



# ELECTRIC RESOURCES REQUEST FOR OFFERS

- RENEWABLE ENERGY REOURCES
- CARBON FREE RESOURCES
- ENERGY STORAGE TECHNOLOGIES



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# REQUEST FOR OFFERS PROCESS & SPECIFICATIONS

(Resource Planning and Development (RPD) Procurement Process)

## **PART I-PURPOSE**

### **A. Introduction**

The Modesto Irrigation District, hereinafter referred to as the District or MID, is soliciting competitive proposals on a rolling basis for the purpose of evaluating renewable resources for clean, sustainable energy in order to meet the District's Renewable Portfolio Standard (RPS) needs consistent with the California Renewable Energy Resources Program (Public Resources Code section 25740 et seq.) and the California Renewables Portfolio Standard Program (Public Utilities Code sec. 399.11 et sec.), and carbon free resources. *Note: All capitalized terms not defined within the Request for Offers document are defined within Appendix C.*

MID is an irrigation district, organized and operated under the laws of the State of California, which undertakes both electric and water operations. The District is a local publicly owned electric utility (as that term is defined in Public Utilities Code section 224.3). The District owns and operates facilities for the generation, transmission, distribution, purchase and sale of electric power and energy at wholesale and retail levels. MID is a fully integrated, fully resourced utility that resides within the Balancing Authority of Northern California (BANC) balancing authority area. The District serves approximately 131,000 electric customers with a peak demand of approximately 700 MW.<sup>1</sup>

This Request for Offers (RFO) is open to Eligible Renewable Energy Resources, carbon free energy resources, and standalone energy storage projects. This RFO is not an offer to purchase and does not establish a purchase commitment from or obligation of the District for electric capacity, energy, or any other product that is offered as a result of this process.

The District seeks cost-effective resources to support its RPS and carbon free objectives with commercial operation or delivery starting in Q2 2022 and beyond with resources that have the following minimum characteristics described below:

- Minimum electric generating capacity of three (3) megawatts and a maximum of fifty (50) megawatts;
- If applicable, the proposed resources must be CEC-certifiable as Eligible Renewable Energy Resources;
- All Environmental Attributes/Renewable Energy Certificates must be tendered to the District without any additional costs or conditions as part of the contract for renewable power;
- All delivery costs to the point of delivery, including transmission, must be included in the price.

Resources can be located: (i) within MID's service territory, ii) remotely with physical delivery on the District's circuit at the Westley Substation, or (iii) remotely with scheduled delivery to the Tracy Substation (230 kV) . Any offers selected by the District for procurement may result in a Power Purchase Agreement (PPA) or other contract, subject to negotiation of satisfactory terms

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<sup>1</sup> A map of MID's electric service area can be accessed through the following link:

<https://www.mid.org/mid-map.pdf>.

and conditions, for capacity, energy, and Environmental Attributes/Renewable Energy Credits with a term of at least 10 years. Unless otherwise negotiated, the Proposer will own and operate the facilities and be responsible for development, land acquisition, transmission, fuel supply source and transportation, permitting, financing, and construction for the facilities.

The District seeks a COD from the proposed offers as soon as Q2 2022, with a preference for an early date. Proposals may include i) project ownership by the District, ii) a power purchase agreement with an ownership option, or iii) a power purchase without an ownership option.

All offers submitted must include a completed application (included with the RFO documents) for each facility being offered for consideration.

## **PART II- DESIRED PRODUCT OFFERS**

### **A. Product Descriptions**

At this time the District seeks to procure only products that can meet the California Energy Commission's definition of Portfolio Content Category 1 products<sup>2</sup>, carbon free energy, or standalone energy storage projects. Each offer submitted in response to this RFO must be for only one electric generating facility, and depending on technology, where the source of renewable fuel is located at the same location as the proposed generating facility (the District is not looking to aggregate multiple projects in a single offer). Sellers can submit more than one offer, in any of the Eligible Renewable Energy Resource technology areas or for standalone energy storage projects. A facility can include more than one generator of like kind.

Products from the offered resources can be structured in the following manner:

(1) **Intermittent Dispatch Basis**

The Proposer will deliver energy, bundled with Environmental Attributes/Renewable Energy Certificates, and capacity attributes if available, whenever generated by the facility.

