

PROCUREMENT COMPLIANCE ATTRIBUTE PURCHASE AGREEMENT

This PROCUREMENT COMPLIANCE ATTRIBUTE PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of [*date*] (the “Effective Date”) by and between DESERT VIEW POWER LLC, a Delaware limited liability company (“Seller”), and [*FULL LEGAL NAME*], a [*jurisdiction of organization*] [*entity type*] (“Buyer”). Seller and Buyer are sometimes referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Parties desire to enter into this Agreement in order to set forth the terms and conditions relating to the purchase and sale of certain biomass electricity compliance attributes for Buyer to satisfy its “Procurement of Recycled Organic Products by Local Jurisdictions” requirement of SB1383.

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

ARTICLE 1 DEFINITIONS

As used in this Agreement, the following defined terms have the meanings set forth below:

“Annual Report” means, with respect to any Contract Year, a report in the form attached hereto as Exhibit A setting forth the Facility, the number of Contract PCAs delivered in the Contract Year, the number of kWh produced by the Facility with Feedstock during such Contract Year, the amount of Buyer Energy Consumption during such Contract Year, and other terms applicable to such Contract PCAs.

“Applicable Standard” means the Recovered Organic Waste Product procurement standards enacted by the State of California and set forth in Health and Safety Code Sections 39730 et seq., 42652, 42652.5, and 42653, and the rules and regulations promulgated by CalRecycle thereunder, including those regulations set forth in 14 Cal. Code Regs. Sections 18993.1 and 18993.2, all as may be amended from time to time.

“Business Day” means a day on which Federal Reserve member banks in San Francisco, California, are open for business.

“Buyer Energy Consumption” means, with respect to any period, the number of kWh of electricity that is consumed by municipal operations of Buyer or another eligible direct service provider to Buyer permitted by 14 Cal. Code Regs. Sections 18993.1(e)(2) during such period (either from the grid or directly), as certified in writing by Buyer to Seller from time to time at Seller’s reasonable request.

“CalRecycle” means the California Department of Resources Recycling and Recovery, or a successor governmental authority responsible for implementing and/or promulgating the Applicable Standards and overseeing the qualification and use of PCAs in California.

“Contract Year” means each twelve (12) calendar month period during the Term beginning on January 1 and ending on December 31.

“Contract Year-to-Date” means, as of any date in any Contract Year, the period from January 1 of such Contract Year through such date.

“Event of Default” means, with respect to Party, any of the following events:

(a) The failure of such Party to pay any amount when due in full as and when required under this Agreement, and such amount is not paid in full within five (5) Business Days after receiving Notice thereof;

(b) With respect to Seller, the failure of Seller to satisfy its Contract PCA delivery obligations under this Agreement (other than following a payment default by Buyer), and such failure is not cured within five (5) Business Days of the date that it receives Notice from Buyer of such failure;

(c) With respect to Buyer, the failure of Buyer to purchase Contract PCAs when required under this Agreement, and such failure is not cured within five (5) Business Days of the date that it receives Notice from Seller of such failure;

(d) If any representation or warranty made by such Party in Section 5.1 or Section 5.2, as applicable, proves to have been materially misleading or false in any material respect when made and such Party does not cure the underlying facts so as to make such representation and warranty materially correct and not misleading in any material respect within thirty (30) calendar days of receipt of Notice from the other Party setting forth in reasonable detail the circumstances underlying such materially false or misleading representation or warranty;

(e) With respect to Seller, the failure to provide Buyer with Notice as required under Section 2.3 that qualifying electricity generated at the Facility and sold into the grid during such period is not sufficient to produce the number of PCAs required to be delivered during such period and that therefore Seller’s obligation to deliver PCAs to Buyer during that period is excused to the extent qualifying electricity is insufficient.

(f) Any other failure of performance by such Party of its material obligations under this Agreement not otherwise specified as a separate Event of Default hereunder, and such failure is not cured within thirty (30) calendar days of receipt of Notice of Event of Default; or

(g) Such Party (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights that is not dismissed within sixty (60) days; or (iv) has a secured party take possession of all or substantially all of its assets or has a distress, execution, receivership, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter;

provided, that a Final Determination that any PCAs are Disallowed PCAs shall not be an Event of Default.

“Facility” means the biomass fueled electricity generation facility operated by Seller and located at 62300 Gene Welmas Way, Mecca, California 92254 or another biomass fueled electricity generation facility identified by Seller receiving Feedstock in compliance with Cal. Code Regs. Tit. 14, § 18993.1 (i) which may from time to time produce PCAs on the Seller’s behalf.

“Feedstock” means biomass feedstock received directly from one or more eligible solid waste facilities described in 14 Cal. Code Regs. Section 18993.1(i).

“Final Determination” means a determination by CalRecycle that any Contract PCAs are Disallowed PCAs, which determination is either (a) challenged in a court of competent jurisdiction and upheld in a final, non-appealable order by a court of competent jurisdiction; or (b) not challenged in any court prior to expiration of the period allowed for any court challenge. The order of a court will be deemed a “Final Determination” when the time for appeal, if any, will have expired and no appeal will have been taken or when all appeals taken will have been finally determined.

“Interest Rate” means a rate equal to two percent (2%) over the per annum rate of interest equal to the prime lending rate as may from time to time be published in the Wall Street Journal under “Money Rates”; provided such interest rate shall never exceed the maximum lawful rate permitted by applicable law.

“kWh” means kilowatt-hours.

“Notice” means the process described in Section 7.2.

