

**SECOND AMENDMENT TO  
RENEWABLE POWER PURCHASE AGREEMENT**

This **SECOND AMENDMENT TO RENEWABLE POWER PURCHASE AGREEMENT** (this "Amendment"), dated as of the last dated signature on the signature page hereto (the "Effective Date") by and between City of San José, a California municipality ("Buyer") and EDPR Scarlet I LLC ("Seller"), each individually a "Party" and collectively, the "Parties".

**RECITALS**

**WHEREAS**, Buyer and EDPR CA Solar Park VI LLC ("EDPR") entered into that certain Renewable Power Purchase Agreement, dated August 6, 2019, as amended by that certain First Amendment to Renewable Power Purchase Agreement, dated March 18, 2022, between Buyer and RE Scarlet LLC (collectively the "Agreement");

**WHEREAS**, RE Scarlet LLC and Seller entered into an Assignment and Assumption Agreement, dated June 16, 2022, pursuant to which RE Scarlet LLC assigned the Agreement to Seller;

**WHEREAS**, the Parties desire to amend the Agreement as set forth herein; and

**WHEREAS**, the Parties are entering into this Amendment in accordance with Section 19.2 of the Agreement to implement such amendments.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Amendments to the Agreement.**

a. The Cover Sheet is hereby amended as follows:

- i. The Date for Completion associated with the Expected Commercial Operation Date Milestone is hereby deleted and replaced with the date "10/31/2023."
- ii. The Date for Completion associated with the Guaranteed Commercial Operation Date Milestone is hereby deleted and replaced with the date "10/31/2023."

b. The definition of Commercial Operation Delay Damages in Section 1.1 is hereby deleted in its entirety and replaced with the following:

**"Commercial Operation Delay Damages"** means an amount equal to [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

c. Section 11.1(b)(ii) is hereby amended by deleting the phrase “ [REDACTED] days of the Guaranteed Commercial Operation Date” and replacing it with “ [REDACTED] days of the Guaranteed Commercial Operation Date”.

d. Section 1(b) of Exhibit B is hereby amended by deleting the sentence “ [REDACTED] [REDACTED]”

e. Section 2(c) of Exhibit B is hereby deleted in its entirety and replaced with “[Reserved]”.

f. Section 2(d) of Exhibit B is hereby deleted in its entirety and replaced with the following:

“(d) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date; provided that in no event shall Seller be obligated to pay aggregate Commercial Operation Delay Damages in excess of the amount equal to the Development Security required hereunder. Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month and Seller shall pay such amounts within ten (10) Business Days of receiving such invoice. For avoidance of doubt, if any of the liability limitations under Section 11.7 of this Agreement or this Exhibit B have been reached, Seller will nevertheless be excused from any failure to achieve Commercial Operation until the date that is [REDACTED] after the Guaranteed Commercial Operation Date, subject to Section 11.1(b)(ii). The Parties agree that Buyer’s receipt of Daily Delay Damages and Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default under Section 11.2(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.”

g. Section 3 of Exhibit B is hereby amended by deleting the phrase “within [REDACTED] days after the Guaranteed Commercial Operation Date” and replacing it “within [REDACTED] days after the Guaranteed Commercial Operation Date”.

h. Section 4 of Exhibit B is hereby deleted in its entirety and replaced with the following:

“4. **Extension of the Guaranteed Dates.** The Guaranteed Commercial Operation Date shall be automatically extended on a day-for-day basis (the “Development Cure Period”) for the duration of any and all delays arising out of the following circumstances:

(a) a Force Majeure Event occurs; or

(b) Buyer has not made all necessary arrangements to receive Metered Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(b) above) shall not exceed [REDACTED] for the Guaranteed Commercial Operation Date, and no extension shall be given if the delay was the result of Seller’s failure to take all reasonable actions to meet its requirements and deadlines. Upon request from Buyer, Seller shall provide

documentation demonstrating to Buyer's reasonable satisfaction that any delay described in clause 4(a) above did not result from Seller's actions or failure to take reasonable actions."

**2. Retention of Delay Damages.** The Parties acknowledge that Seller has paid Buyer [REDACTED] in Daily Delay Damages prior to the date of this Amendment. In consideration of the amendments made to the Agreement in this Amendment, the Parties further acknowledge that (a) Buyer shall retain such [REDACTED] in Daily Delay Damages free from any claim or right of any nature whatsoever of Seller, and (b) Seller is not, and will not be, liable for any further Daily Delay Damages under the Agreement.

**3. General.**

a. Definitions; Interpretation. All capitalized terms used in this Amendment (including the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Agreement.

b. Agreement Otherwise Not 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 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.

c. Entire Agreement. This Amendment constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication or prior writings related thereto.

d. Binding Effect. This Amendment shall be binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns.

e. No Reliance. Each Party hereby acknowledges and confirms that it is executing this 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 Amendment.

f. 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 Amendment and any other documents to be delivered in connection herewith.

g. Governing Law. THIS 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.

h. Amendments. This Amendment may not be modified, amended or otherwise altered except by written instrument executed by the Parties' duly authorized representatives.

i. Interpretation. This 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 Amendment shall not be construed against either Party merely because of such Party's involvement in the preparation hereof.

j. Counterparts. This 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 Amendment by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.


*[Signatures appear on the following page.]*

Execution Version

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

**EDPR SCARLET I LLC**

**CITY OF SAN JOSÉ, a California  
municipality**

Sign:   
Sandhya Ganapahty (Dec 22, 2022 17:48 CST)

Sign:   
Lori Mitchell (Dec 22, 2022 16:56 PST)

Print: Sandhya Ganapahty

Print: Lori Mitchell

Title: Chief Executive Officer

Title: Director Community Energy Department

Date: Dec 22, 2022

Date: Dec 22, 2022

**Approved as to form:**

Sign:   
Kristofer Cheney (Dec 22, 2022 17:44 CST)

Sign:   
Enrique Fernandez

Print: Kris Cheney

Print: Enrique Fernandez

Title: Executive Vice President

Title: Deputy City Attorney II

Date: Dec 22, 2022

Date: Dec 22, 2022

**Approved as to form:**

Sign:   
BRS (Dec 22, 2022 17:34 CST)

Print: Randy Sawyer

Title: Associate General Counsel

Date: Dec 22, 2022