

AMENDED AND RESTATED FOURTH AMENDMENT

This AMENDED AND RESTATED FOURTH AMENDMENT (“Restated Fourth Amendment”) is entered into effective as of January 31, 2011 (“Restated Fourth Amendment Effective Date”) by and among San Diego Gas & Electric Company (“SDG&E” or “Buyer”), MMR Power Solutions, LLC (“MMR”), and USS Energy Star 2 LLC (“USS Energy Star”). Pursuant to Section 42 below, on the Restated Fourth Amendment Effective Date USS Energy Star shall be the “Seller” or “Counterparty” as referred to in the Agreement (defined below). SDG&E and Counterparty are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

WHEREAS, SDG&E and Bethel Energy LLC (“Bethel”) entered into a Master Power Purchase and Sale Agreement-Bethel Solar 1 dated as of October 31, 2006 and related documents, including the confirmation letter (“Confirmation”) and cover sheet (“Cover Sheet”), each dated October 31, 2006 (collectively the “Agreement”).

WHEREAS, Bethel assigned all of its rights, title and interest in and to the Agreement, including the Confirmation and the Cover Sheet, to MMR via an Assignment, Assumption and Consent Agreement dated October 1, 2007.

WHEREAS, Buyer and MMR agreed to amend the Agreement, including the Confirmation and the Cover Sheet, in that certain First Amendment between Buyer and MMR dated February 10, 2008.

WHEREAS, Buyer and MMR agreed to amend further the Agreement, including the Confirmation and the Cover Sheet, in that certain Second Amendment between Buyer and MMR dated March 31, 2009.

WHEREAS, Buyer and MMR agreed to amend further the Agreement, including the Confirmation and the Cover Sheet, in that certain Third Amendment between Buyer and MMR dated May 29, 2009.

WHEREAS, Buyer and MMR agreed to amend further the Confirmation in that certain Fourth Amendment between Buyer and MMR dated June 30, 2010 (“Fourth Amendment”), that certain Fifth Amendment between Buyer and MMR dated August 31, 2010 (“Fifth Amendment”), that certain Sixth Amendment between Buyer and MMR dated October 31, 2010 (“Sixth Amendment”), and that certain Seventh Amendment between Buyer and MMR dated November 30, 2010 (“Seventh Amendment”), in each case to extend the deadline for Counterparty (as defined in the Agreement) to have satisfied or waived the condition precedent set forth in Section 1.2 of the Confirmation and without making any other change to the Agreement, including the Confirmation and the Cover Sheet;

WHEREAS, Buyer and Seller now desire to amend further the Agreement, including the Confirmation and the Cover Sheet, under the terms and conditions set forth in this Restated Fourth Amendment;

WHEREAS, pursuant to Section 42 of this Restated Fourth Amendment, MMR is assigning all of its rights, title and interest in and to the Agreement, including the Confirmation and the Cover Sheet, to USS Energy Star effective on the Restated Fourth Amendment Effective Date;

WHEREAS, because this Restated Fourth Amendment (in addition to making other changes to the Agreement, including the Confirmation and Cover Sheet) further extends the deadline for Counterparty to have satisfied or waived the condition precedent set forth in Section 1.2 of the Confirmation, thereby modifying the only changes that were effectuated in the Fourth Amendment, Fifth Amendment, Sixth Amendment, and Seventh Amendment, Buyer and Counterparty desire to amend and replace the Fourth Amendment, and to terminate, supersede, and replace the Fifth Amendment, Sixth Amendment, and Seventh Amendment, with this Restated Fourth Amendment.

NOW, THEREFORE, for mutual and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

All capitalized terms not otherwise defined herein shall have the meanings attributed to them in the Agreement, including the Confirmation and the Cover Sheet.

1.0 **Effectiveness.** Section 1.1 of the Confirmation shall be deleted in its entirety and replaced with the following:

“Except for the Parties’ obligations as set forth in the first paragraph under Section 1.0 of the Confirmation, and except for Section 1.2 of the Confirmation, as amended by the Restated Fourth Amendment, which are effective immediately, the effectiveness of the Agreement, including the Restated Fourth Amendment, is conditioned upon receiving Final CPUC Restated Fourth Amendment Approval on or before December 1, 2011 without extension for Force Majeure or any other reason. “Final CPUC Restated Fourth Amendment Approval” shall mean a final and non-appealable order or resolution of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves the Restated Fourth Amendment in its entirety and the relief requested in Buyer’s accompanying advice letter filing. The Parties agree to cooperate and use all reasonable efforts to obtain the Final CPUC Restated Fourth Amendment Approval as soon as is practicable, including filing the advice letter as soon as is practicable. SDG&E agrees to provide Counterparty with a copy of any draft or final CPUC order or resolution addressing the Restated Fourth Amendment. Should the CPUC issue an order or resolution approving the Restated Fourth Amendment with conditions or modifications that materially alter the commercial aspects of this Restated Fourth Amendment, then each Party shall have ten (10) Business Days from the later of the mailing date of such order or resolution, or the date that SDG&E provides a copy of such order or resolution to Counterparty, to provide the other Party written notice of the notifying Party’s acceptance or rejection of the CPUC order or resolution as issued, provided, however, that if a Party fails to provide written notification of its acceptance or rejection to the other Party within such ten (10) day period, that Party’s silence shall be deemed to constitute rejection of the CPUC order or resolution as issued and agreement by such Party that this condition has not been satisfied upon the Final Restated Fourth Amendment Approval Date. “Final Restated Fourth Amendment Approval Date” shall mean the first business day after the date on which the CPUC order or resolution approving the Restated Fourth Amendment becomes final and no longer subject to any appeal. If a notice of rejection is sent (or if a party is deemed to have provided a rejection as provided for above), the Parties agree to use good faith efforts to renegotiate the Restated Fourth Amendment. If, within sixty (60) days, no agreement is reached, or if Final CPUC Restated Fourth Amendment Approval does not occur by the deadline specified above, then either Party may terminate the Agreement upon delivery of written notice to the other Party. In the event of such termination, Seller shall forfeit the Bid Fee, and neither Party shall have any additional obligation or liability under this Agreement.”