“Procurement Compliance Attribute” or “PCA” means an attribute associated with Recovered Organic Waste Products generated by the Facility with Feedstock that may be used by an eligible jurisdiction toward its SB 1383 Recovered Organic Waste Product procurement target, together with all associated Reporting Rights. For the avoidance of doubt, Procurement Attributes do not include any energy generated, or any other attributes, including renewable energy credits, capacity, avoided greenhouse gas emissions, avoided pollutant emissions, or any other credit, benefit, emission reduction, offset, or allowances, howsoever entitled, whether currently identified or identified any time in the future, attributable from a biomass conversion facility and/or its avoided emission of pollutants. A quantity of PCAs (including Contract PCAs) shall be expressed in kWh, and shall be converted into equivalent tons using the conversion ratio of one ton for every 650 kWh or such other conversion ratio required by the Applicable Standard.

“PCA Certificate” means, with respect to any Contract PCAs, a certificate required by 14 Cal. Code Regs. Section 18993.2(a)(6) in the form attached hereto as Exhibit B relating to such Contract PCAs.

“Quarterly Certificate” means, with respect to any Quarterly Period, a certificate in the form attached hereto as Exhibit C setting forth the number of Contract PCAs (a) delivered in such Quarterly Period, the Purchase Price to be paid for such Contract PCAs, Buyer Energy Consumption during such Quarterly Period, and other terms applicable to such Contract PCAs; and (b) delivered in the applicable Contract Year through the end of such Quarterly Period, the Purchase Price paid (or to be paid) for such Contract PCAs for the Contract Year through the end of such Quarterly Period, Buyer Energy Consumption during the Contract Year through the end of such Quarterly Period, and other terms applicable to such Contract PCAs.

“Quarterly Period” means each three (3) calendar month period during the Term ending on each March 31, June 30, September 30, and December 31; provided that the first and last Quarterly Periods of the Term shall be pro-rated based on the start date or end date of the Term, as applicable.

“Recovered Organic Waste Products” has the meaning set forth in 14 Cal. Code Regs. Section 18982(60) and that meets the requirements set forth in 14 Cal. Code Regs. Section 18993.1.

“Reporting Rights” means, with respect to any PCA, the right of Buyer to report that it owns such PCA to CalRecycle for purposes of applying such PCA to its SB 1383 Recovered Organic Waste Product procurement target.

“Unit Contingent” means that Seller’s obligation to deliver PCAs to Buyer during any period shall be excused to the extent qualifying electricity generated at the Facility and sold into the grid during such period is not sufficient to produce the number of PCAs required to be delivered during such period.

“Vintage Year” means, with respect to any PCAs, the calendar year or years during which such PCAs were generated, as set forth in the applicable Quarterly Certificate or Annual Report.

“SB 1383” means California’s Short-Lived Climate Pollutant Reduction law.

“Term” means the period defined in Section 6.1.

ARTICLE 2 PURCHASE AND SALE OF PCAS

2.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller shall sell to Buyer, and Buyer shall purchase from Seller:

(a) Contract Years. During each Contract Year, a number of PCAs equal to the lesser of the following (“Total Annual Generated PCAs”): (i) the number of PCAs allocated to Buyer on Schedule I attached hereto for such Contract Year; (ii) if Seller determines that the total PCA generation from the Facility for a Contract Year (“Total Facility Generation”) is or will be insufficient for any reason to produce enough PCAs for Seller to meet its delivery obligations under this Agreement and all other PCA sales agreements for such Contract Year (“Seller’s Total Delivery Obligation”), the number of PCAs allocated to Buyer by Seller on a pro-rata basis based on Total Facility Generation and Seller’s Total Delivery Obligation; and (iii) the number of PCAs corresponding to the total aggregate Buyer Energy Consumption during such Contract Year; provided, that Seller shall not be obligated to sell to Buyer in any Contract Year PCAs in excess of the percentage of generation allocated to Buyer on Schedule I attached hereto for such Contract Year; and

(b) Quarterly Periods. During each Quarterly Period within a Contract Year, (i) a number of PCAs (if positive) equal to the lesser of (1) Total Annual Generated PCAs allocated to Buyer for such Contract Year-to-Date through the end of such Quarterly Period; and (2) the number of PCAs corresponding to the total aggregate Buyer Energy Consumption during such Contract Year-to-Date through the end of such Quarterly Period; minus (ii) the total aggregate number of PCAs purchased and sold under this Agreement during the applicable Contract Year prior to the first day of such Quarterly Period; provided, that Seller shall not be obligated to sell to Buyer in any Quarterly Period PCAs in excess of the percentage of generation allocated to Buyer on Schedule I attached hereto.

The PCAs required to be purchased and sold pursuant to this Section 2.1 are referred to herein as the “Contract PCAs”. Buyer shall not directly or indirectly sell or transfer any Contract PCAs to any person or entity without Seller’s prior written consent in each instance.

2.2 Pricing. Subject to the terms and conditions of this Agreement, Buyer shall purchase the Contract PCAs at a price per Contract PCA set forth in Schedule I (the “Per PCA Price”). The total aggregate amount due for all Contract PCAs in any period (calculated by multiplying the number of Contract PCAs during such period by the Per PCA Price) is referred to herein as the “Purchase Price”.

2.3 Delivery Obligation. Notwithstanding anything to the contrary in this Agreement, the obligation of Seller to sell and deliver Contract PCAs, and of Buyer to purchase and accept the Contract PCAs, is Unit Contingent. Within five (5) Business Days of Seller making a final determination that qualifying electricity generated at the Facility and sold into the grid during an applicable period is not

sufficient to produce the number of PCAs required by this Agreement to be delivered during such period, Seller shall provide Buyer with Notice of such final determination.