(2) **Intermittent Dispatch Basis with Energy Storage**

The Proposer will deliver energy, bundled with Environmental Attributes/Renewable Energy Certificates, and capacity attributes if available, whenever generated by the facility. This type of proposal must comply with the current version of the California Energy Commission RPS Eligibility Guidebook ([Ninth Edition, CEC-300-2016-006-ED9-CMF-REV, January 2017](#)) where the storage device is integrated with the facility, such that the energy storage device is capable of storing energy produced by the Eligible Renewable Energy Resource facility (please refer to Section 3.(F)(a) of the current CEC RPS Eligibility Guidebook) or both the energy produced by the Eligible Renewable Energy Resource facility and other sources.

MID has the following preferences regarding energy storage systems:

- A minimum of four (4) hour discharge duration.
- The District will consider alternate pricing structures; however, responses should include a single energy price in dollars per megawatt-hour (\$/MWh) for all

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<sup>2</sup> Portfolio Content Category 1 products must meet the requirements of Public Utility Code Section 399.16(b)(1)(A) and 399.16(b)(1)(B).

delivered product, inclusive of energy storage; and a price for the energy storage component in dollars per kilowatt-month (\$/kW-mo).

- If the proposal is for a project residing within the District's electric service territory, the District would maintain dispatch rights for the energy storage system.
- If the proposal is for a project residing outside of the District's electric service territory, then the District will reserve the right to negotiate terms for the dispatch of the energy storage system.

**(3) Standalone Energy Storage**

The District is also interested in receiving standalone energy storage offers. Standalone energy storage offers must be at least 3 MW. The District has a preference for the characteristics of standalone energy storage offers to be similar to those that are listed in Part II, section A(2) above for energy storage component.

**Power Purchase Agreement With Option to Buy**

If desired, Proposers can also provide a price at which MID, at its sole discretion, may acquire the facility that is being offered through a power purchase agreement. Such pricing will include MID's acquisition of all capacity, energy, Environmental Attributes/Renewable Energy Certificates, land rights, permits and other licenses, and all other properties or rights necessary to enable MID to own and operate the facility. MID will consider an option to buy only for those facilities that are located within the District's service territory. Any land lease, subject to MID's approval, must be in adequate form and for an adequate term (at least the life of the asset).

**Turnkey Ownership Offers**

Sellers can propose to develop, permit, and construct a new renewable generating facility to be acquired by MID. Such resources must be located within the District's service territory. The facility must be located on land owned or leased by the Seller(s), with ability to assign land rights or to purchase such rights by MID as part of MID's acquisition of the proposed project. Sellers proposing a turnkey acquisition must provide complete design and construction specifications for the technology being proposed, a purchase price on the Commercial Operation Date (and expressed as \$/kW) along with an estimate of all recurring owner costs, including but not limited to operation and maintenance costs, taxes, lease payments, royalties, and insurance.

**B. Point of Delivery and Scheduling**

The District will accept offers of remote projects with physical delivery at Westley or within the District's service territory, or with scheduled delivery to the Tracy Substation (230 kV). Offers will be evaluated based on the Proposer's ability to effectively deliver contracted output to the point of delivery.

- For offers with projects located outside of MID's service territory, Proposers shall be financially and operationally responsible to schedule and deliver the product to the point of delivery, including any required transmission.

Specific terms and scheduling processes will be subject to discussion and negotiation between the District and a Proposer.

## **PART III- OFFER DETAILS**

### **A. PPA**

Because PPA terms and conditions will vary depending on the nature of each proposal, the District has not included a sample PPA in the RFO documents. Terms and conditions will be agreed upon following the selection of a project and will provide the basis for developing a PPA. The District may provide a draft PPA to shortlisted Proposers for review and comment.

### **B. Performance Requirements**

Agreements will include minimum performance requirements. The District will be entitled to damages (to be negotiated as part of a PPA, or other contract, including but not limited to the right to terminate the PPA, or other contract), in the event that the Proposer fails to meet such requirements.

### **C. Re-Power Projects**

Proposers must disclose if the project is a re-power project offer. Offers to re-power an existing facility will be evaluated by the District and, in its sole discretion, the District may accept or reject a proposed offer relating to a re-powered project or request additional information regarding the project.

