

Indian Valley Reservoir Hydroelectric Power Generation

JOINT EXERCISE OF POWERS AGREEMENT

This Agreement is made and entered into as of the ____ day of _____, 2017, by and between the County of Lake and the Yolo County Flood Control and Water Conservation District (YCFCWCD). The County of Lake (County), YCFCWCD and any subsequent signatories of this Agreement are collectively referenced as the “Members” and individually as a “Member.”

RECITALS

A. The Members each have and possess the power to take all necessary and proper steps for the purchase and generation of electrical power to provide public utility services to their constituents and customers.

B. Member YCFCWCD owns and operates a hydroelectric generation plant in Lake County, CA.

C. Members YCFCWD and County both have power needs in Lake County serviced by accounts with PG&E.

D. The Members desire to participate in a virtual net metering program under RES-BCT, the Renewable Energy Self-generation Bill Credit Transfer Program, as described under Section 2830 of the California Public Utilities Code. This will allow the generation of electrical power at Indian Valley Reservoir to be used to offset the electrical costs of Members.

E. Member participation in RES-BCT can be achieved through the cooperative action of the Members operating under a joint exercise of powers agreement pursuant to Government Code section 6500 et seq.

F. NOW, THEREFORE, the Members agree as follows:

PURPOSE AND POWERS

1. **Definitions.** For purposes of this Agreement, the following words and phrases are defined as follows:

(a) "Agreement" means this joint exercise of powers agreement.

(b) “Bill Credit” is defined in Public Utilities Code section 2830(a)(2).

(c) “Generating Account” means the PG&E generating account of YCFCWCD located at the Indian Valley Reservoir facility in Lake County, CA.

(d) “Benefitting Account” means one or more Time of Use (TOU) PG&E accounts located in Lake County, CA, as defined in Public Utilities Code section 2830(a)(1). Benefitting accounts are designated pursuant to Public Utilities Code section 2830(b).

(e) “Program” means the Members’ virtual net metering program under RES-BCT, the Renewable Energy Self-generation Bill Credit Transfer Program, as described under Section 2830 of the California Public Utilities Code.

2. Purpose of the Agreement; Common Powers To Be Exercised. Each Member has in common the power to undertake the Program. This Agreement enables the Members to participate in RES-BCT. The Members shall cooperatively participate in the Program on and subject to the terms of this Agreement and Public Utilities Code section 2830. Bill Credits that appear on the bill of benefitting accounts will be reimbursed to the generation account owner at a rate of 92.5%. The owner of the benefitting account shall retain 7.5% of the Bill Credits. Administration fees from PG&E, currently set at \$30 per month per benefitting account, shall be split evenly among Members. The one time generating account fee of \$500 shall be paid to PG&E by YCFCWCD. Any maintenance, repairs, or upgrade costs to the generating facilities owned by YCFCWCD, including but not limited to turbines, penstocks, transformers, powerlines, meters, telemetry equipment, and requirements of the PG&E interconnection agreement will be paid by the YCFCWCD. Any maintenance, repairs, or upgrade costs to the equipment of the benefitting accounts shall be paid for by Members that own the benefitting accounts.

3. Membership. The Members shall be those agencies set forth in the opening paragraph and any public agency that: (a) has the legal authority to have either a generating account or a benefitting account; (b) subsequently becomes a party pursuant to paragraph 21; and (c) has not withdrawn from this Agreement. This Agreement is not intended to, and shall not be construed to, create an agency or entity that is separate from the Members. Nothing in this Agreement shall prevent the Members from executing other joint powers agreements. Except as otherwise stated in this Agreement, each Member shall bear its own costs in implementing the Program.

ADMINISTRATIVE AGENT

4. Administrative Agents. The chief administrative official or governing body of each Member shall appoint or select an Administrative Agent. The Agent shall serve at the pleasure of the appointing Member and may be removed at any time.

5. Meetings. There will be no regular meetings of the Members collectively. The Administrative Agents, or other authorized representatives of the Members, may collectively schedule meetings of their group. Except as otherwise stated in this Agreement, those meetings shall be for coordination purposes only. Coordination of monthly billing and credit tracking will be performed by regular administrative staff of the Members in the course of their regular duties.

6. Duties of Administrative Agent. The Administrative Agents shall ensure that proper credit, invoicing, and payments occur between generating and benefitting accounts, following the rules of RES-BCT as described under Section 2830 of the California Public Utilities Code. The Administrative Agents shall undertake such other tasks as assigned by their respective employers to implement the Program, consistent with this Agreement and the Members' collective direction in implementing this Agreement.

FINANCIAL PROVISIONS

7. Default. Any Member which defaults in its obligation to pay or advance any amounts due pursuant to this Agreement, or any agreement among one or more Members under this Agreement, after such amounts have become delinquent shall be deemed to have waived and relinquished any right it may have to participate in the Program and to be entitled to participate in any benefits from the Program. Any defaulting Member shall pay interest on the unpaid amount at the rate of twelve percent (12%) per annum, or the maximum rate allowed by law if it is less than twelve percent (12%) per annum, until the overdue invoice amount is paid in full. If a Member is terminated pursuant to this section, then the terminated Member shall remain liable for payment of its share of debts, liabilities and obligations under this Agreement incurred prior to the date of termination, plus interest. The remedies upon default provided by this Agreement are not exclusive, and are in addition to any other remedies which may be provided by law or equity.