2.4 Fulfillment of Obligations. Buyer covenants and agrees that during the Term, Buyer shall accurately and completely report all Buyer Energy Consumption and will not seek to circumvent its obligation to purchase all of the Contract PCAs required to be purchased by Buyer under this Agreement. Seller covenants and agrees that during the Term, Seller shall not reduce the number of Contract PCAs in order for Seller to sell such Contract PCAs to another purchaser at a higher Per PCA Price, except to the extent Seller is permitted to do so by this Agreement.

ARTICLE 3 TRANSFERS

3.1 Delivery. The Contract PCAs set forth on each PCA Certificate shall become usable by Buyer towards Buyer's SB 1383 Recovered Organic Waste Products procurement target upon Seller's receipt of payment in full for such Contract PCAs in accordance with Article 4.

3.2 Further Assurances. The Parties shall cooperate fully and assist each other to obtain any and all required approvals and/or forms which may reasonably be required to effectuate the transfer of the Contract PCAs to Buyer in accordance with this Agreement, and to comply with the Applicable Standard and any and all other regulatory obligations relating to SB 1383 Recovered Organic Waste Products procurement as required by CalRecycle.

3.3 Responsibility. Each Party shall be responsible for all costs, fees, brokerage commissions, taxes, and charges of whatever kind and amount that such Party incurs in connection with the performance of its respective obligations under this Agreement.

3.4 Cooperation. Upon notification that any transfer contemplated by this Agreement will not be completed, the Parties shall promptly confer within five (5) days and shall cooperate in taking reasonable actions necessary to cure any defects in the proposed transfer, so that the transfer can be completed.

3.5 Maximums.

(a) Energy Usage Maximum. Notwithstanding anything in this Agreement to the contrary, Buyer covenants and agrees that Buyer shall not apply (or seek to apply) Contract PCAs toward Buyer's SB 1383 Recovered Organic Waste Product procurement target in any Contract Year to the extent the number of kWh of energy covered by such Contract PCAs, on an as converted to kWh basis, exceeds the amount of Buyer Energy Consumption.

(b) Maximum PCAs. Notwithstanding anything in this Agreement to the contrary, but subject in all respects to Article 2, Buyer shall not be required to purchase PCAs in any Contract Year, on an as converted to kWh basis, in excess of the number of PCAs corresponding to the Buyer Energy Consumption during such Contract Year. In the event Buyer Energy Consumption during any Contract Year is not sufficient to support the purchase and sale of all Contract PCAs, then Seller shall, in addition to any other rights or remedies available to Seller under this Agreement, at law or in equity, have the right (but not the obligation) to sell such excess PCAs to any purchaser other than Buyer at any price negotiated by Seller, and Seller shall be permitted to retain all proceeds of such sales.

ARTICLE 4
REPORTS; BILLING; PAYMENT

4.1 Monthly Energy Usage. Within ten (10) calendar days after the last day of each calendar month, Buyer shall provide Seller with a statement of the Buyer Energy Consumption during such calendar month, together with true, accurate and complete copies of all bills, invoices and other documentation reasonably requested by Seller for energy purchased and consumed by Buyer for its own municipal operations, and energy purchased and consumed by each eligible direct service provider to Buyer allowable by the Applicable Standard (if any) for its own operations, during such calendar month ("Consumption Documents").

4.2 Reporting.

(a) Quarterly Certificates. Within thirty (30) calendar days after the last day of each Quarterly Period, Seller shall provide to Buyer a Quarterly Certificate, together with an invoice relating to such Quarterly Period (each, a "Quarterly Invoice").

(b) Annual Reports. Within thirty (30) calendar days after the last day of each Contract Year, Seller shall provide to Buyer an Annual Report, together with an invoice relating to such Contract Year (each, an "Annual Invoice"; Quarterly Invoices and Annual Invoices are referred to herein as "Invoices") and a PCA Certificate for such Contract Year. For the avoidance of doubt, each Annual Invoice will include a netting of all Purchase Price invoiced in respect of the applicable Contract Year against all Purchase Price paid in respect of the applicable Contract Year, with a statement of the resulting payment or credit due.

(c) Other Information. Each Party shall provide such other information relevant to the performance of such Party's obligations under this Agreement, or to confirm compliance by such Party with its obligations under this Agreement, as may be reasonably requested by the other Party.

(d) Extension; Deemed Purchase. If Buyer fails to deliver all Consumption Documents relating to any applicable period within the period provided in Section 4.1, the deadline for Seller to deliver a Quarterly Certificate or Annual Report shall be automatically extended to the thirtieth (30th) calendar day from and after the date that Seller receives all Consumption Documents for such period. If Buyer fails to deliver all Consumption Documents relating to any Contract Year or Quarterly Period, as applicable, within twenty-five (25) calendar days after the last day of such Contract Year or Quarterly Period, as applicable, then Seller shall provide Buyer with Notice and ten (10) days opportunity to deliver the Consumption Documents. If Buyer fails to provide all Consumption Documents during such ten (10) day period, the Seller have the right, but not the obligation, to Invoice Buyer for one hundred percent (100%) of the Contract PCAs required to be purchased and sold for such Contract Year or Quarterly Period, as applicable, pursuant to Section 2.1, regardless of the amount of Buyer Energy Consumption, and Buyer shall be obligated to pay the full Purchase Price for such PCAs. Buyer shall be solely responsible for any and all matters resulting from any delay or failure to provide Consumption Documents, including any refusal by CalRecycle to accept or apply any PCAs towards Buyer's SB 1383 Recovered Organic Waste Product procurement target.

