean Portfolio Content Category 3 (“PCC 3”) RECs generated by a Project that meet the requirements of the Applicable Program and this Confirmation and which shall be subject to the requirements of a Resource Contingent REC as described in Section R-2.3.3 of Schedule R.

Environmental Attributes: The Environmental Attributes conveyed under this Confirmation as part of the Product are All Attributes, including all Environmental Attributes required under the Applicable Program (as defined in the Definitions section hereof).

Project: As used herein, “Project” shall mean one or more of the renewable energy generating facilities listed in Exhibit A, which shall be referred to collectively as the “Projects”.

Delivery Term: “Delivery Term” means the period from January 1, 2021 through December 31, 2030, and shall continue through the completion of the payment of amounts due pursuant to this Confirmation and the transfer of all RECs to Buyer through WREGIS.

Contract Quantity: The amount of Product to be supplied for each calendar year of the Delivery Term shall be equal to the lesser of (a) [REDACTED] or (b) twenty and eight-tenths percent (20.80%) of the total aggregate output (in MWh) of the Projects for such calendar year (the “Contract Quantity”).

<i>Contract Price:</i>	The price for each MWh (<i>i.e.</i> , per REC) of Product conveyed to Buyer in accordance with the terms of this Confirmation is set forth in Exhibit B (the “ <u>Contract Price</u> ”).
<i>REC Transfer:</i>	During the Delivery Term, Seller shall transfer the RECs to Buyer’s WREGIS account (Buyer’s WREGIS Account Holder Name and Account ID: <i>To be provided to Seller upon account set up</i>).
<i>Invoicing and Payment:</i>	<p>During the Delivery Term, once per quarter, Seller will invoice Buyer for an amount equal to the product of (a) the Contract Price and (b) the portion of the Contract Quantity delivered to Buyer, as evidenced by the quantity of WREGIS Certificates transferred to Buyer’s WREGIS account by Seller.</p> <p>Buyer shall make payment to Seller by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts on or before the twenty-third (23rd) day of the month in which the invoice was received, provided that such invoice was received by the fifteenth (15th) day of the month, otherwise the invoice will be paid on the next month’s monthly distribution date under the Security Documents (<i>i.e.</i>, the 23rd of the month). If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day.</p>
<i>Supporting Data:</i>	Because the Product is being sold by Seller to Buyer to facilitate Buyer’s compliance with the California Renewables Portfolio Standard, including the requirements of Section 399.13(b) of the California Public Utilities Code and CPUC Decision D.17-06-026, Seller shall use reasonable efforts to assist Buyer, if necessary, in timely providing required data and/or documentation, as requested by jurisdictional regulatory authorities, to support Buyer’s compliance.
<i>Change in Law Provisions:</i>	<p>The REC Transaction under this Confirmation is Regulatorily Continuing as defined in Section R-5.2.2(b) of Schedule R. The Parties acknowledge that an essential purpose of this Agreement is for Purchaser to acquire Product that will satisfy Purchaser’s obligations under the Applicable Program. In the event of a Change in Law in the Applicable Program, including for the avoidance of doubt any Change in Law that would prevent the Product from being used by Purchaser to meet the compliance requirements of the Applicable Program, Seller shall make commercially reasonable efforts to obtain compliance with such Change in Law, provided that Seller shall not be required to spend more than [REDACTED] during the Delivery Term in Seller’s efforts to obtain such compliance. Seller shall keep Buyer reasonably informed of its efforts to obtain compliance. If (a) it is not possible to obtain compliance without amending this Confirmation, or (b) notwithstanding Seller’s efforts to obtain compliance, including expenditure by Seller of the amount specified in the preceding sentence, or if Seller cannot, or would not be able to, obtain compliance regardless of the amount of money expended, the Parties shall work in good faith to try and revise this Confirmation so that this Confirmation complies with the requirements of such Change in Law. In the event the Parties cannot reach agreement on any such amendments to this Confirmation after sixty (60) days of commencement of discussions regarding such Change in Law (“<u>Negotiation Period</u>”), then Purchaser may terminate this Confirmation upon written notice to Seller, which shall be effective the next Business Day after such notice is received, and any such termination shall be without further liability to either Party, subject to payment of any amounts owing between the Parties prior to such termination.</p>

SPECIAL PROVISIONS:

A. Non-Modifiable Standard Terms and Conditions

- (1) 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 Buyer 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]**
- (2) 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, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009]**
- (3) Transfer of Renewable Energy Credits: Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer 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]**
- (4) Tracking of RECs in WREGIS: Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer 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]**