8. Accounting Provisions. Each Member shall manage and be responsible for any debts, liabilities or obligations it incurs under, or in connection with, this Agreement. Each Member shall maintain strict accountability of all funds, receipts and disbursements under this Agreement and prepare appropriate records and accounts of all costs incurred and funds received from the Members under this Agreement in accordance with generally accepted accounting practices for California public agencies. The Members shall allow the other Members, or any of their employees, accountants, attorneys or agents to review, inspect, copy and audit any such records and accounts.

RESCISSION, TERMINATION AND WITHDRAWAL

9. Term. This Agreement shall continue in effect until it is terminated as provided below.

10. Termination. This Agreement may be terminated by written consent of not less than two-thirds the Members, except during the outstanding term of any indebtedness. If there is any outstanding indebtedness, the termination must be made subject to the payment of the debt or some other acceptable arrangement whereby the Members agree to payment of the indebtedness.

11. Withdrawal. A Member may unilaterally withdraw from this Agreement without requiring termination of this Agreement, effective upon written notice to the Administrative Agents, provided the withdrawing Member pays or agrees to pay its share of all debts, liabilities and obligations under this Agreement incurred prior to the effective date of such withdrawal.

MISCELLANEOUS

12. Assignment. The rights and duties of the Members under this Agreement may not be transferred, assigned or delegated without the written consent of the all other Members. Any attempt to transfer, assign or delegate such rights or duties in contravention of this Agreement shall be null and void. Any approved transfer, assignment or delegation shall be consistent with the terms of this Agreement. This Agreement shall bind and inure to the benefit of the successors and assigns of the parties.

13. Indemnification. Each Member shall defend, indemnify, protect and hold harmless the other Members, and their officers, employees and agents, from any claim, demand, liability, judgment, award, loss, damage, costs or expense (including reasonable attorney fees and litigation costs) of every nature arising out of or in connection with the breach of this Agreement by the indemnifying Member, or the indemnifying Member's officers, employees or agents, pursuant to or in furtherance of this Agreement.

14. Admission of New Members. Additional public agencies may become Members and parties to this Agreement upon such terms and conditions approved by two-thirds vote of the governing boards of the existing Members and upon the approval and execution of this Agreement with any such terms and conditions by the governing board of the new Member.

15. Severability. If one or more paragraphs or portions of this Agreement are found to be unlawful, invalid or unenforceable by a decision of a court of competent jurisdiction, the remaining paragraphs and portions shall not be affected by such decision.

16. Waiver. The waiver at any time by any Member of its rights with respect to a default under this Agreement shall not be deemed a waiver with respect to a subsequent default.

17. Amendment. This Agreement may be amended only by a written instrument duly approved and executed by all of the then Members.

18. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California. Pursuant to Government Code section 6509, YCFCWD is designated as the Member whose governing authorities shall govern the Members' activities under this Agreement.

19. Integration. This writing constitutes the entire agreement between the Members and supersedes all prior agreements and understandings between the Members relating to the subject matter hereof. The parties acknowledge that there are no understandings, agreements, conditions, representations, warranties, or promises with respect to the subject matter of this Agreement except those contained in this writing.

20. Notices. Any invoice, notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed duly given when (a) personally delivered to or actually received by the Member to whom it is directed or (b) in lieu of such personal service or receipt, 48 hours after being deposited in the United States mail with postage prepaid and addressed to the Member at the address shown on the signature page or (c) by email with return receipt acknowledging the receipt. Any Member may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one specified below.

21. Construction of Agreement. The Members acknowledge that each has had an opportunity to review and revise this Agreement and to obtain the advice of an attorney, and agree that the normal rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the construction and interpretation of this Agreement.

22. Counterparts. This Agreement may be executed by the Members with PDF or facsimile signatures and in separate counterparts, each of which, when executed and delivered to all of the Members, shall be an original. All such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the Members have approved and executed this Agreement effective as of the date first above written as follows:

Name: _____

Name: _____

Title: _____

Title: _____

Of Lake County.

Of Yolo County Flood Control and
Water Conservation District

Date _____

Date _____

Administrative Agent Name:
Jan Coppinger

Administrative Agent Name:
Max Stevenson

Phone Number:
(707) 263-0119

Phone Number:
(530) 662-0265

Mailing Address:
230 N. Main Street
Lakeport, CA 95453

Mailing Address:
34274 Highway 16
Woodland, CA 95695

Email:
Janet.coppinger@lakecountyca.gov

Email:
mstevenson@ycfcwcd.org

APPROVED AS TO FORM:

Anita L. Grant
County Counsel

By: _____