4.3 Review.

(a) Quarterly Invoices. Buyer shall have thirty (30) days from the date of a Quarterly Invoice (the "Quarterly Invoice Review Period") to review and confirm the calculation of the Purchase Price set forth in the Quarterly Invoice in accordance with this Agreement. If Buyer has a good faith dispute that the Purchase Price in the Quarterly Invoice has not been calculated in accordance with this Agreement,

Buyer shall deliver Seller a written notice of such dispute reasonably describing the basis therefor prior to 4:30 p.m. Pacific Time on the last Business Day of the Quarterly Invoice Review Period (each, a “Notice of Dispute”). Failure to deliver a Notice of Dispute prior to 4:30 p.m. Pacific Time on the last Business Day of the Quarterly Invoice Review Period for any Quarterly Invoice (the “Quarterly Invoice Dispute Deadline”) shall, subject to Section 5.4, result in Buyer irrevocably accepting the applicable Quarterly Invoice and waiving any dispute with respect to the applicable Quarterly Invoice and all audit rights under Section 4.6 with respect thereto. If Buyer delivers a valid Notice of Dispute prior to the Quarterly Invoice Dispute Deadline for a Quarterly Invoice, the Parties shall meet in a good faith effort to resolve such dispute during the thirty (30) day period following delivery of the Notice of Dispute.

(b) Annual Invoices. Buyer shall have thirty (30) days from the date of an Annual Invoice (the “Annual Invoice Review Period”) to review and confirm the calculation of the net Purchase Price set forth in the Annual Invoice in accordance with this Agreement. If Buyer has a good faith dispute that the Purchase Price in the Annual Invoice has not been calculated in accordance with this Agreement, Buyer shall deliver Seller a Notice of Dispute prior to 4:30 p.m. Pacific Time on the last Business Day of the Annual Invoice Review Period. Failure to deliver a Notice of Dispute prior to 4:30 p.m. Pacific Time on the last Business Day of the Annual Invoice Review Period for any Annual Invoice (the “Annual Invoice Dispute Deadline”) shall, subject to Section 5.4, result in Buyer irrevocably accepting the applicable Annual Invoice and waiving any dispute with respect to the applicable Annual Invoice and all audit rights under Section 4.6 with respect thereto. If Buyer delivers a valid Notice of Dispute prior to the Annual Invoice Dispute Deadline for an Annual Invoice, the Parties shall meet in a good faith effort to resolve such dispute during the thirty (30) day period following delivery of the Notice of Dispute.

4.4 Payment. Buyer shall pay each Invoice within thirty (30) days from the date of such Invoice. All payments made under this Agreement shall be made in immediately available United States Dollars by electronic transfer without additional notice, and without fees, deductions for counterclaims, set off (except as expressly provided in Section 5.4) or other claims, to the following account:

Seller:	Desert View Power LLC
Bank:	[●]
Account Number:	[●]
ABA Number:	[●]

4.5 Late Payment. If Buyer fails to remit any amount payable hereunder by it when due, interest on such unpaid amount shall accrue daily at the Interest Rate and be payable on demand. The right to collect such interest shall be in addition to, and not in lieu of, any other rights or remedies available to the receiving Party, whether pursuant to this Agreement at law or in equity.

4.6 Audit Rights. Each Party (or its designee) shall have the right, with at least two (2) Business Days’ prior written notice, at its sole expense and during normal working hours, to examine and make copies of the books and records of the other Party to the extent reasonably necessary to verify the accuracy of any payment, charge or computation made pursuant to this Agreement; provided, that no adjustment for any Invoice disputed in accordance with Section 4.3 will be made unless a Notice of Dispute is submitted prior to the applicable Dispute Deadline. If any such examination reveals any inaccuracy, the necessary adjustments in payments due will be promptly made and paid or refunded, as applicable.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party, as of the date of this Agreement that:

(a) It is duly organized and validly existing under the laws of the jurisdiction of its organization and, if relevant under such laws, in good standing;

(b) It has the organizational authority and power to execute, deliver and perform its obligations under this Agreement;

(c) Assuming execution and delivery by the other Party, this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, subject to bankruptcy, reorganization, and similar laws affecting creditors' rights generally and to general principals of equity (regardless of whether considered in a proceeding in equity or at law);

(d) There is no pending or (to its knowledge) threatened litigation, arbitration or administrative proceeding that materially adversely affects its ability to perform its obligations under this Agreement; and

(e) It is not relying upon any advice, reports, analyses, or representations of the other Party other than those expressly set forth in this Agreement, or any guarantee of the obligations of such other Party, and the other Party has not given to it any assurance or guarantee as to the expected financial performance or results of this transaction, and it has entered into this transaction as principal and for its own account (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise), with a full understanding of, and the ability to assume, the terms and risks of the same, and has made its trading and investment decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary.

5.2 Contract PCAs. Seller warrants with respect to Contract PCAs delivered by Seller pursuant to this Agreement that (a) the Facility received Feedstock during the Vintage Year from one or more of the facilities set forth in 14 Cal. Code Regs. Section 18993.1(i) in a sufficient amount to produce electricity underlying such Contract PCAs; (b) such Contract PCAs are derived from electricity generated from Feedstock at the Facility during the Vintage Year; (c) Seller has the right and power to sell such Contract PCAs; (d) such Contract PCAs are delivered free from all liens, claims, security interests, encumbrances and other defects of title arising through Seller prior to delivery (other than Buyer's obligation to pay Seller the Purchase Price); and (e) such Contract PCAs have not otherwise been sold or transferred by Seller to any jurisdiction other than Buyer to satisfy any Recovered Organic Waste Product obligation elsewhere under any standard, marketplace or jurisdiction.