### **D. Environmental Attributes/Renewable Energy Certificates and Tracking**

In addition to the generated renewable energy, Environmental Attributes/Renewable Energy Certificates are required to be provided monthly for all energy produced by the Eligible Renewable Energy Resource and purchased by the District. Participation in a renewable energy certificate tracking system administered by the California Energy Commission (i.e. WREGIS or its successor) will also be required. The transfer of Environmental Attributes/Renewable Energy Credits shall occur via the WREGIS and any other platform required for the transfer of all credits to the District. The Proposer(s) will be responsible for abiding by all operating rules and regulations of the tracking system and Proposer will be responsible for all costs associated with the tracking system including but not limited to paying all necessary costs to maintain an account, reporting all applicable sales to the District and creation and transfer fees associated with delivery of all Environmental Attributes/Renewable Energy Certificates to the District. Note that the project shall be WREGIS-certified no later than 3 months before COD.

### **E. Project Certification**

If applicable, the Proposer will certify the proposed project as a renewable energy resource through the certification process administered by the California Energy Commission or its successor and provide information requested by the California Energy Commission pursuant to Section 399.25(a) of the California Public Utilities Code. As part of this process, Seller should be prepared to provide the CEC-RPS-ID number associated with the pre-certification (upon COD) or the certification (within 180 days of COD) of the renewable energy resource in the proposed offer and be prepared to register the project on the California Energy Commission's RPS Online System located at: <https://rps.energy.ca.gov/>. The RPS Online System is the California Energy Commission's application and reporting system for the California RPS program and projects are required to undergo this process by the California Energy Commission in order for it to certify RPS eligibility of proposed projects. The District requires that during the term of any agreement the

Seller shall assume the risk of maintaining RPS certification and bringing the facility or project into compliance should there be a change in law that renders a facility noncompliant with the RPS. Since this is one of the critical elements of renewable projects or products for the District, please include a description of how that risk would be assumed by the Seller. The District seeks to work towards tangible and timely opportunities to add renewable energy generation to its portfolio as well as energy storage technologies and therefore will not entertain experimental or speculative proposals.

**F. Rolling RFO**

The District is conducting a rolling RFO process whereby proposals may be submitted at any time and the District reserves the right to review any and all proposals throughout the process of this rolling RFO to contact proposers at any time to start negotiations and execute one or more agreements.

**G. Development And Performance Security**

Projects that are selected for negotiation may be required to post development and, if applicable, performance security in an amount acceptable to the Proposer and the District, in order to provide financial security to the District for Proposer's obligations to the District before and, if applicable, after the achievement of the COD. Specific terms related to development and performance security may be negotiated with Proposer(s).

**H. Project Generation**

Proposer(s) are required to provide a 12x24 generation profile for the offered project and a forecast of annual expected generation in MWhs during the proposed term.

**I. Project Schedule and Delays**

The District wants to see a proposed description of the schedule to obtain the COD. This should include the following descriptions:

- How the Proposer will obtain site access and control through executed leases, fee purchases, approvals, or other means;
- Any details of prior settlement agreements for environmental mitigation and clear identification of post-construction or pass-forward mitigation obligations that would be forwarded to MID in the event that an agreement is executed.
- Proposed schedule for obtaining construction and operational permits and licenses, and construction financing.
- Proposed construction schedule, including application status for transmission and interconnection service acquisition, major equipment description and purchasing timelines, anticipated factory acceptance testing of major components, site tests, commencement of test-energy and Commercial Operation Date (COD).
- Description of whether and to what extent any environmental studies have been carried out with respect to the proposed project and how compliance with the California Environmental Quality Act (CEQA), which is a requirement before an agreement can be executed by MID, might be effectuated, including, if the proposed project is located outside of MID's service territory.

Any negotiated PPAs or other contracts will include provisions for COD delay damages. Specific terms will be subject to discussions and negotiation between the District and shortlisted Proposer(s).

**J. Approvals**

Any agreement resulting from this process is expressly subject to:

1. Negotiation of a mutually satisfactory PPA, or other contract, and
2. Obtaining approval of the District's Board of Directors.

Participation in this process, including selection for the shortlist or as a PPA finalist, does not constitute a purchase commitment, or a promise or obligation to purchase, by the District, or provide a guaranty for approval of any contract by the District.

