City of Needles, California
Request for Council Action

☒ CITY COUNCIL/NPUA ☐ Board of Public Utilities ☒ Regular ☐ Special

Meeting Date: September 10, 2019

Title: Purchase of Portfolio Content Category ("PCC") 3 Renewable Energy Credits to Comply with the Renewable Portfolio Standard ("RPS") Procurement Percentage for CY 2019

Background: The City is mandated by the California Air Resources Board ("CARB") to purchase RECs to offset the Green House Gases ("GHG") generated from the non-renewable energy (Brown Power) it purchases.

The RPS procurement percentage obligation for 2019 is 31% of actual/forecasted retail sales. The estimated retail sales for 2019 are 63,444 MWh; multiplied by 31% equals a compliance target of 19,668 PCC-3 RECs. PCC-3 RECs can only be purchased in increments of 1,000.

Unused RECs for any compliance period can be retired within 36 months of the vintage month.

2019 RPS obligation: 63,444 MWh X 31% = 19,668		
+ 20% estimate increase = 23,601	X $.75/unit =	$18,000.00
No broker commission due (direct counterparty for transaction) =		$0.00
Grand Total		$18,000.00

Note: *Delivery to occur via WREGIS Tracking System. Delivery of theses RECs to be on or before August 16, 2019. Due to the lowest cost the City has seen for RECs staff transacted.*

The Board of Public Utilities approved the recommended action on 9/3/19.

Fiscal Impact: $18,000 to be funded in FY19/20 Electric Budget.

Environmental Impact: Obtaining clean energy under Green-e® standards such as solar electric, wind, Biomass ect.

Recommended Action: ***Move to*** ratify the City Managers purchase of Portfolio Content Category ("PCC") 3 Renewable Energy Credits to comply with the Renewable Portfolio Standard ("RPS") procurement percentage for CY 2019 not to exceed $18,000.00

Submitted By: Rainie Torrance, Finance

City Management Review: Rick **Date:** 8/19/22

Approved: ☐ Not Approved: ☐ Tabled: ☐ Other: ☐

Agenda Item: 6

AGREEMENT FOR PURCHASE AND SALE OF RENEWABLE ENERGY CERTIFICATES

The purpose of this letter ("Confirmation Letter") entered into on this Tuesday, August 6, 2019 ("Contract Date") is to confirm the terms and conditions of the transaction between **ACT Commodities Inc.** ("Seller") and **NEEDLES, CITY OF** ("Buyer") as of the Contract Date (the "Transaction"). Seller and Buyer are each referred to as a "Party" and, collectively, as the "Parties." This Confirmation Letter, including the attached Terms and Conditions, shall constitute the entire agreement ("Agreement") between the Parties related to the subject matter hereof and supersedes and replaces any prior oral or written confirmation, including broker confirmations, regarding this Transaction.

The terms of the Transaction to which this Confirmation Letter relates are as follows:

Seller:	**ACT Commodities Inc.**	**Buyer:**	NEEDLES, CITY OF

Product:	REC	**Trade Number:**	T00033233
Trade Date:	8/5/2019	**Delivery Date:**	On or before Friday, August 16, 2019
Product Price:	$ 0.75	**Product Vintage:**	1/1/2017 - 12/31/2017
Product Quantity:	24,000	**Deal Value:**	$ 18,000.00

Technology: N/A **Classification:** Bucket 3 (US) **Registry:** WREGIS
Product Siting: No **Other**: N/A **Product Type**: California PCC 3 ("Bucket 3") RECs **State**: California

Capitalized terms used but not defined herein shall have the meanings given to them in the General Terms and Conditions.

Seller: ACT Commodities Inc.
By: _____
Name: Paul ter Veen
Title: CEO

Buyer: NEEDLES, CITY OF
By: _____ for Rick Daniels
Name: Patrick Martinez for Rick Dan.
Title: Director of Dev Services

TERMS AND CONDITIONS

ARTICLE 1: DEFINITIONS

1.1 Bankrupt. "Bankrupt" means an entity that has (i) filed a petition or otherwise commenced, authorized or acquiesced in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (ii) had any such petition filed or commenced against it and not dismissed within 30 days, (iii) made an assignment or any general arrangement for the benefit of creditors, (iv) otherwise become bankrupt or insolvent, however evidenced, (v) had a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (vi) become generally unable to pay its debt when due.