5.3 Buyer Consumption. Buyer represents and warrants that Buyer is, and at all times during the term will be, a jurisdiction within the meaning of 14 Cal. Code Regs. Section 18993.1(a), and that Buyer will exercise Reporting Rights with respect to Contract PCAs in respect of any period only to the extent Buyer Energy Consumption during such period permits Buyer to do so.

5.4 Disallowed PCAs. If there is a Final Determination that any Contract PCAs purchased by Buyer hereunder do not meet the requirements for Buyer's SB 1383 Recovered Organic Waste Product procurement target as set forth in the Applicable Standard due solely to the feedstock used to generate electricity at the Facility to produce such PCAs not qualifying as "Feedstock" ("Disallowed PCAs"), then Seller shall refund to Buyer (or, if Buyer owes any amounts hereunder to Seller, apply toward such balance) the Purchase Price actually paid by Buyer for such Disallowed PCAs or, if Seller has not yet invoiced Buyer for such Disallowed PCAs, Seller shall not invoice Buyer (and Buyer shall not be required to pay the Purchase Price) for such Disallowed PCAs. Buyer acknowledges and agrees that the remedies granted to Buyer in this Section shall be the sole and exclusive remedies of Buyer for any Final Determination that any PCAs are Disallowed PCAs. Notwithstanding the foregoing, if any person or entity challenges a Final Determination that any PCAs are Disallowed PCAs in a court of competent jurisdiction, then (a) the Parties

shall reasonably cooperate with such person or entity in its efforts to challenge such Final Determination; and (b) neither Party shall oppose such person or entity in its efforts to challenge such Final Determination. and (c) the remedies set forth in this Section shall not be exercisable unless and until a Final Determination is made that PCAs are Disallowed PCAs.

5.5 Limitation of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 5.1, 5.2, 5.3 and 5.4, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND EACH PARTY EXPRESSLY DISCLAIMS, AND THE OTHER PARTY ACKNOWLEDGES THAT SUCH PARTY IS NOT RELYING UPON, ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, AND WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY WITH RESPECT TO (A) CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE; OR (B) ANY ACTION OR FAILURE TO ACT, OR APPROVAL OR FAILURE TO APPROVE, OF ANY AGENCY OR GOVERNMENTAL ENTITY.

5.6 Limitations of Liability. THE PARTIES CONFIRM AND AGREE THAT UNDER THIS AGREEMENT, NO PARTY IS REQUIRED TO PAY OR WILL BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT, LOST REVENUE, COSTS OF DELAY, LIABILITY TO THIRD PARTIES, BUSINESS INTERRUPTION DAMAGES, OR OTHERWISE, WHETHER BY STATUTE, IN TORT, CONTRACT OR OTHERWISE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE PARTIES' PERFORMANCE (OR NON-PERFORMANCE) UNDER THIS AGREEMENT. IN NO EVENT WILL EITHER PARTY'S LIABILITY FOR ANY CLAIM OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE) FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM THIS AGREEMENT OR FROM PERFORMANCE OR BREACH THEREOF EXCEED THE PURCHASE PRICE REQUIRED TO BE PAID HEREUNDER.

5.7 Survival. The representations in Sections 5.1 5.2, 5.3 and 5.4 shall survive any expiration or termination of this Agreement until the first (1st) anniversary of the termination of the Term, whereupon they shall automatically terminate and be of no further force or effect.

ARTICLE 6 TERM; SURVIVAL.

6.1 Term. This Agreement is effective as of the Effective Date and will remain effective until the earlier to occur of (a) delivery of all of the Contract PCAs and Seller's receipt of the full Purchase Price for all Contract PCAs; (b) the termination of this Agreement pursuant to Section 6.2 or Section 7.9; and (c) [*date*] (the "Term").

6.2 Termination Due to Event of Default. If an Event of Default occurs with respect to either Party (the "Defaulting Party") at any time during the Term, the other Party (the "Performing Party") may, in addition to any other rights or remedies available to the Performing Party, (a) designate by written notice delivered to the Defaulting Party a date, no earlier than the day such notice is delivered and no later than twenty (20) days after such notice is delivered, as the early termination date of the Term; or (b) by written notice delivered to the Defaulting Party, immediately suspend transfers of Contract PCAs due in respect of this Agreement (provided that such suspension shall not suspend or otherwise affect Buyer's obligations to pay for Contract PCAs delivered prior to the date of suspension).

6.3 Survival. Except as set forth herein, Article 1, Article 2, Article 3, Article 4, Section 5.5, Section 5.6, Section 5.7, this Section 6.3, and Article 7 (subject to the limitation in Section 7.6) shall survive

expiration or termination of the Term. Termination of the Term or this Agreement shall not release any Party from the obligation to pay any amounts which may be due or owing under this Agreement with respect to any period prior to the date of termination of this Agreement.

ARTICLE 7 GENERAL PROVISIONS

7.1 Waiver of Immunity. Each Party waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (a) suit; (b) jurisdiction of any court; (c) relief by way of injunction or order for specific performance or recovery of property; (d) attachment of its assets (whether before or after judgment); and (e) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any suit, action, or proceedings relating to any dispute arising out of or in connection with this Agreement.

