

AGREEMENT FOR SALE OR PURCHASE OF RENEWABLE ENERGY CREDITS

This Agreement for Sale or Purchase of Renewable Energy Credits (RECs) (the “Agreement”) is made and entered into as of December 6, 2022 (the “Effective Date”) by and between The City of San Marcos (hereinafter “San Marcos”) and Lower Colorado River Authority (hereinafter “LCRA”) (when used herein “Parties” refers collectively to LCRA and San Marcos).

WHEREAS, San Marcos is interested in the sale or purchase of RECs to third parties.

WHEREAS, LCRA has relationships with counterparties for the sale and purchase of RECs.

NOW, THEREFORE, in consideration of the premises, the covenants and representations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. LCRA’s Services

(a) LCRA will make commercially reasonable efforts to sell RECs on San Marcos’ request.

(b) LCRA will make commercially reasonable efforts to purchase RECs on San Marcos’ request.

(c) LCRA is not an agent of San Marcos and shall not have authority to bind San Marcos or enter into agreements on behalf of San Marcos.

(d) LCRA in its sole discretion will identify counterparties and negotiate the terms, conditions and final price of the sale or purchase of RECs to a third party. LCRA will settle the transactions.

(e) In regards to REC sales, LCRA will apply a credit in the amount of funds received from the settlement of the RECs transactions against amounts owed by San Marcos to LCRA pursuant to its Amended and Restated Wholesale Power Agreement. If LCRA uses a third party to serve as a broker when selling RECs at San Marcos’ request, then LCRA will net any broker fees against the credit.

(f) In regards to REC purchase, LCRA will apply a charge in the amount of funds owed from the settlement of the RECs transactions by San Marcos to LCRA. If LCRA uses a third party to serve as a broker when purchasing RECs at San Marcos’ request, the broker fees will be included in the charge.

(g) LCRA will transfer purchased RECs to San Marcos after executing any transaction for the purchase of RECs on San Marcos’ behalf. LCRA shall transfer the RECs to San Marcos via ERCOT’s Texas REC Trading Program’s website.

2. San Marcos’ Obligations and Acknowledgements.

- a) San Marcos will notify LCRA of the type (wind, solar, etc), amount of, and if San Marcos wants Green e-certified or Texas Compliance RECs to be sold or purchased.
- b) San Marcos will convey and transfer all of its interest in the RECs prior to LCRA executing any transaction for the sale of the RECs. San Marcos shall transfer the RECs to LCRA via ERCOT's Texas REC Trading Program's website.

SAN MARCOS ACKNOWLEDGES THAT LCRA CANNOT GUARANTEE THE CONSUMMATION OF THE SALE OR PURCHASE OF THE RECs, THE CREDITWORTHINESS OF THE COUNTERPARTIES, OR THE ECONOMIC BENEFITS OF THE SALE OR PURCHASE OF THE RECs.

3. Independent Contractor

LCRA is an independent contractor and will not through performance of the services described in this Agreement be or become an agent, partner or employee of San Marcos. LCRA is not granted any authority or responsibility, express, implied or apparent, to bind or act on behalf of San Marcos.

4. Term and Default

(a) This Agreement shall commence on the Effective Date and, subject to the terms and conditions herein, shall continue until the parties complete their obligations, or until December 31, 2027, whichever is earlier. Either Party may terminate this Agreement at any time by providing the other Party notice of termination, so long as the requested REC sale has not yet been completed.

(b) At the termination of this Agreement, the Parties shall no longer be bound by the terms hereof, except (i) to pay broker fees or any other amounts owing by one Party to the other; (ii) to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement before or upon such termination; (iii) obligations of the Parties' hereunder with respect to indemnification; and (iv) any other rights or obligations of the Parties which, by the terms hereof or under applicable law, survive the termination of this Agreement.

5. Exclusion of Liability and Indemnity

(a) Except to the extent mandated by applicable law, and except for any liability resulting from intentionally wrongful conduct or intentional breach by LCRA, LCRA shall not be liable to San Marcos by reason of any representation or any implied warranty, condition, or other term, or any duty under applicable law, or under the express terms of this Agreement, for any loss of profit or any indirect, special or consequential losses, damages, costs, expenses, or other claims (caused by negligence or otherwise of LCRA or its employees) which arise out of or in connection with the provision of the nature of the services provided by LCRA to San Marcos.

(b) LCRA shall not be liable to San Marcos or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any obligations in relation to the services provided by LCRA, if the delay or failure was due to any cause beyond LCRA's reasonable control.

6. Notices

Once LCRA executes the sale or purchase of RECs to a third party, which shall be on a commercially reasonable basis, LCRA will advise San Marcos.

LCRA Contact:

Lorey Helford
Energy Analyst
(512) 578-7760
Lorey.Helford@lcra.org

San Marcos Contact:

Tyler J. Hjorth
Director, Utilities
(512) 393-8309
THjorth@sanmarcostx.gov

7. Dispute Resolution

Any disputes arising between San Marcos and LCRA shall be resolved pursuant to good faith efforts by such disputing parties. The parties shall first attempt to resolve the dispute by means of negotiations between employees of each party who possess full authority to resolve said dispute. In event of litigation or arbitration, the prevailing party shall be entitled to recover from the other Party reasonable legal fees and other expenses incurred in connection with such litigation.

8. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by the laws of the State of Texas. Venue will be in Travis County District Court.

(b) Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

(c) Headings and Rules of Interpretation. Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. The words “hereto”, “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “person” shall include individuals; partnerships; corporate bodies (including but not limited to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The word “including” shall be deemed to be followed by the words “without limitation”. In the event of any conflict between the text of this Agreement and the contents of an Exhibit hereto, the text of this Agreement shall govern.

(d) Severability. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such unenforceability or invalidity shall not affect the enforceability or validity of any other provision of this Agreement.

(e) Waiver. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Party against whom the waiver is sought to be enforced. Any waiver shall be effective only for the particular event for which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.

(f) Assignment. Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Parties which consent shall not be unreasonably withheld or delayed.

(g) Not an Amendment. This Agreement is for the Services described herein and is not an amendment to any other agreement between the Parties.

(h) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, intending to be legally bound hereby, San Marcos and LCRA have executed this Agreement as of the date first set forth above.

CITY OF SAN MARCOS

By: _____

Name (printed): _____

Title: _____

LOWER COLORADO RIVER AUTHORITY

By: _____

Name (printed): _____

Title: _____