2.0 **Financing.** Section 1.2 of the Confirmation shall be deleted in its entirety and replaced with the following:

“Except for Seller’s obligations under the first paragraph of Section 1.0 of this Confirmation, Seller’s obligations under this Confirmation and the Agreement are expressly conditioned upon Seller first having obtained legally binding commitments from one or more financial institutions or other third party lenders or third party investors to finance the development, construction, and ownership of the Facility on terms and conditions acceptable to Seller in Seller’s sole and absolute discretion no later than December 31, 2012 (the “Financing Condition Deadline”) without extension for Force Majeure or any other reason. In the event that Seller fails to give written notice to Buyer on or before the date that is fifteen (15) days after the Financing Condition Deadline that Seller has either satisfied or waived the condition precedent specified in this Section 1.2, then the condition precedent shall be deemed not to have been satisfied or waived. In the event that this condition precedent is not satisfied or waived, Seller shall forfeit the Bid Fee, and neither Party shall have any additional obligation or liability under this Agreement.”

3.0 Electrical Interconnection. The following new Section 1.3 shall be added to the Confirmation:

“1.3 In no event later than December 1, 2012, without extension for Force Majeure or any other reason, Buyer shall have agreed to and approved of the Facility’s in-service interconnection date as designated by the CAISO (“In-Service Date”) if such In-Service Date is after the Commercial Operation Deadline. In the event that Buyer fails to give written notice to Seller by the deadline specified above that Buyer has either satisfied or waived the condition precedent specified in this Section 1.3, then such condition precedent shall be deemed to not have been satisfied or waived. In the event that the condition precedent specified in this Section 1.3 is not satisfied or waived, then Seller shall forfeit the Bid Fee and neither Party shall have any additional obligation or liability under this Agreement.”

4.0 Obligations Effective Immediately. In Section 1.0 of the Confirmation, any place the words “Sections 1.1 and 1.2” or “Section 1.1 and Section 1.2” appear they shall be replaced with “Sections 1.1, 1.2, and 1.3,” and any place the words “both of the conditions precedent in Sections 1.1 and 1.2” or “both conditions precedent in Section 1.1 and 1.2” appear they shall be replaced with the words “all conditions precedent in Sections 1.1, 1.2 and 1.3.”

5.0 Firm Transmission. Section 2.1 of the Confirmation shall be deleted in its entirety.

6.0 Facility. Section 3.0 of the Confirmation shall be modified by replacing the information specified therein for “*Technology Type*,” “*Specific Unit Description*,” and “*Facility Total Net Capacity*” with the following:

“Technology Type: Solar
 Specific Unit Description: Photovoltaic (PV)-based generation
 Facility Total Net Capacity: 123 MW_{ac} if single-axis tracking with crystalline silicon (c-Si) solar cells are used, or 139 MW_{ac} if fixed-panel solar cells are used.”

7.0 Output. Section 3.1 of the Confirmation shall be modified by deleting “304,017 MWh” and replacing it with the following:

Contract Year	Annual Estimated Output (MWh)	Contract Year	Annual Estimated Output (MWh)
1	304,017	11	275,548
2	303,103	12	277,486
3	300,041	13	269,425
4	296,980	14	266,363
5	293,918	15	263,301
6	290,856	16	260,240
7	287,795	17	257,178
8	284,733	18	254,117
9	281,671	19	251,055
10	278,610	20	247,993”

8.0 Commercial Operation Deadline. Section 3.2 of the Confirmation shall be deleted in its entirety and replaced with the following:

“COD. The Facility must satisfy the requirements for Commercial Operation (set forth in Section 3.3) by the Commercial Operation Deadline (“COD”). The “Commercial Operation Deadline” with respect to the Facility shall be no later than September 30, 2013, as extended by Force Majeure on a day-for-day basis for up to one hundred and eighty (180) days (the “Maximum Force Majeure Delay”) to the extent Seller is actually delayed by Force Majeure in achieving Commercial Operation by the Commercial Operation

Deadline. Any delays to Commercial Operation after the Maximum Force Majeure Delay period caused by Force Majeure shall result in daily delay damages and/or Event of Default in accordance with Section 12.0.”