7.2 Notices. All notices, invoices, other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or e-mail. Notices, invoices and communications shall be deemed given when (a) actually received; (b) delivered by private courier (with confirmation of delivery); (c) transmitted by e-mail (with confirmation of transmission) (d) the next Business Day after delivered to a reputable overnight courier with all charges prepaid; or (e) five (5) Business Days after being deposited in the United States mail, first-class, registered or certified, return receipt requested, with postage paid. The communications shall be sent to the following addresses, or a different address provided by the receiving Party in accordance with the notice delivery requirements above:

If to Seller:

Desert View Power LLC
3600 American River Drive, Suite160
Sacramento, California 95864
Attention:
Phone:
E-mail:

If to Buyer:

[*name*]
[*address*]
Attention: [●]
Phone: [●]
Email: [●]

7.3 Force Majeure. Neither Party shall be liable for any failure or delay in the performance of its respective obligations hereunder (other than the obligation to make any payment) if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such Party, which event or circumstance was not anticipated as of the Effective Date, including acts of God; expropriation or confiscation of facilities by a governmental agency (including without limitation a tribal authority); compliance with any change of law or government regulation, or order by government authority; act of war, rebellion or sabotage or damage resulting therefrom; fire, flood, earthquake, explosion or accident; epidemic or pandemic; riot, strike, or other concerted acts of workmen, whether direct or

indirect("Force Majeure"). Notwithstanding the foregoing, Force Majeure shall not include (a) the loss of Buyer's markets for PCAs; (b) Buyer's inability to use PCAs for regulatory compliance reasons caused by Buyer; (c) Buyer's ability to purchase PCAs from another source or at a price lower than the Per PCA Price; or (d) Seller's ability to sell PCAs at a price greater than the Per PCA Price. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives written notice and details of the Force Majeure to the other Party as soon as practicable, then, the Claiming Party shall be excused from the performance of its obligations hereunder (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall seek to remedy the Force Majeure with commercially reasonable efforts. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure. A Party seeking to be excused from performance of any of its obligations hereunder is not required to rely solely on this Section, but shall be entitled to rely on any other applicable provision of this Agreement.

7.4 Entire Agreement; Amendments. The terms of this Agreement constitute the entire agreement between the Parties with respect to the matters set forth in this Agreement and supersede all prior and contemporaneous representations, warranties, covenants and agreements, whether oral or written. This Agreement may be changed only by written agreement identified as an amendment to this Agreement executed and delivered after the date hereof by all of the Parties.

7.5 Waiver. Either Party may waive compliance with any of the agreements or conditions of the other Party contained herein. Any such waiver shall be valid only if expressly set forth in an instrument in writing signed by the Party to be bound thereby. Any waiver of any breach, term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition, of this Agreement. No delay by Buyer or Seller in exercising its rights or remedies hereunder, including the right to terminate this Agreement or suspend performance, shall be deemed to constitute or evidence any waiver by Buyer or Seller of any right hereunder. The rights granted in this Agreement are cumulative of every other right or remedy that the enforcing Party may otherwise have at law or in equity or by statute.

7.6 Confidentiality.

(a) Definition. For purposes of this Agreement, "Confidential Information" means oral and written information exchanged between the Parties in connection with this Agreement, including but not limited to utility customer account data, trade secret, and proprietary information, and personal financial data. . Notwithstanding the foregoing, the following shall not constitute Confidential Information: (i) information which was already in a Party's possession on a non-confidential basis prior to its receipt from the other Party; (ii) information which is obtained from a third person who, insofar as is known to the Party, is not prohibited from transmitting the information to the Party by an obligation of confidentiality to the other Party; (iii) information which is or becomes publicly available through no fault of the Party; (iv) information which is at any time independently developed by employees or consultants of a Party who have not had access to Confidential Information in the possession of that Party; and (v) records which are deemed to be public records subject to disclosure under the California Public Records Act, Government Code Section 6250, et seq.

(b) Generally. Except as provided in this Section 7.6, neither Party shall use for any purpose other than completing the transactions contemplated by this Agreement, or publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the Term, without the other Party's prior express written consent. Each Party may permit knowledge of and access to Confidential Information only to those of its affiliates and its and their members, directors, managers, officers, attorneys,

accountants, representatives, agents and employees that have a need to know related to this Agreement and agree to keep such information confidential.

(c) Required Disclosure. Notwithstanding the foregoing, if required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated, or if requested by a court, governmental agency or authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the court, governmental agency or authority, as required or requested, provided that, if permitted by applicable laws, such Party has notified the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses) to cause that court, governmental agency, or authority to treat such information in a confidential manner or to prevent such information from being disclosed or otherwise becoming part of the public domain, and the Party being compelled to disclose shall reasonably cooperate (at the disclosing Party's expense) with the disclosing Party's reasonable requests to limit or prevent such disclosure.

(d) Survival. This Section 7.6 survives for a period of one (1) year following the expiration or termination of this Agreement.

7.7 Governing Law. This Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of California, including its statutes of limitations and repose, but without regard to any borrowing statute that would result in the application of the statute of limitations or repose of any other jurisdiction.

7.8 Venue. Each Party hereby (a) irrevocably consents to the exclusive jurisdiction of any California State and Federal courts sitting in Sacramento, California with respect to all actions and proceedings arising out of or relating to this Agreement; (b) agrees that all claims with respect to any such action or proceeding shall be heard and determined exclusively in such California State or Federal court; (c) waives the defense of an inconvenient forum; (d) consents to service of process by mailing or delivering such service to it at its address set forth below and (v) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

7.9 Change in Law. If any statutes, rules, or regulations are enacted, amended or revoked which (other than statutes, rules, or regulations are enacted, amended or revoked by Buyer) have the effect of (a) changing the transfer and sale procedures set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable; (b) making this Agreement illegal or unenforceable; or (c) eliminating the existence of the Contract PCAs or prohibiting Buyer from applying PCAs to Buyer's SB 1383 Recovered Organic Waste Product procurement target (a "Change in Law"), the Parties agree to negotiate in good faith to amend this Agreement to conform with such Change in Law in order to maintain the original intent of the Parties under this Agreement. If the Parties cannot agree in good faith to amend this Agreement to conform with such Change in Law in order to maintain the original intent of the Parties under this Agreement within sixty (60) days of a Party providing the other Party with a written notice of a Change in Law, then either Party may terminate this Agreement upon delivery of written notice of termination to the other Party.