**K. Submittal Requirements**

All Proposers that respond to this RFO shall provide a Submittal Letter signed by an authorized official of the offering company. Submittal Letters are to be included with each Project Application (refer to **Attachment 1**) and shall include a narrative summary of the offered project and technology, and state the period under which the terms and conditions of the response to the RFO will remain valid. Proposers may also include any additional information related to the proposed project that may assist the District during its evaluation process. Proposers submitting offers for multiple projects must submit a separate application for each project.

**PART IV- INSTRUCTIONS FOR SUBMITTAL**

**A. General Contact Information**

All submittals and questions shall be submitted via email to the general RFO email address at: **RPD\_Procurement@mid.org** .

**B. Clarifications and Amendments**

Clarifications regarding this RFO shall be requested in writing directed to the email address listed above. In order to ensure fast and reliable distribution of documents, Proposers are advised to provide an e-mail address to which notifications will be sent. The District reserves the right to



follow up with questions or inquiries to request clarification of information submitted and to request additional information from any Proposer.

**C. Submittals**

Proposers shall submit an electronic copy of the Project Application (in Microsoft Excel) and the Submittal Letter and any other documentation submitted as part of Proposer's offer (in MS Word or Adobe Acrobat Portable Document File (PDF)).

Email offers to: **RPD\_Procurement@mid.org** .

If the file size exceeds 10 MB, please send an inquiry to the email above in order to receive access to the District's file transfer site.

All Proposers that submit offer response packages will receive emails confirming receipt within 3-5 business days.

Submission of a proposal constitutes acknowledgment that the respondent has read and agrees to be bound by the terms and specifications of this RFO and any addendum subsequently issued by the District.

**PART V- EVALUATION**

**A. Evaluation Process and Criteria**

The District may request from any Proposer at any time, additional information on any offer. The District shall have the right, at its sole discretion, to request this information without notifying other potential Proposers.

The District will pre-screen all responses prior to a detailed evaluation of the completed Project Application package. The minimum qualifications for pre-screening purposes include the following:

- The offer includes Environmental Attributes/Renewable Energy Certificates (if applicable).
- A Submittal Letter with the required statement and signed by an officer of the Proposer's company authorized to enter the company into negotiations for a PPA or other contract is included with the Project Application.
- Submitted offers shall meet the requirements of Part III, section K.
- The proposal is complete enough to allow MID to conduct a detailed evaluation of the project (i.e., identifies the project location, fuel source and availability, point of planned interconnection and delivery, cost assumptions, etc.).

Failure to meet any of the above requirements will establish grounds for the Project Application to be disqualified by the District.

After prescreening, the Project Applications will be evaluated against a common set of criteria that will include various factors. A partial list of factors to be considered during the District's evaluation process is included below. This list may be expanded at the District's discretion.

Price	Energy Storage Characteristics	COD
Energy/Capacity Value Throughout Term	Project Location & Point of Delivery	Resource Capacity Factor/Generation Profile
Development Security/Performance Security Amounts	Qualification of Project Team and Renewable Energy Project Development Experience	Financial Stability of Project Owner
Project Schedule Description	Transmission Availability	Dispatch Flexibility

Based on the outcome of the evaluation, the District will determine at its sole discretion whether or not to reach out for further questions on an offer or to engage in further discussions to discuss terms and conditions with the related Proposer(s).

**B. Exclusive Offers**

Proposer(s) that have submitted an offer(s) that are selected will negotiate the terms of an agreement for the offered project(s) with the goal (but not guarantee) of achieving final drafts to be presented to the District’s Board of Directors for consideration for approval and execution. Upon selection, Proposers that are offering the same capacity and/or energy from one resource in response to multiple solicitations must execute an exclusivity agreement and immediately withdraw their offer from all other solicitations or risk being removed as a PPA Finalist.

Discussion of terms and conditions of any exclusive offers shall not constitute a purchase commitment by or obligation of the District. Discussions with, and materials provided by, Proposer(s) during the RFO process will be taken into consideration by the District during the selection process.