- 9.0** **Exhibit D.** Exhibit D to the Agreement shall be deleted and replaced with the Exhibit D that is attached to this Restated Fourth Amendment.
- 10.0** **Commercial Operation.** In Section 3.3 of the Confirmation, delete the words “turbine supplier”.
- 11.0** **Delivery Point.** Section 4.0 of the Confirmation shall be deleted in its entirety and replaced with the following:

“Delivery Point. The Delivery Point shall be the Point Of Interconnection of the Facility to the CAISO System as set forth in the Facility’s Large Generator Interconnection Agreement which shall be the 230 KV bus at the Buyer’s Imperial Valley Substation.”
- 12.0** **Delivery Term.** In Section 5.1 of the Confirmation the word “date” shall be replaced with the word “Date”.
- 13.0** **Performance Guarantees.** The second paragraph of Section 7.1 of the Confirmation and the table that follows shall be deleted in their entirety and replaced with the following:

“The Guaranteed Energy Production at any given time shall be 70% of the then previous Contract Year’s Annual Estimated Output (as indicated in Section 3.1 of this Confirmation) plus 70% of the then current Contract Year’s Annual Estimated Output (as indicated in Section 3.1 of this Confirmation). If Seller is otherwise capable of generating Output from the Facility but is excused from performance under subsection (ii), (iii) or (v) of Section 7.2, then Seller shall receive credit for purposes of meeting the Guaranteed Energy Production only (and not for any other purpose, including payment) for each period that such performance is excused with such credited amounts to be reasonably calculated based on historical performance and adjusted by season.”
- 14.0** **Seller Excuses.** In Section 7.2 of the Confirmation, subpart (vii) is deleted in its entirety.
- 15.0** **Exclusivity.** In Section 8.1 of the Confirmation, clause (i) shall be deleted and replaced with the following:

“(i) to the CAISO in available imbalance markets if Seller is unable to deliver Output to the Delivery Point”.
- 16.0** **Contract Price.** In Section 9.1 of the Confirmation, the first sentence shall be deleted and replaced with the following:

“The Contact Price to be paid by Buyer shall be the applicable price specified in the table in Section 9.1.1 below, adjusted as specified in Section 9.1.2 below.”
- 17.0** **Price Schedule.** After the first sentence in Section 9.1 of the Confirmation, a new Section 9.1.1 and the heading “Price Schedule” shall be inserted just before the table.
- 18.0** **Contract Price Reductions.** After Section 9.1.1 of the Confirmation, the following shall be added as a new Section 9.1.2:

“9.1.2 Contract Price Reduction. Each applicable price specified in the table in Section 9.1.1 shall be reduced as specified in subpart (i) or subpart (ii) below, as applicable. The price reduction specified in subparts (i) and (ii) below shall be mutually exclusive and under no circumstances shall the Contract Price

ever reflect both the price reduction specified in subpart (i) below and the price reduction specified in subpart (ii) below.

(i) LCBF Price Reduction

- a) If the Final Network Upgrades Costs (as defined in subpart (b) below) exceed the Preapproved Costs (as defined in subpart (c) below), then Buyer shall be entitled to the LCBF Price Reduction (as defined in subpart (d) below), to be calculated and applied as specified in subparts (d)-(e) below.
- b) The “Final Network Upgrades Costs” shall mean those costs incurred by all Participating Transmission Owners (without adjustments resulting from any audits that are not complete as of the Reduction Commencement Date, as defined in subpart (d)(iii) below) for any Network Upgrades that are necessary to interconnect the Facility to enable the cost-effective and reliable delivery of Output & Capacity Attributes from the Facility to Buyer’s load as is consistent with FERC’s then current orders and rulemakings; provided, however, if at the Reduction Commencement Date (as defined in subpart (d)(iii) below), not all of the expected Final Network Upgrades Costs have been paid by all of the Participating Transmission Owners, the Parties shall use the estimates for such unpaid portions contained in the Facility’s Large Generator Interconnection Agreement (as such agreement may be amended from time to time).
- c) The “Preapproved Costs” shall mean Seventeen Million dollars (\$17,000,000).
- d) The “LCBF Price Reduction” shall be calculated as specified in subpart (e) below and shall:
 - i) be expressed in dollars per MWh;
 - ii) apply as a reduction to the applicable dollar per MWh price specified in the table in Section 9.1.1;
 - iii) apply commencing on the earlier of (i) the first day of the first full billing month following the date when Seller receives the initial reimbursement for the final completed Network Upgrades project (without audit) (or last reimbursement if the final completed Network Upgrades project is with Buyer as the Participating Transmission Owner), and (ii) the first day of the month in which the last ten (10) years of the Delivery Term begins (such date is the “Reduction Commencement Date”);
 - iv) apply only to the first One Hundred Thousand MWh (100,000 MWh) of Delivered Energy delivered by Seller under this Agreement during each consecutive twelve billing month period;
 - v) apply for a period of ten (10) years after the Reduction Commencement Date; and
 - vi) never apply in any period when the Deliverability Price Reduction is being applied to the prices specified in the table in Section 9.1.1.

e) The LCBF Price Reduction shall be calculated as follows:

$$R = C \times 0.00000151729312707986$$

Where:

R = the LCBF Price Reduction (expressed in dollars per MWh)

C = the positive difference, if any, between the Final Network Upgrades Costs minus the Preapproved Costs

(ii) Deliverability Price Reduction

a) In the event that the Facility has not achieved Full Capacity Deliverability Status (as defined in the CAISO Tariff) or all of the Network Upgrades specified in the Facility’s Large Generator Interconnection Agreement (as may be amended from time to time) are not complete and operational, both as of the Date of Commercial Operation, then Buyer shall be entitled to a Deliverability Price Reduction (as defined in subpart (b) below), to be calculated and applied as specified in subpart (b) below.