7.10 Construction; Interpretation. All Article and Section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any

other gender, masculine, feminine, or neuter, as the context requires. Unless otherwise expressly provided, the words “include” and “including” do not limit the preceding words or terms, and mean “including without limitation”. In the calculation of any period of time, if the last day of such period falls on a day other than a Business Day, the period of time shall be automatically extended to the next Business Day. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

7.11 Assignment. Buyer may not assign this Agreement or its rights or obligations hereunder in whole or in part. Seller may assign, mortgage, pledge, sell, or otherwise directly or indirectly assign its interest in this Agreement or its rights hereunder with the prior written consent of Buyer which shall not be unreasonably withheld.

7.12 No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties (and their successors and assigns permitted hereunder) shall not impart any rights enforceable by any other third party.

7.13 Electronic Transmissions. Each Party agrees that (a) any signature page to this Agreement, consent or signed document transmitted by electronic transmission shall be treated in all manner and respects as an original written document; (b) any such signature page, consent or document shall be considered to have the same binding and legal effect as an original document; and (c) at the request of any Party, any such signature page, consent or document transmitted by electronic transmission shall be re-executed and/or re-delivered, as appropriate, by the relevant Party or parties in its original form. Each Party further agrees that such Party will not raise the transmission of a signature page, consent or document by electronic transmission as a defense in any proceeding or action in which the validity of such signature page, consent or document is at issue and hereby forever waives such defense. For purposes of this Agreement, the term “electronic transmission” means any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

7.14 Counterparts. This Agreement may be executed in one or more counterparts and by different Parties in separate counterparts, each of which will be deemed an original, but all of which will together constitute one instrument.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its duly authorized representatives as of the date first set forth above.

DESERT VIEW POWER, LLC

By: _____
Name:
Title:

[LEGAL NAME OF ENTITY (ALL CAPS)]

By: _____
Name:
Title:

FORM OF
ANNUAL REPORT

This Annual Report, dated as of [*date*], evidences the purchase and sale of the number of Contract PCAs during the Contract Year set forth below pursuant to that certain Procurement Compliance Attribute Purchase Agreement, dated as of [*date*] (the "Purchase Agreement"), between Desert View Power LLC ("Seller") and [*name of buyer*] ("Buyer"). Capitalized terms used but not defined in this Certificate shall have the meanings assigned in the Purchase Agreement.

Contract Year Ending:	[●]
Facility:	[●]
Contract PCAs During Contract Year (kWh):	[●]
Buyer Energy Consumption (kWh) During Contract Year:	[●]
Total PCAs Delivered During Contract Year (kWh):	[●]
Total PCAs Delivered During Contract Year (equivalent tons):	[●]

[Note to Draft: this Form of Report to be adjusted to reflect annual reporting requirements specified by CalRecycle]

FORM OF
PCA CERTIFICATE

DESERT VIEW POWER LLC (“Seller”), through the undersigned authorized representative in his official capacity as an officer, DOES HEREBY CERTIFY UNDER PENALTY OF PURJURY as of [*date*] that:

1. This Certificate is being delivered pursuant to that certain Procurement Compliance Attribute Purchase Agreement, dated as of [*date*] (the “Purchase Agreement”), between Seller and [*name of buyer*] (“Buyer”). Capitalized terms used but not defined herein shall have the meanings assigned in the Purchase Agreement.

2. Seller is the owner and operator of the biomass-fueled electricity generation facility located at 62300 Gene Welmas Way, Mecca, California 92254 (the “Facility”).

3. The Facility qualifies as a biomass conversion facility that generates electricity for sale to the California electricity grid through the use of biomass feedstock received directly from one or more permitted solid waste facilities described in 14 Cal. Code Regs. Section 18993.1(i).

4. During the Contract Year identified below, the Facility generated electricity from biomass feedstock received directly from one or more permitted solid waste facilities described in 14 Cal. Code Regs. Section 18993.1(i) sufficient to produce the number of PCAs transferred to Buyer under the Purchase Agreement during the Contract Year identified below (the “Transferred PCAs”):

<u>Number of Transferred PCAs</u>	<u>Contract Year Ended</u>
[•]	December 31, [•]

5. Upon payment in full for the Transferred PCAs, the Transferred PCAs have not otherwise been sold or transferred by Seller to any jurisdiction other than Buyer to satisfy any recovered organic waste obligation elsewhere under any standard, marketplace or jurisdiction.

IN WITNESS WHEREOF, this Certificate has been executed and delivered by a duly authorized representative as of the date first set forth above.

DESERT VIEW POWER, LLC

By: _____
Name:
Title:

FORM OF
QUARTERLY CERTIFICATE

This Quarterly Certificate, dated as of **[date]**, evidences the purchase and sale of the number of Contract PCAs during the Quarterly Period and Contract Year set forth below pursuant to that certain Procurement Compliance Attribute Purchase Agreement, dated as of **[date]** (the “Purchase Agreement”), between Desert View Power LLC (“Seller”) and **[name of buyer]** (“Buyer”). Capitalized terms used but not defined in this Certificate shall have the meanings assigned in the Purchase Agreement.