**PART VI-OTHER NOTICES**

**A. Proprietary & Confidential Information**

Submitted offers may include proprietary and/or confidential information. Proposers are advised that Section 6253 of the California Public Records Act provides that any person may receive a copy of any identifiable public record that is not exempt from disclosure under other provisions of the Act. The District will disclose such documents unless (1) the data submitted in response to this RFO is stamped "Proprietary/Confidential Materials;" or (2) the Proposer(s) provides a brief explanation of the basis for confidentiality under the Public Records Act (the Confidential Information). If the District is requested or required, pursuant to any applicable law, regulation, order, or ruling, to disclose any of the Confidential Information, the District will provide prompt written notice to the Proposer of such requirement so that the Proposer, at its sole cost and expense, can seek a protective order or other appropriate remedy regarding such disclosure.

The District reserves the right to release Confidential Information to its advisers for purposes of evaluating the Proposer’s offer. In the event that such release to advisers is made, advisers will be bound to the same standard of care with respect to disclosure as the District. Any negotiated agreement(s) will be disclosed to the public in full upon consideration by the District’s Board of Directors. Neither the District nor its advisers will be liable for any damages resulting from any

accidental disclosure before, during or after this RFO solicitation process, even if the documents are marked as Proprietary/Confidential Materials.

The District has provided a sample confidentiality agreement for execution by any Proposers that are interested in proposing offers as part of this RFO process (please refer to Appendix B). If an initial offer is made, a Proposer should execute and email a confidentiality agreement to the email listed in Part IV.C.

**B. Preparation Cost and Ownership of Offers**

The District shall not be responsible for any of the Proposer's costs incurred to prepare, submit, any omissions, negotiate, or to enter into any agreements, or for any other activity related thereto to meet the requirements for offers established in this RFO. All submittals shall become the property of the District and will not be returned.

**C. Release of the District for Delays**

The Proposer acknowledges that it bears sole responsibility for submitting all applications and obtaining all necessary permits, leases or mortgages, interconnection, financing and other agreements necessary for the Proposer to perform its obligations as described in the Project Application and supporting documentation. Proposer further acknowledges that, if its offer is selected, it will hold the District harmless and not liable for:

- i. Any time and costs required to complete studies to obtain required permits for project operation, or enter into necessary agreements for the construction of a new project or re-power project as contemplated by this RFO (including without limitation any interconnection arrangements that must be made with other parties, studies, certification requirements, leases, mortgages, financing, or permits).
- ii. Any time and costs required to perform any transmission facility upgrades necessary to meet the COD as set forth by this RFO.
- iii. Any time and costs to construct the project.
- iv. Costs to construct any upgrades to transmission facilities, to the extent that the actual costs differ from any original cost estimates used to establish the offered price in the Project Application.
- v. Time required to obtain environmental permits to construct or operate, including acquisition of any emission reduction credits required by law or regulation.

**D. CEC Renewable Resource Certification**

Prior to delivery of any energy to the District, Proposer must complete all applicable renewable certifications required by the CEC to establish the proposed facility(ies) as an Eligible Renewable Energy Resource project. The CEC provides more information regarding these certifications on its website:

<https://www.energy.ca.gov/programs-and-topics/programs/renewables-portfolio-standard/renewables-portfolio-standard-0>

**E. Conditions of RFO Process**

The District reserves the right, at any time and in its sole discretion, to terminate this bidding process, change the basis for evaluation of offers, accept any offer, enter into any negotiation(s)

or any agreement(s) with one or more Proposers, and evaluate the qualifications and proposals of any Proposer upon notice of termination of this RFO process. The District also reserves the right to execute no agreement, suspend this RFO, or issue a new RFO that would supersede and replace this RFO. The District further reserves the right at any time, in its sole discretion, to reject any offer or proposal on the grounds that it does not conform to the terms and conditions of this RFO, or for any other reason, reserves the right to amend this Request for Proposals from time-to-time, and reserves the right to request information at any time during the solicitation process. Proposers that submit proposals agree to do so without legal recourse against the District, its directors, officers, employees and agents for the foregoing reasons or any other reason.

**F. Definition of Terms**

Please refer to Appendix C.