Notwithstanding the foregoing, for periods in which the Facility has not achieved Full Capacity Deliverability Status (as defined in the CAISO Tariff) and all of the Network Upgrades specified in the Facility’s Large Generator Interconnection Agreement (as may be amended from time to time) are not complete and operational by the date specified for such in the Large Generator Interconnection Agreement (as may be amended from time to time), and the delay is not caused by the action or inaction of the Seller, then the Deliverability Price Reduction in this Section 9.1.2(ii) shall not apply.

b) The “Deliverability Price Reduction” shall:

- i) be expressed in dollars per MWh;
- ii) apply as a reduction to the applicable dollar per MWh price specified in the table in Section 9.1.1;
- iii) be as stated below for the applicable year:

<u>Contract Year</u>	<u>Price Reduction</u>	<u>Contract Year</u>	<u>Price Reduction</u>
1	\$8/MWh	5	\$20/MWh
2	\$9/MWh	6	\$25/MWh
3	\$13/MWh	7	\$35/MWh
4	\$15/MWh	8-20	\$35/MWh

- iv) apply only to Delivered Energy in billing months when the Facility has not achieved Full Capacity Deliverability Status (as defined in the CAISO Tariff) or all of the Network Upgrades specified in the Facility’s Large Generator Interconnection Agreement (as may be amended from time to time) are not complete and operational (subject to the second paragraph in subsection (a) above);
- v) not apply to the proportionate extent that Buyer is meeting some of its Resource Adequacy Requirements from the Facility’s Net Qualifying Capacity (as defined in the CAISO Tariff), with the proportioning to reflect the difference between the Facility’s Net Qualifying Capacity and the Net Qualifying Capacity that would be available if the Facility had

achieved Full Capacity Deliverability Status (as defined in the CAISO Tariff) and all of the Network Upgrades specified in the Facility’s Large Generator Interconnection Agreement (as may be amended from time to time) were complete and operational; and

- vi) never apply in any period when the LCBF Price Reduction is being applied to the prices specified in the table in Section 9.1.1.”

19.0 Energy Payment. The first paragraph of Section 9.2 of the Confirmation shall be deleted and replaced with the following:

“Except as specified in Section 17 of the Confirmation, the energy payment shall be only for Delivered Energy, delivered by the Seller and received by the Buyer during the Delivery Term at the Delivery Point. Except as specifically stated in Section 8.1, Buyer shall receive all Green Attributes for all Output delivered to the Delivery Point. The energy payment shall be calculated as follows:”

20.0 Imperial Irrigation District Agreement. Section 9.2.1 of the Confirmation shall be deleted in its entirety and replaced with the following: “Reserved.”

21.0 Penalties. Section 9.2.2 of the Confirmation shall be deleted in its entirety and replaced with the following: “Reserved.”

22.0 Delivered Energy. Section 9.2.3 of the Confirmation shall be deleted in its entirety and replaced with the following:

“Delivered Energy” means all Output delivered to Buyer as measured in MWh at the CAISO revenue meter of the Facility adjusted to reflect deliveries to the Delivery Point based on a power factor of precisely one (1) and net of all auxiliary load and electrical losses associated with transmission of the Product to the Delivery Point, including if applicable, but not limited to, any distribution, transmission, or transformation losses between the CAISO revenue meter and the Delivery Point.”

23.0 Test Energy. Section 9.3 of the Confirmation shall be deleted in its entirety and replaced with the following:

“Test Energy. Prior to the Delivery Term and subject to the completion of all required interconnection facilities as described in the applicable Large Generator Interconnection Agreement, Seller shall sell and Buyer shall buy all Output as test energy so long as such test energy exceeds 1 MW. With respect to such test energy, Buyer shall receive and pay for Delivered Energy and associated Green Attributes delivered to the Delivery Point at the price of 75% of the Contract Price applicable to the hour of delivery. Prior to the start of test energy delivery, Seller shall have (i) obtained CEC certification as an Eligible Renewable Energy Resource (ERR), and (ii) applied with the CAISO to become a Participating Intermittent Resource.”

