

RENEWABLE ENERGY CERTIFICATES SPOT PURCHASE AND SALES AGREEMENT

This Renewable Energy Certificates Spot Purchase and Sales Agreement (“Agreement”) is made between Seller and Buyer (each a “Party” and, together, “Parties”) as of the date of execution last written below (the “Effective Date”) for the sale and purchase of renewable energy certificates pursuant to the following terms and conditions:

SELLER: Fayetteville Public Works Commission

BUYER: North Carolina Eastern Municipal Power Agency

CONTRACT QUANTITY/REC PRODUCT:

Seller’s allotment of 4,071 renewable energy certificates originated by the Southeastern Power Administration as a result of hydro generation at the John H. Kerr Dam during the period January 1, 2022, to December 31, 2022 (each a “REC” and collectively the “RECs”).

CONTRACT PRICE: \$20.69 per REC

SCHEDULE FOR INVOICE, PAYMENT & DELIVERY:

DELIVERY: Delivery of the RECs shall be complete upon execution of this agreement as the Seller’s RECs already reside in the Buyer’s REC Tracking System account.

PAYMENT: Buyer shall pay Seller eighty-four thousand two hundred twenty-two dollars and ninety-nine cents (\$84,228.99) amount due to Seller within fifteen (15) Business Days after the Effective Date.

COMMUNICATION:

Any communication necessary to provide notice to the other Party or invoices submitted under this Agreement shall be delivered as set forth in the attached Notice Contact Schedule. Any payment due hereunder shall be made in accordance with instructions set forth on the invoice.

DEFINITIONS:

Any capitalized term used in this Agreement and not defined herein shall be defined in accordance with the definitions set forth in the statutes and regulations implementing the RPS set forth in this Agreement.

“Business Day” means a day on which Federal Reserve member banks in New York City are open for business, which day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

“REC(s)” has the definition as previously set forth in this Agreement. Each REC represents the environmental attributes of each MWh of electricity that is derived from the use of a qualifying renewable energy source or that is generated by a qualifying renewable energy facility, as such

are defined in the designated RPS. A certificate is derived from one MWh of electricity generated accordingly.

“REC Tracking System” means the PJM Generation Attribute Tracking System (“GATS”), which includes a generation information database and certificate system, operated by PJM, its designee or successor entity as approved under the regulations designated above for the REC Product hereunder, which accounts for the generation attributes of electricity generated within PJM.

“RPS” means N.C.G.S. 62-133.8,.

OTHER TERMS:

1. Warranty of Title: Seller warrants that at the time of Delivery of the Contract Quantity hereunder, that (i) it has good and marketable title to such RECs; (ii) such RECs have not been sold to any other person or entity nor used to meet compliance requirements under the RPS or any other voluntary renewable energy program or standard, or under any other environmental regulatory program that would conflict with Buyer’s ability to use the RECs for compliance under the RPS, including any greenhouse gas reduction requirements; and (iii) it has right, title to and interest in such RECs and such RECs are free and clear of any liens or other encumbrances or title defects.

2. Limitation on Warranty: EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, AND WHETHER EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

3. Indemnification: Each Party shall indemnify, defend and hold harmless the other Party from and against any third-party losses, claims, demands, suits, costs and expenses (“Claims”) arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to the Contract Quantity are vested in such Party and which in any manner, directly or indirectly, arise out of, result from or connected with the performance or non-performance of the indemnifying Party under this Agreement, except in cases of negligence, gross negligence or willful misconduct by the other Party, its agents or representatives.

4. Remedies for Other Defaults: In the event of a Party’s failure to perform any material term of this Agreement, including but not limited to, Seller’s breach of warranty, Buyer’s failure to pay for the RECs or either Party’s misrepresentation, and such failure is not remedied within three (3) business days after the non-performing Party has received written notice of such failure, the other Party may terminate the Agreement. In the event of a termination, Buyer shall take all necessary steps to return the RECs to Seller including, but not limited to taking such action to allow transfer of the RECs to Seller’s NC-RETS account and delivering to Seller such instruments of transfer, assignment, or release as Seller shall reasonably require. Buyer shall have no payment obligation to Seller in the event that either Party terminates this Agreement.

