

**SECOND AMENDMENT TO  
DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT)  
RENEWABLE POWER PURCHASE AGREEMENT**

THIS SECOND AMENDMENT TO DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT) RENEWABLE POWER PURCHASE AGREEMENT (this “Second Amendment”), executed as of the last dated signature on the signature page hereto (the “Effective Date”), by and between the CITY OF SAN JOSE, a California municipal corporation (formerly referred to as a California municipality) (“Buyer”), and WEST TAMBO CLEAN POWER II LLC, a Delaware limited liability company (“Seller”). Buyer and Seller may sometimes hereinafter be referred to individually as “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS**, the Parties entered into that certain Disadvantaged Communities Green Tariff (DAC-GT) Renewable Power Purchase Agreement, dated May 8, 2022 and entered into that certain First Amendment to Disadvantaged Communities Green Tariff (DAC-GT) Renewable Power Purchase Agreement, dated April 24, 2023 (together, the “Agreement”); and

**WHEREAS**, the Parties hereby desire to amend the Agreement as set forth herein in this Second Amendment, in accordance with section 19.2 of the Agreement;

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

**AGREEMENT**

**1. Amendments to the Agreement.**

- a. The Cover Sheet of the Agreement is hereby amended as follows:
  - i. The ‘Milestones’ is hereby amended by deleting “4/30/23” for the ‘Expected Commercial Operation Date’ and replacing it with “6/01/2024”.
  - ii. The ‘Delivery Term’ is hereby amended by deleting “Fifteen (15) Contract Years” and replacing it with ‘Twenty (20) Contract Years’.
  - iii. The Expected Energy table is hereby deleted in its entirety and replaced with the following table:

Contract Year	Expected Energy (MWh)
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1 - 20	
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- iv. The 'Contract Price' is hereby amended to read, "shall be \$ [REDACTED] unless Seller qualifies for a total ITC rate of 50%, in which case it shall be \$ [REDACTED]"
  - v. The 'Development Security and Performance Security' is hereby amended by deleting "\$ [REDACTED]" for Development Security and replacing it with "\$ [REDACTED]".
  - b. The Definition of 'COD Delay Damages' set forth in Section 1.1 of the Agreement is amended by deleting the phrase "[REDACTED] (\$ [REDACTED])" and replacing it with the following: "[REDACTED] (\$ [REDACTED])".
  - c. Exhibit B, Section 3 is amended by deleting "[REDACTED]" and replacing it with "[REDACTED]".
2. **CPUC Approval.** Within sixty (60) days after the Effective Date of this Second Amendment, Buyer shall file with the CPUC the appropriate request for CPUC Approval. As requested by Buyer, Seller shall use commercially reasonable efforts to support Buyer in obtaining CPUC Approval. Buyer has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Second Amendment or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party. Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if CPUC Approval has not been obtained or waived by Buyer in its sole discretion within one hundred eighty (180) days after Buyer files its request for CPUC Approval and a Notice of termination is given on or before the two hundred tenth (210th) day after Buyer files the request for CPUC Approval. For purposes of this Section 2 only, CPUC Approval means a final and non-appealable order or approval of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Second Amendment in its entirety, including payments to be made by the Buyer. CPUC Approval will be deemed to have occurred on the date that the approval becomes final and non-appealable.
3. **ITC Bonus Rate.**
- a. This Second Amendment is conditioned on Seller having submitted a commercially reasonable application for an ITC rate of 50% within thirty days of having the opportunity to do so and in no event later than November 18, 2023. If Seller has not submitted a commercially reasonable application for an ITC rate of 50% by the date stated in the prior sentence, this amendment shall be null and void unless the parties otherwise agree in writing.

- b. Seller shall diligently pursue obtaining an ITC rate of 50%, including timely making any required submissions, responses, or other communications.
4. In the event that Seller qualifies for a total ITC rate of 50%, the 'Contract Price' shall be deleted in its entirety and replaced with the following: "**Contract Price**: shall be \$ [REDACTED]".
5. **Development Cure Period.** As set forth in Section 2 of the First Amendment to Disadvantaged Communities Green Tariff (DAC-GT) Renewable Power Purchase Agreement dated April 24, 2023, Seller has already extended both the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date by [REDACTED] days, which is the maximum extension available under the Development Cure Period, and no further extension shall be granted under the Development Cure Period for any reason, including Force Majeure Event, absent the written agreement of the Parties. For the avoidance of doubt, this second amendment does not change Section 2 of the First Amendment to Disadvantaged Communities Green Tariff (DAC-GT) Renewable Power Purchase Agreement dated April 24, 2023 or restore the Development Cure Period.
6. **Miscellaneous.**
  - a. Recitals. The Recitals set forth above herein are accurate and correct and shall be incorporated herein as though fully set forth herein.
  - b. Definitions. All capitalized terms used in this Second Amendment (including the Recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Agreement.
  - c. Agreement not Otherwise Affected. Except for the amendments pursuant hereto, the Agreement remains unchanged and in full force and effect and is hereby ratified and confirmed in all respects. The execution and delivery of, or acceptance of, this Second Amendment and any other documents and instruments in connection herewith by either Party shall not be deemed to create a course of dealing or otherwise create any express or implied duty by it to provide any other or further amendments, consents, or waivers in the future.
  - d. Entire Agreement. This Second Amendment and the Agreement (as amended by the First Amendment) constitute the entire agreement and understanding of the Parties with respect to its subject matter and supersede all oral communication or prior writings related thereto.
  - e. Binding Effect. This Second Amendment shall be binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns.

- f. No Reliance. Each Party hereby acknowledges and confirms that it is executing this First Amendment on the basis of its own investigation and for its own reasons without reliance upon any agreement, representation, understanding or communication by or with the other Party or its agents, representatives or attorneys not set forth within the Agreement or this First Amendment.
- g. Costs and Expenses. Each Party shall be responsible for any costs and expenses incurred by such Party in connection with the negotiation, preparation, execution, and delivery of this Second Amendment and any other documents to be delivered in connection herewith.
- h. Governing Law. THIS FIRST AMENDMENT SHALL BE GOVERNED BY, CONSTRUED, AND ENFORCED UNDER THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER STATE.
- i. Amendments. This Second Amendment may not be modified, amended, or otherwise altered except by written instrument executed by the Parties' duly authorized representatives.
- j. Interpretation. This Second Amendment is the result of negotiations between and has been reviewed by counsel to each of the Parties and is the product of all Parties hereto. Accordingly, this First Amendment shall not be construed against either Party merely because of such Party's involvement in the preparation hereof.
- k. Counterparts. This Second Amendment may be executed and delivered in counterparts, all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Second Amendment by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.
- l. Electronic Signatures. Unless otherwise prohibited by law or Buyer policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by Buyer.

**[Signatures to follow on next page.]**

**[The remainder of this page is intentionally blank.]**

IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to be duly executed as of the Effective Date.

**SELLER**

**WEST TAMBO CLEAN POWER II LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form for Seller:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BUYER**

**CITY OF SAN JOSE,**  
a California municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form for Buyer:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_