## APPENDIX A

## RPS ELIGIBLE RENEWABLE ENERGY RESOURCES

Pursuant to the MID RPS, an Eligible Renewable Energy Resource is an electric generating facility that meets all of the criteria listed below:

<b>NEW TECHNOLOGY</b>	The facility uses biodiesel, biomass, biomethane, solar thermal, photovoltaics, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, solid waste conversion, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to a facility using these technologies.
<b>LOCATION &amp; DELIVERY</b>	The facility is located in the State of California and has its first point of interconnection with a California balancing authority, has a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area or the facility is located outside the State of California and is connected to the Western Electricity Coordinating Council (WECC) transmission system with direct delivery into a California balancing authority or a contractual requirement for direct delivery of electricity to the District or agreed upon point of delivery into a California balancing authority under normal operating conditions and without substituting electricity from another source.

For other details on eligibility for each of the listed technologies, please refer to the California energy Commission's (CEC) Renewable Portfolio Standard Eligibility Guidebook RPS Eligibility Guidebook (Ninth Edition, CEC-300-2016-006-ED9-CMF-REV, January 2017) and the RPS Overall Program Guidebook (Sixth Edition, CEC 300-2013-008-ED6-CMF) can be found on the CEC's document website <https://www.energy.ca.gov/renewables/documents/index.html#rps>.

## **APPENDIX B**

## **SAMPLE CONFIDENTIALITY AGREEMENT**

This CONFIDENTIALITY AGREEMENT (“Agreement”), is entered into as of [DATE] by and between Modesto Irrigation District (“MID”), an irrigation district formed under the law of the State of California and [Proposer] (“Proposer”). MID and Proposer may each be referred to herein as “Party” or collectively referred to herein as the “Parties,” as the context requires.

WHEREAS, MID, as part of its retail electric operations, purchases and sells electric power for the benefit of its customers; and

WHEREAS, MID, in furtherance of its desire to procure renewable resources to meet its Renewable Portfolio Standard (“RPS”) and carbon free resources, issued in September of 2021 a Electric Resources Request for Offers (2021 Resource Planning and Development (RPD) Procurement Process);

WHEREAS, the Proposer provided a response to the 2021 RPD Procurement Process, which response resulted in an offer to provide renewable resources (“Offer”) and in negotiation regarding a potential mutually agreeable power purchase agreement (“PPA”) or other contract for consideration by the MID Board of Directors; and

WHEREAS, in the interest of potentially developing a mutually agreeable PPA, based on Proposer’s response to the 2021 RPD Procurement Process and the Offer, each Party may disclose to the other Party certain Confidential Information, as defined below, and the Parties hereby intend that such Confidential Information shall be treated as confidential to the extent allowed by law and used only in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the agreements, representations, promises, warranties and covenants contained herein, the Parties hereby agree as follows:

1. **Confidential Information.**

For the purposes of this Agreement, “Confidential Information” shall mean any and all information marked by either Party as “Confidential Information” or “Proprietary and Confidential” that either such Party has furnished or is furnishing (“Disclosing Party”) to the other Party (“Recipient”) in connection with the 2021 RPD Procurement Process, an Offer, PPA or other contract negotiations, whether tangible or intangible, and in whatever form or medium provided, as well as all information generated by the Recipient or its Representatives, as defined below, that contains, reflects, or is derived from the furnished information. “Confidential Information,” when marked as such, may include, but is not limited to, any and all financial information, pro forma cash flow projections, production data, performance data, financing plans and any other related material or information that may be disclosed, to the other Recipient; however Confidential Information shall not include the following:

(a) Information which was already in the Recipient’s possession and subject to disclosure as of the effective date of this Agreement or prior to the disclosure of such information by the Disclosing Party;



(b) Information which is hereafter disclosed to the Recipient without the obligation of confidence by a third party who did not disclose such information in violation of a confidentiality agreement between such person or entity and the Disclosing Party; or

(c) Information which is or becomes publicly available other than as a result of a violation or breach of this Agreement.

2. Non-Disclosure and Non-Use of Confidential Information.

The Parties agree that they shall maintain the Confidential Information in strict confidence and that the Confidential Information shall not, without Disclosing Party's prior written consent, be disclosed by the Recipient or by its affiliates, officers, directors, partners, employees, agents, or representatives (collectively "Representatives") in whole or in part, and shall not be used by Recipient or its Representatives other than in connection with the 2021 RPD Procurement Process, an Offer, or potential negotiation of a PPA or other contract. Recipient agrees to transmit the Confidential Information only to such of its Representatives who need to know the Confidential Information for the sole purpose of assisting the Recipient in connection with the 2021 RPD Procurement Process, an Offer or potential negotiation of a PPA or other contract; provided that such Representatives shall be informed of the terms of this Agreement and agree to comply with the terms hereof.