5. Limitation on Remedies and Damages: THE EXPRESS REMEDIES AND MEASURE OF

DAMAGES PROVIDED IN THIS AGREEMENT SHALL BE THE SOLE AND EXCLUSIVE REMEDIES OF THE RESPECTIVE PARTIES, AND ALL OTHER REMEDIES OR DAMAGES AT LAW ARE HEREBY WAIVED AND IN NO EVENT SHALL ANY OTHER LIABILITY BE INCURRED BY EITHER PARTY, INCLUDING (BUT NOT LIMITED TO) LIABILITY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES IN TORT, CONTRACT, OR OTHERWISE, EXCLUDING, HOWEVER, ANY SUCH AWARD THAT MAY BE GRANTED TO A THIRD PARTY AND SUBJECT TO INDEMNIFICATION ABOVE.

6. *Taxes:* Seller shall pay any taxes or other fees associated with its ownership of the RECs prior to sale of the RECs to Buyer. Buyer shall pay any taxes or other fees, including sales and use taxes, imposed on the sale and delivery of the RECS. Each Party agrees to indemnify, defend and hold harmless the other Party from and against any taxes or other fees for which the indemnifying Party is responsible under this provision. Buyer agrees to furnish Seller with all applicable tax exemption certificates and documentation where exemption from applicable taxes is claimed.

7. *Assignment:* This Agreement is not assignable by either Party without the prior written consent of the non-assigning Party.

8. *Governing Law:* This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of North Carolina, without regard to principles of conflicts of law.

9. *Representations of Corporate Authority to Contract:* As of the Effective Date, each Party hereby represents and warrants to the other Party through the Term of the Agreement as follows: (a) it has and, at all times during the Term will have, all necessary power and authority to execute, deliver and perform its obligations hereunder; (b) the execution, delivery and performance of the Agreement has been duly authorized by all necessary action and does not violate any of the terms or conditions of its governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to it; and (c) 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 the Agreement.

10. *Term:* The term of this Agreement (“Term”) shall be effective on and as of the Effective Date set forth above and shall continue in effect until the Parties have performed their respective delivery and payment obligations as set forth herein, provided however, the Agreement shall continue in effect after termination of the Term to the extent necessary to provide for resolution of any dispute or for indemnification associated with this Agreement.

11. *Miscellaneous:* This Agreement shall completely and fully supersede all other understandings or agreements, both written and oral, including any term sheet or confirmation, between the Parties relating to the subject matter hereof. The Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to the Agreement. This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument. Any original executed copy of this Agreement or other related document may be

photocopied and stored on computer tapes and disks (“Imaged Agreement”). If an Imaged Agreement is introduced as evidence in any judicial or administrative proceedings, it shall be considered as admissible evidence. Neither Party shall object to the admissibility of the Imaged Agreement on the basis that such was not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth above.

**North Carolina Eastern Municipal
Power Agency**

Fayetteville Public Works Commission

By: _____
Name: Andrew M. Fusco
Title: Chief Strategy Officer

By: _____
Name: Marion J. Noland
Title: Interim CEO/GM

Date: _____

Date: _____

NOTICE CONTACT SCHEDULE

FAYETTEVILLE PUBLIC WORKS COMMISSION:

NOTICES TO:

Fayetteville Public Works Commission
Keith A Lynch
955 Old Wilmington Road
Fayetteville, NC 27501
Keith.lynch@faypwc.com
910.223.4815

CONFIRMATIONS:

Fayetteville Public Works Commission
Keith A Lynch
955 Old Wilmington Road
Fayetteville, NC 27501
Keith.lynch@faypwc.com
910.223.4815

INVOICES:

Fayetteville Public Works Commission
Keith A Lynch
955 Old Wilmington Road
Fayetteville, NC 27501
Keith.lynch@faypwc.com
910.223.4815

PAYMENTS:

Bank Name: WELLS FARGO BANK N.A.
Branch Address: 200 Green Street, Fayetteville, NC 28301
ABA routing # 121000248
Checking Account # 2029150457087

Please use this bank address for international funds:
420 Montgomery Street
San Francisco, California 94104

If bank requests a SWIFT CODE, please use WFBIU6S

NOTICE CONTACT SCHEDULE

(continued)

NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY

NOTICES TO:

ElectriCities of NC, Inc.
Attention: Karen Maclaga, Renewable Energy Portfolio Manager
1427 Meadow Wood Blvd
Raleigh, NC 27604
Phone: 919-760-6264
kmaclaga@electricities.com

CONFIRMATIONS:

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Attention: Karen Maclaga, Renewable Energy Portfolio Manager
1427 Meadow Wood Blvd
Raleigh, NC 27604
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kmaclaga@electricities.com

PAYMENTS:

North Carolina Eastern Municipal Power Agency - ACH:

Bank: Bank of America
Name: NCEMPA Supplemental
ABA No.: 111000012
Account No.: 3750387397