Facility: [●]

Quarterly Period Ending: [●]

Contract Year Ending: [●]

(a) Buyer Energy Consumption for Contract Year-to-Date through end of Quarterly Period: [●]

(b) PCAs allocated to Buyer Contract Year-to-Date through end of Quarterly Period: [●]

(c) PCAs delivered by Seller to Buyer during prior Quarterly Periods of Contract Year: [●]

PCAs delivered by Seller to Buyer this Quarterly Period, equal to the lesser of (a) or (b), less (c) [●]

Price per kWh: \$[●]

Price per Equivalent Ton: \$[●]

Aggregate Purchase Price Due: \$[●]

Expected Energy Consumption 1,214,993
Contract PCA Volume 750,750

	Original Projection Consumption*	Original Projection PCAs generated*
January	101,249	37,538
February	101,249	37,538
March	101,249	37,538
April	101,249	37,538
May	101,249	90,090
June	101,249	90,090
July	101,249	90,090
August	101,249	90,090
September	101,249	90,090
October	101,249	75,075
November	101,249	37,538
December	101,249	37,538
YTD / Future	1,214,993	750,750

Actual Consumption*	Actual PCAs generated*	Updated Forecast Consumption*	Updated Forecast PCAs generated*	Total Projected Consumption*	Total Projected PCAs generated*
85,000	50,000			85,000	50,000
85,000	50,000			85,000	50,000
85,000	50,000			85,000	50,000
90,000	75,000			90,000	75,000
95,000	130,000			95,000	130,000
100,000	175,000			100,000	175,000
		110,000	80,000	110,000	80,000
		110,000	80,000	110,000	80,000
		100,000	30,000	100,000	30,000
		95,000	16,000	95,000	16,000
		95,000	13,000	95,000	13,000
		95,000	1,750	95,000	1,750
540,000	530,000	605,000	220,750	1,145,000	750,750

* Attributed to this jurisdiction

SCHEDULE I

PRICING AND VOLUME

The example schedules below represent pricing based on the cumulative volume signed up by June 30, 2023, by all Pioneer Community Energy jurisdictions. The contract with each individual jurisdiction will have its individualized schedule inserted into the document.

Pricing is in three tiers: 0-10,000 tons; 10,001-20,000 tons; 20,001+ tons.

All PCAs purchased will be priced at the total volume signed up by June 30, 2023.

If Total 2025 Commitment from all Pioneer Community Energy jurisdictions is **up to 10,000** tons as of 6/30/2023:

Then Schedule 1 would look like this:

<u>Vintage Year</u>	<u>Per PCA Price (\$/ton equivalent)</u>	<u>Per PCA Price (\$/kWh)</u>	<u>Volume (tons equivalent)</u>	<u>Volume (kWh)</u>	<u>Percentage of Generation</u>	<u>Purchase Price (Contract Year)</u>
2023	\$31.50	\$0.0485	3,000	1,950,000	1.30%	\$ 94,500.00
2024	\$32.45	\$0.0499	6,500	4,225,000	2.82%	\$ 210,892.50
2025	\$33.42	\$0.0514	10,000	6,500,000	4.33%	\$ 334,183.50
2026	\$34.42	\$0.0530	10,000	6,500,000	4.33%	\$ 344,209.01
2027*	\$35.45	\$0.0545	TBD	TBD	TBD	TBD

If Total 2025 Commitment from all Pioneer Community Energy jurisdictions is **10,001 to 20,000** tons as of 6/30/2023:

Then Schedule 1 would look like this:

<u>Vintage Year</u>	<u>Per PCA Price (\$/ton equivalent)</u>	<u>Per PCA Price (\$/kWh)</u>	<u>Volume (tons equivalent)</u>	<u>Volume (kWh)</u>	<u>Percentage of Generation</u>	<u>Purchase Price (Contract Year)</u>
2023	\$30.25	\$0.0465	3,942	2,562,300	1.71%	\$ 119,245.50
2024	\$31.16	\$0.0479	8,541	5,551,650	3.70%	\$ 266,116.21
2025	\$32.09	\$0.0494	13,140	8,541,000	5.69%	\$ 421,691.84
2026	\$33.05	\$0.0509	13,140	8,541,000	5.69%	\$ 434,342.59
2027*	\$34.05	\$0.0524	TBD	TBD	TBD	TBD

If Total 2025 Commitment from all Pioneer Community Energy jurisdictions is **20,001 to 30,000** tons as of 6/30/2023:

Then Schedule 1 would look like this:

<u>Vintage Year</u>	<u>Per PCA Price (\$/ton equivalent)</u>	<u>Per PCA Price (\$/kWh)</u>	<u>Volume (tons equivalent)</u>	<u>Volume (kWh)</u>	<u>Percentage of Generation</u>	<u>Purchase Price (Contract Year)</u>
2023	\$29.00	\$0.0446	6,265	4,071,990	2.71%	\$ 181,673.40
2024	\$29.87	\$0.0460	13,573	8,822,645	5.88%	\$ 405,434.47
2025	\$30.77	\$0.0473	20,882	13,573,300	9.05%	\$ 642,457.70
2026	\$31.69	\$0.0488	20,882	13,573,300	9.05%	\$ 661,731.43
2027*	\$32.64	\$0.0502	TBD	TBD	TBD	TBD

* The volume in 2027 will automatically adjust to represent 100% of the Buyer's Recovered Organic Waste Product target as provided by CalRecycle, with the Percentage of Generation and the Purchase Price filled in accordingly.