3. Remedies

Each Party acknowledges that any breach of this Agreement by a Party could cause the other Party irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity. In the event of any dispute concerning the respective rights and obligations of the Parties under this Agreement, each Party shall be responsible for its own expenses and attorneys fees and costs.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT TO THIS AGREEMENT OR FOR ANY FAILURE OR PERFORMANCE RELATED HERETO HOWSOEVER CAUSED.

4. Applicable Law and Required Disclosure.

This Agreement shall be governed by and construed under the laws of the State of California without reference to its conflicts of law or rules. All disputes arising from or related to this Agreement shall be litigated in a United States federal or a state court of competent jurisdiction located in the State of California and the Parties consent to personal jurisdiction and venue in such courts.

The Parties agree not to disclose Confidential Information only to the extent permitted by

the public records laws of the State of California. Parties are advised that Section 6253 of the California Public Records Act provides that any person may receive a copy of any identifiable public record that is not exempt from disclosure under other provisions of the Act. The District will disclose such documents unless (1) the data submitted to it is stamped “Confidential Information” or “Proprietary and Confidential”; or (2) the Disclosing Party provides a brief explanation of the basis for confidentiality under the Public Records Act.

In the event that a Recipient is requested or required by legal or regulatory authority or court order to disclose any Confidential Information, the Recipient shall promptly notify the Disclosing Party of such request or requirement prior to disclosure so that the Disclosing Party may seek an appropriate protective order. In the event that a protective order or other remedy is not obtained, Recipient agrees to furnish only that portion of the Confidential Information that it reasonably determines is consistent with the scope of the subpoena or demand, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. A disclosure by the Recipient in response to a valid order by a court or other governmental body, or as otherwise required by law, will not be considered a breach of this Agreement by the Recipient so long as the Recipient has provided the Disclosing Party notice as set forth above.

5. Term.

This Agreement and the obligations contained herein shall be in effect as of the date first above written (the “Effective Date”) and shall remain in effect until the earlier of: (1) the date that an Offer results in the execution of an PPA or other contract between MID and the Proposer, (2) the date that an Offer is disqualified by MID, or (3) the date that the 2021 RPD Procurement Process is terminated.

6. Savings Provision.

To the extent that any provision of this Agreement or any paragraph, term, sentence, phrase, clause or word of this Agreement shall be found by a court of law having jurisdiction to be void, illegal or unenforceable for any reason, such paragraph, term, sentence, phrase, clause or word shall be deemed modified or deleted in such a manner as to make the Agreement, as so modified, legal and enforceable under applicable laws. The remainder of the Agreement shall remain in full force and effect.

7. Sole and Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and there are no other agreements, warranties or representations, written or oral, other than those contained herein or specifically incorporated herein by reference. This Agreement may only be amended, modified, or extended by a writing signed by each of the Parties. Such amended Agreement will supersede any and all prior agreements or understandings between the Parties with regard to the subject matter contained therein.

8. Successors and Assigns.

The provisions of this Agreement bind the Parties hereto and each and all of their respective heirs, legal representatives, successors, and assigns. This Agreement may not be assigned by any Party without the prior written consent of the other Party.

9. No Other Agreement.

It is expressly understood that this Agreement shall not be construed as a letter of intent, or acceptance of or agreement to accept an Offer. This Agreement does not create a partnership, joint venture, agency or any other legal relationship between the Parties. This Agreement shall not be construed as an obligation on the part of any Party to refrain from pursuing business opportunities other than the 2021 RPD Procurement Process or an Offer.

This Agreement may be signed in counterparts, each of which shall be deemed an original. This Agreement may be executed and delivered by facsimile or electronic mail and the Parties agree that such facsimile or electronic mail execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each Party may use such facsimile or electronic mail signatures as evidence of the execution and delivery of this Agreement by the Parties to the same extent that an original signature could be used.