1.2 Change in Law. "Change in Law" means that, prior to the Delivery of the Product, a statute, rule, or regulation is enacted, amended or revoked which has the effect of (a) changing the transfer and sale procedures set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable, (b) making this Agreement illegal or unenforceable, or (c) eliminating the existence of the Product.

1.3 Delivery. "Delivered" or "Delivery" means the transfer from Seller to Buyer of the specified amount of the Product.

1.4 Delivery Date. "Delivery Date" means the date on which Seller initiates a transfer order for the Product to Buyer's Registry account.

1.5 Product. "Product" means the Renewable Energy Certificates ("RECs") to be delivered in the Transaction.

1.6 Registry. "Registry" means a generation information system, generation attribute tracking system or other system that records generation from Renewable Energy Facilities in any particular geographical region, such as Western Renewable Energy Generation Information System (WREGIS), New England Power Pool Generation Information System (NEPOOL GIS), Electric Reliability Council of Texas (ERCOT), PJM Environmental Information Services, Inc. Generation Attribute Tracking System (PJM EIS GATS), or Midwest Renewable Energy Tracking System (M-RETS).

1.7 Trade Date. "Trade Date" mean the date that the purchase was executed in the market.

ARTICLE 2: TRANSACTION, PAYMENT, TAXES AND TRANSFER OF TITLE

2.1 Transaction. The Parties desire to enter into a transaction for the purchase and sale of Product under this Agreement ("Transaction"). Such Transaction, unless otherwise agreed in writing, will be governed by this Agreement. The Transaction will be effected or Confirmed pursuant to a Confirmation Letter.

2.2 Payment. Seller shall deliver an invoice to Buyer reflecting the purchase price following Seller's Delivery of the Product ("Invoice"). The Invoice may be furnished to Buyer by email or otherwise. Within XXXX (X) business days of the later of (a) Buyer's receipt of the Invoice (as defined below) and (b) Buyer's receipt of confirmation that the Product have been Delivered to Buyer's Registry account, Buyer shall pay Seller for the Product so Delivered. All payments made under this Agreement shall be made in immediately available United States Dollars by electronic transfer.

2.3 Taxes and Fees. Seller will be responsible for any taxes imposed on the creation, ownership, or transfer of Product under this Agreement up to and including the time and place of its Delivery. Buyer will be responsible for any taxes

imposed on the receipt or ownership of Product at or after the time and place of its Delivery. Each Party will be responsible for the payment of any fees, including brokers' fees, incurred by it in connection with any Transactions hereunder.

2.4 Transfer of Title. None of Seller's property interest in the Product will pass to Buyer until the Delivery and payment set forth above are complete. Upon such completion, all rights, title and interest in and to the Product, to the full extent the same is property, will transfer to Buyer. To the extent that any Transaction is for Product not yet generated at the time of the Transaction, Seller agrees to promptly make and Buyer agrees to accept actual Delivery of the Product.

ARTICLE 3: REPRESENTATIONS AND WARRANTIES

3.1 Mutual Representations and Warranties. On the Contract Date and on the Trade Date, each Party represents and warrants to the other that:

(a) It is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization;

(b) It has the power and authority to enter into this Agreement and to perform its obligations hereunder;

(c) Its execution and performance do not violate or conflict with applicable law, any provision of its constituent documents, or any contract binding on or affecting it or any of its assets or any order or judgment of any governmental authority applicable to it or its assets;

(d) All governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to entering into and performing this Agreement have been obtained or submitted and are in full force and effect and all conditions thereof have been complied with;

(e) No Event of Default, as defined in section 4.1 has occurred and is continuing, and none will occur as a result of its entering into or performing this Agreement or any Transaction;

(f) It is not relying upon any representations of the other Party other than those expressly set forth herein, and it is acting for its own account, and not as agent or in any other capacity, fiduciary or otherwise;

(g) It has entered hereinto with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks; and

(h) All applicable information, documents or statements that have been furnished in writing by or on behalf of it to the other Party in connection with this Agreement are true, accurate and complete in every material respect and do not omit a material fact that would otherwise make the information, document or statement misleading.