24.0 Facility Schedule. Section 11.0 of the Confirmation shall be deleted in its entirety and replaced with the following:

The Facility Milestones, unless extended due to a Force Majeure, are the following:

1	Obtain CEC certification as an Eligible Renewable Resource	COD minus 24 months
2	Obtain WREGIS certification to track Green Attributes	COD minus 24 months
3	Submit Large Generator Interconnection Application to CAISO	Completed
4	Submit major required development approval applications (County, APCD, other)	March 31, 2011
5	Execute an Installation Contractor contract	COD minus 12 months
6	Deliver to Buyer documentation in form and substance reasonably acceptable to Buyer evidencing Seller’s good and marketable title in fee simple to the Facility site	COD minus 8 months

	free and clear of all liens and encumbrances except for customary exceptions which are acceptable to Buyer in its sole judgment or a valid leasehold interest in the Facility site for the duration of the Delivery Term. Any lease of the Facility site shall be subject to the prior review and approval of Buyer, which approval may not be unreasonably withheld, conditioned or delayed.	
7	Receive all development approvals and permits necessary to begin construction	COD minus 7 months
8	Issue Unconditional Notice to Proceed to the Installation Contractor	COD minus 7 months
9	Apply with CAISO to become a Participating Intermittent Resource	60 days prior to delivery of any test energy
10	Execute a Meter Services Agreement with CAISO	COD minus 7 months
11	Execute a Participating Generator Agreement with CAISO	COD minus 7 months
12	Execute a Large Generator Interconnection Agreement with CAISO	COD minus 6 months
13	Begin Construction activities	COD minus 6 months
14	Begin testing of the Facility	COD minus 1 month

25.0 Facility Delays. In Section 12.2 of the Confirmation, in the second sentence, the delay damages of “\$8,329.24” shall be deleted and replaced with “\$16,894.44 (“Daily Delay Damages”).”

26.0 Forced Outage. The following new Section 14.4 shall be added to the Confirmation:

“14.4 “**Forced Outage**” means any unplanned reduction or suspension of production of Product from the Facility or unavailability of the Facility in whole or in part that is not a Scheduled Maintenance Outage or a willful withholding of Product when the Facility is otherwise capable of delivering Product under Good Utility Practice. Within fifteen minutes of any Forced Outage, Seller shall submit a completed Exhibit G: Outage Notification Form to the Buyer in accordance with the instructions shown on the form and shall submit outage information to the CAISO in accordance with the CAISO Tariff and Section 16.3. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage. Seller shall not substitute energy from any other source for the output of the Facility during a Forced Outage. For the avoidance of doubt, Forced Outage shall not include instances when the Facility is curtailed or subject to a dispatch down (or in the event of an Economic Curtailment addressed in Section 17).”

27.0 Standard Capacity Product. In Section 15.0 of the Confirmation, the word “Reserved” shall be deleted and the following shall be inserted as a new Section 15.0:

“**Standard Capacity Product.** To the extent the provisions of the CAISO Tariff implementing the Availability Standards apply to the Facility, the Parties agree that (i) any Availability Incentive Payments are for the benefit of the Seller and for Seller’s account and (ii) any Non-Availability Charges are the responsibility of the Seller and for Seller’s account.”

28.0 Scheduling for CAISO Interconnection. Section 16 of the Confirmation shall be deleted in its entirety and replaced with the following:

16.0 Scheduling for CAISO Interconnection.

16.1 EIRP Requirements. Seller shall cause the Facility to become a Participating Intermittent Resource, including executing all necessary documents to become a Participating Intermittent Resource not less than sixty (60) days before the start of any Energy deliveries from the Facility. Seller shall be responsible for all CAISO forecasting fees and related charges associated with the Facility becoming a Participating Intermittent Resource and participating in the CAISO’s Eligible Intermittent Resource Protocol (“EIRP”). Seller shall use commercially reasonable efforts to obtain certification with the CAISO as a Participating Intermittent Resource in EIRP prior to Commercial Operation. Seller and Buyer shall comply with EIRP, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources, including the EIRP, for the

Delivery Term. In the event that EIRP or the CAISO Tariff and/or any protocols relating thereto are changed, amended, modified, replaced, or terminated, Seller and Buyer agree to comply with such revisions and, to the extent practical, to implement such revisions in a manner that maintains the relative economic positions of the parties as of the date of this Agreement.

- 16.2 Buyer as Scheduling Coordinator for the Facility. Upon initial synchronization of the Facility to the CAISO System, Buyer shall be the Scheduling Coordinator (SC) or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the initial synchronization of the Facility to the CAISO System, Seller and Buyer shall take all actions and execute and deliver to the other Party and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility effective as of the initial synchronization of the Facility to the CAISO System. Buyer shall perform its obligations as Scheduling Coordinator for the Facility in accordance with the CAISO Tariff. On and after initial synchronization of the Facility to the CAISO System, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to the CAISO based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to Section 13.0, and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, or real time basis, as determined by Buyer. Buyer (as Seller's SC) shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of scheduled energy consistent with EIRP whenever EIRP is applicable, and consistent with Buyers' best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever EIRP is not applicable (the energy reflected in such Schedules and updates is "Scheduled Energy").
- 16.3 Notices. Buyer (as Seller's SC) may provide Seller with access to a web based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. In accordance with Section 14 and this Section 16, Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.
- 16.4 CAISO Costs and Revenues. Except as otherwise set forth below and elsewhere in this Agreement, Buyer (as Seller's SC) shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits and other payments) as the Scheduling Coordinator for the Facility, including revenues associated with CAISO dispatches, bid cost recovery, inter-SC trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO charges or penalties incurred each month in excess of \$100,000 ("Seller Penalty Threshold") as a consequence of the Facility not being available, the Seller not notifying the CAISO and Buyer (as Seller's SC) of outages in a timely manner (in accordance with the CAISO Tariff and as set forth in Section 14), any other failure by Seller to abide by the CAISO Tariff, and deviations between Delivered Energy and Scheduled Energy that are attributable to Seller, the Facility, or any event, circumstance, act or incident occurring prior to or at the Delivery Point, including without limitation uninstructed deviation penalties (except that during the period before Seller obtains certification to become a Participating Intermittent Resource Seller shall be responsible for the foregoing charges or penalties even if they are below the Seller Penalty Threshold). In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.