10. Notices

Any notice given hereunder by either Party shall be made in writing and delivered by facsimile, electronic mail, certified mail, or overnight delivery as follows:

To Proposer:

Contact:  
Fax:  
E-Mail:  
Mail:

Overnight Delivery:

To MID:

Contact: David Olivares  
Fax: (209) 526-7595  
E-Mail: David.Olivares@mid.org  
Mail: P.O. Box 4060  
Modesto, CA 95352

Overnight Delivery: 1231 Eleventh Street  
Modesto, CA 95354

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the date first above written.

Modesto Irrigation District

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Proposer:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX C

## DEFINITION OF TERMS

**BANC-** The Balancing Authority of Northern California.

**CEC-** The California Energy Commission, or its successor.

**Commercial Operation Date (COD)-** The date of delivery whereby the Seller guarantees the commencement of delivery of the selected offered project electrical output, and the seller ensures that they have i) obtained the necessary operating permits issued by the appropriate authorities for the operation of the facility, ii) certified the project as a renewable resource through the California Energy Commission, iii) secured appropriate interconnection arrangements for the offered project.

**Eligible Renewable Energy Resources-** The renewable resource technologies listed in Appendix A in accordance with the most current California Energy Commission RPS Eligibility Guidebook ([Ninth Edition, CEC-300-2016-006-ED9-CMF-REV, January 2017](#)). This includes power from wind, small hydroelectric (30MW or less), geothermal, direct combustion biomass, biodiesel power producing facilities, as well as from facilities generating power from digester gas, photovoltaic, solar thermal, biomass gasification with natural gas assistance, fuel cells using eligible renewable fuels, qualifying Municipal Solid Waste conversion, tidal current, ocean wave, and ocean thermal technology.

**Environmental Attributes/Renewable Energy Certificates-** Any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Eligible Renewable Energy Resource, and its avoided emission of pollutants.

Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants;
- (2) Any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;<sup>3</sup>
- (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

Green Attributes do not include:

- (i) Any energy, capacity, reliability or other power attributes from the Eligible Renewable Energy Resource,
- (ii) Production tax credits associated with the construction or operation of the Eligible Renewable Energy Resource and other financial incentives in the form of credits, reductions, or allowances associated with the Eligible Renewable Energy Resource that are applicable to a state or federal income taxation obligation,
- (iii) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or

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<sup>3</sup> Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

- (iv) Emission reduction credits encumbered or used by the Eligible Renewable Energy Resource for compliance with local, state, or federal operating and/or air quality permits.

If the Eligible Renewable Energy Resource is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide a buyer with sufficient Green Attributes to ensure that there are zero (0) net emissions associated with the production of electricity from the Eligible Renewable Energy Resource.

Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy.

**GWh** – Gigawatt-hours, each GWh is equal to 1,000 megawatt-hours.

**MW**- Megawatt or Megawatts.

**MWh**- Megawatt-hour or megawatt-hours. A measure of energy expected to be generated in one hour by one MW of capacity.

**Renewable Portfolio Standard (RPS)**- This is a renewable energy retail sales requirement established through legislation SB 100, 2018. Publicly Owned Utilities, such as the District, have the obligation to procure sufficient Eligible Renewable Energy Resources in order to meet 60% of its retail customer energy needs from the output of such resources by the end of 2030.

**Proposer(s)**– The respondent entity or entities responding to this RFO, in representation of themselves.

**Proposer's Representative**- Entity representing the Proposer.

**Submittal Letter**- This document must accompany the Project Application and shall include a narrative summary of the offering, technology, and state the period under which the terms and conditions of the response to the RFO will remain valid, and must be signed by an authorized representative. An officer authorized to bind must sign the proposal on behalf of the Proposer and must include the following declarations on the letter:

*"This proposal is genuine, and not sham or collusive, nor made in the interest or in behalf of any person not herein named; the respondent has not directly or indirectly induced solicited any other respondent to put in a sham bid, or any other person, firm or corporation to refrain from submitting a proposal; and the respondent has not in any manner sought by collusion to secure for themselves an advantage over any other respondent."*

**WECC**- The Western Electricity Coordinating Council, or its successor.

**WREGIS**- The Western Renewable Energy Generation Information System, or its successor.