B. Additional Terms and Conditions

- (1) Seller Representations and Warranties. Seller represents and warrants:
 - (a) Seller is the owner of the Projects and all Product delivered under this Confirmation to Buyer shall have been produced by the Projects;
 - (b) As of both Delivery and passage of title, Seller has and conveys to Buyer all right, title, interest in and to the REC and all Environmental Attributes underlying the REC, and the exclusive right to any and all Reporting Rights Seller may have in or to the REC and Environmental Attributes, free and clear of any liens, security interests, or other encumbrances of any kind whatsoever;
 - (c) Seller has not sold the Product to be transferred to Buyer to a third party; and
 - (d) the Product meets the requirements set forth in PUC Code 399.16(b)(3) and the RPS compliance requirements for Portfolio Content Category 3 as set forth in CPUC Decision 11-12-052.
- (2) Buyer Representations and Warranties. Buyer represents and warrants that Buyer has taken all necessary steps to establish a WREGIS account to receive the RECs to be transferred from Seller to Buyer prior to the first delivery under this Confirmation.

- (3) Assignment. Buyer may assign its interest in this Confirmation to City of Pomona, a California municipal corporation and charter city in furtherance of its Pomona Choice Energy program (“City of Pomona”) without Seller’s consent, provided that (i) City of Pomona and this Agreement are still subject to the Security Documents or (ii) City of Pomona has provided other performance assurance reasonably acceptable to Seller.

C. Amendments to The Master Agreement; Additional Provisions

(1) Confidentiality.

- (a) Section 30, Confidentiality, of the Master 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”.
- (b) Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

- (2) Credit Requirements. The Parties agree and acknowledge that this Confirmation is subject to the Security Agreement dated as of June 10, 2020, between City of Pomona, as pledgor, and River City Bank, a California corporation, not in its individual capacity, but solely as Collateral Agent (“Security Agreement”), and all obligations hereunder are Obligations as defined in such Security Agreement, and that the Security Agreement is incorporated into this Agreement by reference. In accordance with the Security Documents, City of Pomona shall ensure that SCE deposits into a lockbox account, all of the proceeds of all of the Customer account receipts (net of the amounts to be paid to SCE) received from the sale of the Product to the Customers. SPI shall receive, in accordance with the Security Documents, payments for its invoices due and payable from such lockbox. Except as provided in the foregoing, Section 27 of the Master Agreement is not applicable to, and credit support is not required for Buyer under this Confirmation. Buyer’s obligation to make payments hereunder are to be made solely from the lockbox and obligations to make payments hereunder do not constitute any kind of indebtedness of Buyer or create any kind of lien on, or security interest in, any property or revenues of Buyer.

- (3) Counterparts. This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

- (4) 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 only 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.

- (5) 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.

D. Definitions/Interpretations

For purposes of this Confirmation, the following definitions shall apply:

“Applicable Program” means the California Renewables Portfolio Standard.

“Buyer” as used herein shall have the same meaning as “Purchaser” under the Master Agreement.

“California Renewables Portfolio Standard” means the renewable energy program and policies, codified in California Public Utilities Code Sections 399.11 through 399.32 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time, including without reservation the requirements of California Public Utilities Code Section 399.13(b) and CPUC Decision D.17-06-026.

“CEC” means the California Energy Commission or its regulatory successor.

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

“Depository Bank” has the meaning set forth in the Security Agreement.

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

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, dated as of June 10, 2020, among the Collateral Agent, City of Pomona, SPI and the PPA Providers party thereto from time to time.

“Secured Account” means deposit account no. *****7613 maintained in the name of City of Pomona at Depository Bank, and any replacement account.

“Security Agreement” has the meaning set forth in Section C (2) of this Confirmation.

“Security Documents” means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement and the Account Control Agreement, dated as of June 10, 2020, among the Depository Bank, City of Pomona and the Collateral Agent.

“STC” stands for Standard Terms and Conditions of the CPUC relating to purchase and sales of the Product.

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

“WREGIS” means the Western Renewable Energy Generation Information System or its successor systems.

[Signatures appear on the following page.]

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

California Choice Energy Authority, a California joint powers authority	Sierra Pacific Industries
By:	By:
Name:	Name:
Title:	Title:

Acknowledged: City of Pomona, a California municipal corporation and charter city d/b/a Pomona Choice Energy.

CITY OF POMONA

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

PROJECTS

Facility	WREGIS ID	CEC RPS ID	CA County	CBA
Anderson 2	W4675	61146A	Shasta	CAISO
Burney	W1734	60087A	Shasta	CAISO
Lincoln	W1735	60088A	Placer	CAISO
Quincy	W1736	60089A	Plumas	CAISO
Sonora	W2842	60576A	Tuolumne	CAISO

EXHIBIT B
CONTRACT PRICE

Year		Contract Price	