3.2 Warranties of Seller. With respect to each Product, Seller represents and warrants to Buyer that as of the Trade Date and through and up to the Delivery Date: (i) Seller has good and marketable title to such Product; (ii) all right, title and interest in and to such Product are free and clear of any liens, taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer; (iii) each REC meets the specifications set forth in the confirmation letter; and (iv) that such Product complies with any applicable renewable portfolio standard ("RPS") adopted by a governmental authority or otherwise, or other similar program with respect to which exists a market or registry.

3.3 LIMITATION OF WARRANTIES. ALL OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE OR WITH RESPECT TO CONFORMITY WITH ANY MODEL OR SAMPLES, ARE DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY HEREUNDER WITH

RESPECT TO ANY FUTURE ACTION OR FAILURE TO ACT OR APPROVAL OR FAILURE TO APPROVE BY ANY GOVERNMENTAL AUTHORITY.

3.4 Indemnity. Each Party will indemnify, defend and hold harmless the other Party from and against any claims or demands made by others arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided herein, except to the extent arising from such Party's own gross negligence or willful misconduct. Each Party will indemnify, defend and hold harmless the other Party against any fees or taxes for which such Party is responsible under Section 2.3.

3.5 Survival. Articles 1, 2, 3, 5, and 6 survive expiration or termination hereof.

ARTICLE 4: EVENTS OF DEFAULT; REMEDIES

4.1 Events of Default. An "Event of Default" means, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant hereto if such failure is not remedied within three business days after written notice;

(b) Failure to Deliver or receive Product when due pursuant to a Transaction;

(c) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when repeated;

(d) Such Party becomes Bankrupt; or

(e) A Party's failure to perform any other material covenant or obligation set forth herein if such failure is not remedied within twenty (20) business days after written notice.

4.2 Declaration of Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party occurs and is continuing, the other Party (the "Non-Defaulting Party") will have the right to (i) upon two (2) business days' written notice to the Defaulting Party terminate this Agreement ("Early Termination Date"), to accelerate all amounts owing between the Parties and to liquidate and terminate the Transactions ("Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement, and (iii) suspend performance. The Non-Defaulting Party will calculate, in a commercially reasonable manner, a settlement amount as follows ("Settlement Amount"):

(a) If Buyer is in default and Seller elects Early Termination: Buyer shall pay Seller an amount equal to the sum of (i) the Contract Price for any Product delivered to Buyer for which Seller has not been paid, and (ii) the positive difference, if any, obtained by subtracting the Sales Price for any Product not received from the Contract Price for such Product not received multiplied by the amount of Product (in REC units) not received, plus reasonable third party fees (including broker fees) incurred by Seller in enforcement and protection of its rights under this Agreement.

(b) If Seller is in default and Buyer elects Early Termination: Seller shall pay Buyer an amount equal to the positive difference, if any, obtained by subtracting the Contract Price for any Product not delivered from the Replacement Price for such Product not delivered, multiplied by the amount of Product (in REC units) not delivered, plus reasonable third party fees (including broker fees) incurred by Buyer in enforcement and protection of its rights under this Agreement.

4.3 Suspension of Performance. Notwithstanding any other provision hereof, if an Event of Default has occurred and is continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, has the right (i) to suspend performance under any or all Transactions and (ii) to the extent an Event of Default has occurred and is continuing, to exercise any remedy available at law or in equity, except as limited by Section 5.1

4.4 Limitation of Liability. IN THE EVENT OF A DEFAULT, THE DEFAULTING PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, AND SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER. IN NO EVENT WILL EITHER PARTY BE LIABILE TO THE OTHER FOR PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE.

ARTICLE 5: CHANGE IN LAW

5.1 Change in Law. If a Change in Law occurs, the Parties hereto agree to negotiate in good faith to amend this Agreement to conform to such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement. However, in no event will a Change in Law that changes in any respect the value of the Product, have any effect on the obligations of the Parties to purchase and sell the Product on the terms and at the Contract Price set forth in this Agreement. If the Parties are unable, despite such good faith efforts, to reform this Agreement within fifteen (15) business days following commencement of such negotiations, either Party may terminate this Agreement with no further payment or performance obligations except for any such obligations that have accrued prior to such termination. Buyer assumes full liability upon Delivery.