- 16.5 CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after final settlement information becomes available from the CAISO (approximately 90 days after each month in the Delivery Term) that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Seller shall pay the amount of CAISO Charges Invoices within ten Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. Upon Seller's request, Buyer shall promptly provide Seller with all CAISO settlement data required to validate a CAISO Charges Invoice. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.
- 16.6 Dispute Costs. Buyer (as Seller's SC) may be required to dispute CAISO settlements in respect of the Facility. To the extent Buyer is solely responsible for settlement costs, or solely pays for disputes, Buyer may dispute these at its own election and its own expense. If Seller is assessed settlement costs (i.e. the settlement exceeds Seller Penalty Threshold), then Buyer (as Seller's SC) agrees, and Seller permits, Buyer to prosecute disputes on Seller's behalf, for which Seller agrees to pay Buyer's incremental costs and expenses (including reasonable attorneys' fees, including reasonably allocated costs of in-house counsel of the Buyer) that may be reasonably incurred by Buyer to prosecute such CAISO disputes, unless the Seller's share of total anticipated or actual costs of prosecution exceed the Seller's share of the settlement amount,.
- 16.7 Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.
- 16.8 Master File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.
- 16.9 Annual Forecast of Delivery Schedules. No later than forty-five (45) days before (A) the first day of the first Contract Year of the Delivery Term and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day Scheduled Energy, by hour, for the following calendar year.
- 16.10 Monthly Forecast of Delivery Schedules. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide a non-binding forecast of each day's average Scheduled Energy, by hour, for the following month ("Monthly Delivery Forecast").
- 16.11 Daily Delivery Schedules. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Scheduled Energy for each hour of the immediately succeeding day ("Day-Ahead Schedule"). A Day-Ahead Schedule provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Schedule shall clearly identify, for each hour, Seller's best estimate of all amounts of energy to be delivered and sold to Buyer pursuant to this Agreement. Seller shall deliver energy in accordance with its Day-Ahead Schedule. Seller shall accurately reflect on such Schedule the expected generation of the Facility, subject to the applicable CAISO Tariff, and Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Schedule as

required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

16.12 **Hourly Delivery Schedules.** Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Outages in accordance with Section 14.4.

29.0 Curtailment and Dispatch Down. In Section 17 of the Confirmation, the following shall be added at the end of the sentence:

"provided, however, that (1) neither curtailment nor dispatch down shall include periods of curtailment of delivery of Product from the Facility resulting from economic curtailment where Buyer (as the Scheduling Coordinator) submits an economic bid in the applicable CAISO market that results in an otherwise available Product not being scheduled or awarded in such CAISO market ("an Economic Curtailment"), and (2) such Economic Curtailment shall not be a Buyer excuse under Section 7.3 and Seller shall be entitled to the remedies under Section 4.2 of the Master Agreement as if Product had been delivered to the Delivery Point.

30.0 Delivery and Metering. The following shall be added at the end of the opening paragraph in Section 18.0 of the Confirmation:

"This entire Section 18 and its subsections shall be construed in accordance with the CAISO Tariff and the Facility's Meter Service Agreement with the CAISO."

31.0 Meter Agreements. Section 18.1 of the Confirmation shall be deleted and replaced in its entirety with the following:

"**CAISO Revenue Meter.** All Output from the Facility per the terms of this Agreement must be delivered through a single CAISO revenue meter and that meter must be dedicated exclusively to the Facility described herein. All Product purchased under this Agreement must be measured by the Facility's CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment reasonably necessary to accommodate the Facility. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO meter reporting website and/or directly from the CAISO meter(s) at the Facility site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.3 of the Master Agreement, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data."

32.0 Force Majeure Definition. In Article One, Section (a), Paragraph (2) of the Cover Sheet, the definition of "Force Majeure" shall be amended by adding the following at the end of the definition:

"Force Majeure shall include delays to the extent caused by the failure of the CAISO or a Participating Transmission Owner to achieve the in-service interconnection date for the Facility's interconnection facilities by the COD, but not where such delays are the direct or indirect result of the fault or negligence of the Seller and including Seller's failure to enter into an Engineering & Procurement Agreement with San Diego Gas & Electric Company."

33.0 **Additional Definitions.** In Article One, Section (a) of the Cover Sheet, the following shall be added as additional definitions to be included in the Agreement, with all defined terms to be organized in alphabetical order:

“Availability Standards” shall mean Availability Standards as defined in the FERC decisions contained in Dockets ER09-1064 & ER10-1524 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.”

“Availability Incentive Payments” shall mean Availability Incentive Payments as defined in the FERC decisions contained in Dockets ER09-1064 & ER10-1524 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.”

“CAISO System” shall mean “CAISO Controlled Grid” as defined in the CAISO Tariff.”

“Non-Availability Charges” shall mean Non-Availability Charges as defined in the FERC decisions contained in Dockets ER09-1064 & ER10-1524 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.”

“Eligible Intermittent Resource Protocol” has the meaning set forth in the CAISO Tariff.”

“Large Generator Interconnection Agreement” has the meaning set forth in the CAISO Tariff.”

“Meter Service Agreement” has the meaning set forth in the CAISO Tariff.”

“Point Of Interconnection” has the meaning set forth in the CAISO Tariff.”

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

“Scheduling Coordinator” has the meaning set forth in the CAISO Tariff.”

“Network Upgrades” has the meaning set forth in the CAISO Tariff.”

“Participating Transmission Owner” has the meaning set forth in the CAISO Tariff.

“Participating Transmission Owner’s Interconnection Facilities” has the meaning set forth in the CAISO Tariff.”

“Engineering & Procurement Agreement” has the meaning set forth in the CAISO Tariff.”

34.0 In Article Three, Section (c) of the Cover Sheet, the existing language shall be deleted and replaced with the following:

“During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Facility’s Facility Total Net Capacity, including Capacity Attributes, from the Facility for Buyer to use in meeting a portion of its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe. Seller agrees that it shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use all of the Facility Total Net Capacity , to the extent permissible under the Resource Adequacy rules and rules for determining Net Qualifying Capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement for the Resource Adequacy requirements of Buyer. In the process of applying for interconnection for the Facility under the CAISO’s Large Generator Interconnection Procedures, Seller shall request all required Network Upgrades (as defined in the CAISO Tariff and Seller shall not elect “energy-only” status) that are necessary to interconnect the Facility to enable the fully deliverable, cost-

effective and reliable delivery of Output and Capacity Attributes from the Facility to Buyer's load as is consistent with FERC's then current orders and rulemakings."

- 35.0** **WREGIS**. In Article Three, Section (e) of the Cover Sheet, the existing language that was added as a new Section 3.7 shall be deleted and replaced with the following:

"**WREGIS**. Prior to the initial delivery of Energy to Buyer, Seller shall register the Facility in the Western Renewable Energy Generating Information System or any successor renewable energy tracking program ("**WREGIS**"), and take all other actions necessary to ensure that the Energy or Green Attributes produced from the Facility are issued and tracked for purposes of satisfying the requirements of the California Renewable Portfolio Standard and transferred to Buyer, including payment of all fees required to register the facility in WREGIS, issue WREGIS certificates, and transfer such certificates to Buyer. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the Agreement."

- 36.0** **Credit**. In Article Eight, Section (d) of the Cover Sheet, the first paragraph of Section 8.4 shall be deleted in its entirety and replaced with the following:

"To secure its obligations under this Master Agreement, in addition to satisfying any credit terms pursuant to the terms of Section 8.2 to the extent marked applicable, (i) Seller has delivered to Buyer (the "Secured Party") a Letter of Credit, which Seller shall maintain in full force and effect until the Project Development Security is posted, in the amount of One Million Dollars (US\$1,000,000) and from the Final CPUC Restated Fourth Amendment Approval Date such amount shall be increased to a total of Two Million Dollars (US\$2,000,000) (the "Bid Fee"). Additionally, Seller agrees to deliver to Buyer (the "Secured Party") within fourteen (14) days after the date on which all of the conditions precedent set forth in Sections 1.1, 1.2, and 1.3 of the Confirmation are either satisfied or waived, and Seller thereafter shall maintain in full force and effect, a Letter of Credit, the form of which shall be substantially similar to Exhibit B, in the following amounts during the following periods: (a) until the Date of Commercial Operation, Three Million and Forty One Thousand Dollars (US\$3,041,000) ("Project Development Security"); and (b) from the Date of Commercial Operation until the end of the Term, Nine Million and One Hundred and Twenty-One Thousand Dollars (US\$9,121,000) ("Project Operation Security"). Buyer shall return and release to Seller (1) the Bid Fee on the date when the Project Development Security is delivered, and (2) the Project Development Security on the date when the Project Operation Security is delivered. Seller shall have the right, in its sole discretion, to satisfy the foregoing security requirements by posting cash in lieu of a Letter of Credit, and/or to replace any existing Letter of Credit with cash. Except for the Bid Fee, which shall be Buyer's sole remedy when this Agreement requires Seller to forfeit the Bid Fee, security provided under this Master Agreement shall not be deemed a limitation of damages."

- 37.0** **Representations**. In Article Ten (b) of the Cover Sheet, the added Section 10.2(xiii) shall be modified by inserting the following at the end of the existing section:

"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 CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC 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. If at any time during the Delivery Term Seller's representations and warranties set forth in this Section 10.2(xiii) become materially false or misleading, then Seller covenants that it shall provide prompt Notice to Buyer describing the circumstances which make Seller's representation and warranties in Section 10.2(xiii) materially false and misleading and the efforts that Seller has undertaken and will undertake so that Seller's representation and warranties in Section 10.2(xiii) are no longer materially false and misleading."

38.0 **Audit.** In Article Ten (e) of the Cover Sheet, Section 10.9 of the Master Agreement is modified by deleting the first sentence of Section 10.9 and replacing it with the following:

“Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including to verify Seller’s representation and warranty in Section 10.2(xiii).”

39.0 **Assignment.** In Article Ten (c) of the Cover Sheet, the existing language in Article 10.5 shall be deleted in its entirety and replaced with the following:

“Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. For purposes hereof, the transfer of more than fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the fair market value of the assets of such parent entity) to a person that is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer’s prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry.”

40.0 **Indemnification** In Article Ten of the Cover Sheet, the following shall be added as a new paragraph (l):

“(l) Indemnity.

Section 10.4 shall be modified by adding the following at the end of the paragraph:

In addition, Seller shall indemnify, defend and hold harmless Buyer from and against any Claims filed at the FERC alleging that Buyer, in its role as the Participating Transmission Owner, violated FERC’s Order No. 2003 or related or subsequent FERC orders, including those orders involving the CAISO’S Large Generator Interconnection Agreement as it may be modified from time to time and accepted by FERC, to the proportionate extent that the Claims are a result of the application of the LCBF Price Reduction specified in Section 9.1.2(i) of the Confirmation; provided however, that:

- 1) For the avoidance of doubt, Seller’s indemnification obligation shall not apply to the extent of Claims that are based on allegations of imprudence in the selection, identification, design or construction of Network Upgrades;
- 2) If Seller is required to reimburse Buyer (or the Participating Transmission Owner) under this Section, then the price reductions under Section 9.1.2(i) of the Confirmation shall be adjusted and Seller and Buyer shall take appropriate action to ensure that each is restored to the same net economic position as intended by this Agreement; and

3) Each Party covenants and agrees that it shall not file any protest, complaint, or other challenge with FERC that would be a Claim covered by this indemnification provision if it were filed by a third party.”

41.0 **Prior Amendments.** Effective as of the Restated Fourth Amendment Effective Date, the Fourth Amendment is hereby amended and replaced, and the Fifth Amendment, Sixth Amendment, and Seventh Amendment are hereby terminated, superseded, and replaced, by this Restated Fourth Amendment.

42.0 **Assignment, Assumption and Consent.** MMR hereby conveys, transfers and assigns unto USS Energy Star all of MMR’s right, title, obligation and interest in and to the Agreement, including the Confirmation and the Cover Sheet, and USS Energy Star hereby accepts the foregoing assignment and hereby assumes all of the past, present and future obligations and liabilities of MMR under the Agreement, including the Confirmation and Cover Sheet, on the Restated Fourth Amendment Effective Date. SDG&E hereby consents to the foregoing assignment.

43.0 **Party A Information.** The first page of the Agreement shall be modified to replace all notice information for Party A with the following:

Name: USS Energy Star 2 LLC (“Party A”)

All Notices:

Street: 1015 W HAYS ST
City: BOISE, ID Zip: 83702
Attn : Contract Administration
Phone: (208) 344-5428
Facsimile: (208) 387-3533
Duns: N/A
Federal Tax ID Number: 90-0625308

Invoices:

Attn: Accounting Department
Phone: (208) 344-5428
Facsimile: (208) 387-3533

Scheduling:

TBD

Payments:

Attn: Accounting Department
Phone: (208) 344-5428
Facsimile: (208) 387-3533

Wire Transfer:

BNK: BANK OF THE CASCADES
ABA: 121000248
ACCT: 74014439
Confirmation:
FAX: (208) 319-2444

Credit and Collections:

Street: 1015 W HAYS ST, Attn: Accounting Department
City: BOISE, ID Zip: 83702
Attn : Contract Administration

Phone: (208) 344-5428
Facsimile: (208) 387-3533

With additional Notices of an Event of Default or Potential Event
of Default to:

Reed Smith LLP,
Attn: Stephane Nguyen
1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067
Phone: (310) 734-5200
Facsimile: (310) 734-5299

- 44.0** **Counterparty.** All references to Bethel Energy, LLC in the Agreement, including the Confirmation and Cover Sheet, shall be deleted and replaced with “USS Energy Star 2 LLC.”
- 45.0** **Facility.** All references to the “Project” in the Agreement, including the Confirmation and Cover Sheet, shall be deleted and replaced with “Facility.”
- 46.0** **No Other Modification.** Except as modified and amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

[Signatures appear on the next page]

IN WITNESS WHEREOF, the Parties have read this Restated Fourth Amendment, understand it and agree to be bound by its terms.

Seller: USS Energy Star 2 LLC

By: Bob Mooney

Name: BOB MOONEY

Its: Manager

Buyer: San Diego Gas & Electric Company

By: Michael R. Niggli

Name: Michael R. Niggli

Its: President and Chief Operating Officer

Approved as to legal form a.s.

Seller: MMR Power Solutions, LLC

By: R. Becker

Name: RICHARD BECKER

Its: DIRECTOR