ARTICLE 6: MISCELLANEOUS

6.1 Assignment. Neither Buyer nor Seller shall assign this Agreement nor delegate any of its duties hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, that either Party, without the consent of the other Party, may assign this Agreement to any of its affiliates provided that such assignee's creditworthiness shall be equal to or greater than that of the assignor; and provided further that Seller may assign this Agreement without the consent of Buyer as collateral security to any lender (and in connection therewith, Buyer shall execute and deliver to such lender a consent agreement in a form reasonably acceptable to Buyer). Any assignment in violation of this Article 6.1 shall be voidable at the sole discretion of the non-assigning Party.

6.2 Notices. All notices, requests, statements or payments will be made as specified in the writing. Notices, unless otherwise specified herein, must be in writing and delivered by hand delivery, United States mail, overnight courier service or email to the addresses laid out in the cover page:

6.3 General.

(a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter. Any prior agreement or negotiation between the Parties with respect to the subject hereof is superseded.

(b) No amendment or modification hereto or to any written Confirmation Letter is enforceable unless in writing and executed by both Parties.

(c) The waiver by either Party of a default or a breach by the other Party will not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach will not operate as a waiver of any default or breach.

(d) Except as provided in a writing or pursuant to Article 6.2, if any provision hereof is, for any reason, determined to be invalid, illegal, or unenforceable in any respect, the Parties will negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions that will, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions hereof will, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.

(e) This Agreement may be executed in counterparts, each of which will be deemed an original but all of which taken together will constitute one and the same original instrument.

6.4 Confidentiality. Neither Party will disclose the terms or conditions this Agreement to a third party (other than the Party's employees, guarantor, lenders, counsel, accountants, agents or advisors who have a need to know such information and have agreed to keep such terms confidential) except:

(a) In order to comply with any applicable law or regulation, or request of any regulatory agency having jurisdiction over the Party and requesting the confidential information in the ordinary course of business or

(b) In connection with any court or regulatory proceeding

6.5 Governing Law. This Agreement is governed by and shall be construed in accordance with the laws of the State of California

6.6 without giving effect to any conflict of law principles that would apply the laws of any other jurisdiction.

6.7 Dispute Resolution. Any dispute or claim arising out of or related hereto or any breach thereof or any need for interpretation related to any dispute arising out of or related hereto will be settled by binding arbitration administered by the American Arbitration Association, by an arbitrator chosen by both parties. In the event of a disagreement, the arbitrators chosen by each party will select a third arbitrator to arbitrate the issue.

6.8 Force Majeure. "Force Majeure" means any cause or event beyond the reasonable control of the affected Party and not due to the fault or negligence of the Party affected and which could not have been avoided or overcome by due diligence and use of reasonable efforts, including (but only to the extent that the following examples satisfy such definition): acts of God, flood, tornado, hurricane, ice storm or other unusually severe storms, lightning, earthquake, fire, explosion, acts of the public enemy, vandalism, riots, explosions, blockades, sabotage, terrorism, civil disturbance, impact of war (declared or not) or mobilization, national emergency, or any restraint or restriction imposed by applicable law or any directive from a Governmental Authority, which by exercise of due diligence and in compliance with applicable law a Party could not reasonably have been expected to avoid and to the extent which, by exercise of due diligence and in compliance with applicable law, has been unable to overcome (so long as the affected Party has not applied for or assisted such act by a Governmental Authority).

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NOTICE CONTACT SCHEDULE

("Buyer")

NOTICES TO:
Attn:
Address: 817 3RD ST
NEEDLES, 92363
Phone: (760) 326-2115 Ext. 140
Fax:
Email: ndlsacct@citlink.net

PAYMENTS:
By Wire & ACH:
Company:
Bank:
Routing Number:
Account #:

NOTICE CONTACT SCHEDULE (continued)

ACT Commodities Inc.

NOTICES DO:
ACT Commodities Inc.
Attn: Tom Wray
437 Madison Avenue, Suite 17A
New York, NY 10022
Phone: 212-803-1276
Email: TWray@actcommodities.com

INVOICES AND CONTRACTS:
ACT Commodities Inc.
Attn: Operations
437 Madison Avenue, Suite 17A
New York, NY 10022
Phone: (212) 803-1500
Email: