



**Meeting of the Valley Clean Energy Alliance
Board of Directors
Thursday, November 12, 2020 at 4:00 p.m.
Via Teleconference**

Pursuant to the Provisions of the Governor’s Executive Orders N-25-20 and N-29-20, which suspends certain provisions of the Brown Act and the Orders of the Public Health Officers with jurisdiction over Yolo County, to Shelter in Place and to provide for physical distancing, all members of the Board of Directors and all staff will attend this meeting telephonically. Any interested member of the public who wishes to listen in should join this meeting via teleconferencing as set forth below.

Please note that the numerical order of items is for convenience of reference. Items may be taken out of order on the request of any Board member with the concurrence of the Board. Staff recommendations are advisory to the Board. The Board may take any action it deems appropriate on any item on the agenda even if it varies from the staff recommendation.

Members of the public who wish to listen to the Board of Director’s meeting may do so with the teleconferencing call-in number and meeting ID code. Teleconference information below to join meeting:

Join meeting via Zoom:

- a. From a PC, Mac, iPad, iPhone, or Android device with high-speed internet.
(If your device does not have audio, please also join by phone.)**

<https://us02web.zoom.us/j/87282371161>

Meeting ID: 872 8237 1161

- b. By phone**

One tap mobile:

+1-669-900-9128,,87282371161 US

+1-346-248-7799,,87282371161 US

Dial:

+1-669-900-9128 US

+1-346-248-7799 US

Meeting ID: 872 8237 1161

Public comments may be submitted electronically or during the meeting. Instructions on how to submit your public comments can be found in the PUBLIC PARTICIPATION note at the end of this agenda.

Board Members: Don Saylor (Chair/Yolo County), Dan Carson (Vice Chair/City of Davis), Tom Stallard (City of Woodland), Wade Cowan (City of Winters), Gary Sandy (Yolo County), Lucas Frerichs (City of Davis), Angel Barajas (City of Woodland), and Jesse Loren (City of Winters)

4:00 p.m. Call to Order

1. **Welcome**
2. **Approval of Agenda**
3. **Public Comment:** This item is reserved for persons wishing to address the Board on any VCE-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to two minutes per speaker, electronically submitted comments should be limited to approximately 300 words. Comments that are longer than 300 words will only be read for two minutes. All electronically submitted comments, whether read in their entirety or not, will be posted to the VCE website within 24 hours of the conclusion of the meeting. See below under **PUBLIC PARTICIPATION** on how to provide your public comment.

CONSENT AGENDA

4. **Approve October 10, 2020 Board Meeting Minutes.**
5. **Receive 2020 Long Range Calendar.**
6. **Receive Financial Update – September 30, 2020 (unaudited) financial statement.**
7. **Receive November 5, 2020 Regulatory Update provided by Keyes & Fox.**
8. **Receive November 3, 2020 Customer Enrollment Update.**
9. **Receive Community Advisory Committee October 22, 2020 Meeting Summary.**
10. **Approval of Amendment 1 to VCE’s Mailing Service agreement with Automate to extend the contract through June 30, 2022 and increase the not to exceed amount by \$40,000.**
11. **Approval of Amendment 1 to VCE’s marketing consultant agreement with Green Ideals to extend the contract one (1) year.**
12. **Accept and attest the accuracy of Valley Clean Energy’s 2019 Power Content Label for the Standard Green and UltraGreen products for 2019.**
13. **Ratify VCE’s 3-year Strategic Plan.**
14. **Ratify VCE’s Environmental Justice Statement.**

REGULAR AGENDA

15. **Approve the below Power Purchase Agreements (PPA) for renewable energy and capacity resulting from VCE’s local request for offers for long term renewables projects.**
 - a. **PPA between Valley Clean Energy and Putah Creek Solar Farms, LLC to procure 3 megawatts of solar co-located with a battery energy storage system under development in Yolo County, California; and,**
 - b. **PPA between Valley Clean Energy and Gibson Renewables LLC to procure 20 megawatts of solar combined with a battery energy storage system under development in Yolo County, California.**

16. Receive update on short and long-range COVID impacted financial forecast, load, revenue and power costs. (Informational)
17. Approve allocation of Fiscal Year 2020 Net Margin between cash reserves, dividends, and local program reserves.
18. Receive update on City of Winters enrollment and outreach. (Informational)
19. **Board Member and Staff Announcements:** Action items and reports from members of the Board, including announcements, AB1234 reporting of meetings attended by Board Members of VCEA expense, questions to be referred to staff, future agenda items, and reports on meetings and information which would be of interest to the Board or the public.
20. **Adjournment:** The next VCE Board meeting is scheduled for Thursday, December 10, 2020 at 4:00 p.m. to held via teleconference.

PUBLIC PARTICIPATION INSTRUCTIONS FOR VALLEY CLEAN ENERGY BOARD OF DIRECTORS MEETING ON THURSDAY, NOVEMBER 12, 2020 AT 4:00 P.M.:

PUBLIC PARTICIPATION. Public participation for this meeting will be done electronically via e-mail and during the meeting as described below.

Public participation via e-mail: If you have anything that you wish to be distributed to the Board and included in the official record, please e-mail it to VCE staff at Meetings@ValleyCleanEnergy.org. If information is received by 3:00 p.m. on the day of the Board meeting it will be e-mailed to the Board members and other staff prior to the meeting. If it is received after 3:00 p.m. the information will be distributed after the meeting, but within 24 hours of the conclusion of the meeting.

Verbal public participation during the meeting: If participating during the meeting, there are two (2) ways for the public to provide verbal comments:

- 1) If you are attending by computer, activate the “participants” icon at the bottom of your screen, then raise your hand (hand clap icon) under “reactions”.
- 2) If you are attending by phone only, you will need to press *9 to raise your hand.

VCE staff will acknowledge that you have a public comment to make during the item and will call upon you to make your verbal comment.

Public Comments: If you wish to make a public comment at this meeting, please e-mail your public comment to Meetings@ValleyCleanEnergy.org or [notifying the host as described above](#). Written public comments that do not exceed 300 words will be read by the VCE Board Clerk, or other assigned VCE staff, to the Committee and the public during the meeting subject to the usual time limit for public comments [two (2) minutes]. General written public comments will be read during Item 3, Public Comment. Written public comment on individual agenda items should include the item number in the “Subject” line for the e-mail and the Clerk will read the comment during the item. Items read cannot exceed 300 words or approximately two (2) minutes in length. All written comments received will be posted to the VCE website. E-mail comments received after the item is called will be distributed to the Board and posted on the VCE website so long as they are received by the end of the meeting.

Public records that relate to any item on the open session agenda for a regular or special Board meeting are available for public review on the VCE website. Records that are distributed to the Board by VCE staff less than 72 hours prior to the meeting will be posted to the VCE website at the same time they are distributed to all members, or a majority of the members of the Board. Questions regarding VCE public records related to the meeting should be directed to Board Clerk Alisa Lembke at (530) 446-2750 or Alisa.Lembke@ValleyCleanEnergy.org. The Valley Clean Energy website is located at: <https://valleycleanenergy.org/board-meetings/>.

Accommodations for Persons with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact Alisa Lembke, VCE Board Clerk/Administrative Analyst, as soon as possible and preferably at least two (2) working days before the meeting at (530) 446-2754 or Alisa.Lembke@ValleyCleanEnergy.org.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 4

TO: Board of Directors
FROM: Alisa Lembke, Board Clerk / Administrative Analyst
SUBJECT: Approval of Minutes from October 8, 2020 Board Meeting
DATE: November 12, 2020

RECOMMENDATION

Receive, review and approve the attached October 8, 2020 Board meeting Minutes.



**MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE
BOARD OF DIRECTORS REGULAR MEETING
THURSDAY, OCTOBER 8, 2020**

The Board of Directors of the Valley Clean Energy Alliance duly noticed their regular meeting scheduled for Thursday, October 8, 2020 at 4:00 p.m., to be held via Zoom teleconference. Chairperson Don Saylor established that there was a quorum present and began the meeting at 4:00 p.m.

Board Members Present: Don Saylor, Dan Carson, Tom Stallard, Gary Sandy, Wade Cowan, Jesse Loren, Lucas Frerichs (arrived at 4:02 p.m.), Angel Barajas (arrived at 4:02 p.m.)

Members Absent: None

Approval of Agenda Chair Saylor informed the Board that Item 14 – statement on environmental justice issues will be addressed before Item 13 – Strategic Plan.

Motion made by Director Loren to approve the October 8, 2020 agenda as amended with Item 14 being addressed before Item 13, seconded by Director Frerichs. Motion passed unanimously.

Public Comment Chairperson Saylor opened the floor for public comment.

There were no written or verbal comments.

Approval of Consent Agenda / Resolution 2020-029 No items to be pulled from the consent agenda. There were no written or verbal public comments.

Motion made by Director Stallard to approve the consent agenda, seconded by Director Loren. Motion passed. The following items were approved, ratified, and/or received:

4. September 10, 2020 Board meeting Minutes;
5. 2020 Long Range Calendar;
6. Financial Updated – August 31, 2020 (unaudited) financial statement;
7. Legislative Update;
8. September 30, 2020 Regulatory update provided by Keyes & Fox
9. September 30, 2020 Customer Enrollment Update;
10. Community Advisory Committee (CAC) September 24, 2020 meeting summary; and,
11. SMUD Amendment #20 to Task Order 2 – implementation of the 2019 California Energy Commission Power Content Label as Resolution 2020-029.



Item 12: Financial Audit of Fiscal Year July 1, 2019 through June 30, 2020

Jesse Deol of James Marta & Company presented a summary of audit findings of VCE's financials for fiscal year 2019/2020.

There was a brief discussion about the current investment policy VCE is following. Staff are to provide a copy to the Board for future discussion.

There were no written or verbal public comments.

Director Carson made a motion to accept and approve the Audited Financial Statements for the period of July 1, 2019 to June 30, 2020; accept the communication with Governance Letter; and, accept the Internal Control Letter, seconded by Director Cowan. Motion passed by the following vote:

AYES: Saylor, Carson, Stallard, Sandy, Frerichs, Cowan, Barajas, Loren

NOES: None

ABSENT: None

ABSTAIN: None

Item 13: Approve Valley Clean Energy statement on environmental justice issues.

VCE Staff Rebecca Boyles summarized the revisions and additions to the Environmental Justice (EJ) statement.

Board Members provided their comments and questions. Ms. Boyles explained that the Environmental Protection Agency (EPA) definition was used in the EJ statement. The Board requested that language be added to the EJ Statement that is inclusive of sex, gender identity, and sexual orientation.

There were no written or verbal public comments.

Director Loren made a motion to approve Valley Clean Energy statement on environmental justice with modifications to include language that is more inclusive of sex, gender identity, and sexual orientation, seconded by Director Barajas. Motion passed by the following vote:

AYES: Saylor, Carson, Stallard, Sandy, Frerichs, Cowan, Barajas, Loren

NOES: None

ABSENT: None

ABSTAIN: None

Item 14: Approve Valley Clean Energy three-year Strategic Plan

VCE Staff provided an overview of the revised Strategic Plan (Plan), including topic and goal areas. Interim General Manager Mitch Sears reiterated that the draft Plan has goals that are overarching and lists measurable objectives to reach those goals. The Plan currently does not show what actions Staff need to take to accomplish those goals.



Discussion occurred and suggestions were made, such as:

- 1) financial stability and future Power Charge Indifference Adjustment costs; under Topic B (Procurement & Power Supply)/Goal 2, the goal to be 100% carbon neutral by 2030 versus 2035 as proposed in an earlier draft and the study to present options to achieving this goal;
- 2) adding a section to Topic C (Customers & Community)/Goal 3, that reflects the Environmental Justice Statement;
- 3) the definition of carbon free resource portfolio (carbon free hour by hour) as stated in Goal 2, Objective 2.5; and,
- 4) within the new section "Timing, Measurement and Updates", providing an annual report to the CAC, in addition to the Board.

Director Loren is to provide Staff language for an additional objective regarding Environmental Justice Statement to Topic C (Customers & Community)/Goal 3.

There were no written public comments. Verbal public comments were provided:

Yvonne Hunter, CAC Chair, commented that the CAC had a lengthy and thoughtful discussion about the Strategic Plan and the CAC's general statement in support of the direction the Plan is going is included in the Board's packet. She commented that Board Member Dan Carson was in attendance to listen to the CAC discussion; individual CAC Members and the CAC's Strategic Plan Task Group provided comments. As an individual, she encourages the Board to adopt the Plan.

Christine Shewmaker thanked Staff for their work on the Plan. She commented that she is in favor of the 2030 aspirational goal of working towards a resource portfolio that is 100% carbon neutral. This goal is also in line with the emergency declaration recently adopted by the Yolo County Board of Supervisors. She also commented that she supports looking at "carbon free hour by hour" by 2030.

The Board Members discussed shared services, expansion and municipalization and the need to include them within the Plan. The Board requested that Staff draft an additional objective under Topic F) Organization, Workplace & Technology, Goal 6 that addresses these objectives. Staff are to bring the draft language back to the Board for their review. Lastly, the Board discussed the need to keep the goals and objectives sharply defined and measurable, and the Plan discernable and transparent.

Director Stallard made a motion to:

- 1) approve the three-year Strategic Plan with modifications;
- 2) draft a "develop a municipalization or public power roadmap" objective to Topic F) Organization, Workplace, & Technology, Goal 6;



- 3) add an objective to Topic C) Customers & Community, Goal 3, that integrates and addresses the concerns and priorities of emerging and historically marginalized communities in the design and implementation of VCE's services and programs (Environmental Justice Statement);
- 4) add that Staff will, in addition to the Board, provide an annual report to the CAC;
- 5) make two grammatical corrections; and,
- 6) bring the Plan back to the Board for review and ratification.

Motion was seconded by Director Loren. Motion passed by the following vote:
AYES: Saylor, Carson, Stallard, Sandy, Frerichs, Cowan, Barajas, Loren
NOES: None
ABSENT: None
ABSTAIN: None

Item 15: Receive long term energy procurement update (Informational)

VCE Staff Gordon Samuel provided an update on the local request for offers (RFOs) and long term energy procurements. Currently looking at four (4) entities for local projects and Staff are targeting the Board's November meeting for them to consider approving power purchase agreement(s) (PPA). The long term Aquamarine project remains on schedule for Quarter 2 of 2021. The Rugged Solar PPA was terminated by VCE and VCE is currently actively engaged with developers to fill the resource void. Staff are looking at bringing a replacement PPA for consideration to the Board at their November meeting.

There were no written or verbal public comments.

Board Member and Staff Announcements

There were no Board announcements. Mr. Sears announced the following:

- 1) VCE is providing some information on the Winters Senior Center project;
- 2) Outreach to customers in Winters is moving forward, with notices being mailed for those who will enroll in January 2021; and,
- 3) VCE will be making its final payment to SMUD in November for deferred payments.

The next scheduled Board meeting is Thursday, November 12, 2020 at 4 p.m. via teleconference.

Adjournment

With no further business to conduct, the Board meeting was adjourned at 5:46 p.m.

Alisa M. Lembke
VCEA Board Secretary

**VALLEY CLEAN ENERGY ALLIANCE
Board of Directors Meeting**

Staff Report - Item 5

TO: Board of Directors
FROM: Alisa Lembke, Board Clerk/Administrative Analyst
SUBJECT: Community Advisory Committee 2020 Long-Range Calendar
DATE: November 12, 2020

Recommendation

Please find attached the Board and Community Advisory Committee long-range calendar for 2020.

VALLEY CLEAN ENERGY
2020 Meeting Dates and Proposed Topics – Board and Community Advisory Committee

MEETING DATE		TOPICS	ACTION
January 9, 2020	Board WOODLAND	•	•
January 23, 2020	Advisory Committee WOODLAND	•	•
February 13, 2020	Board DAVIS	• Power Purchase Agreement	• Action
February 27, 2020	Advisory Committee DAVIS	• Task Groups – Present Tasks/Projects • Update on Regulatory Assistance Project	• Informational • Informational
March 12, 2020	Board WOODLAND	• Preliminary FY20/21 Operating Budget (Regular) • GHG-free attributes • Local/Regional Renewable RFO solicitation	• Review • Action • Informational
Monday, March 23, 2020 CANCELLED	Board WOODLAND	• Strategic Plan • To be rescheduled for a future date	• Discussion/Action
March 26, 2020 IRP workshop CANCELLED	Advisory Committee WOODLAND	• Integrated Resource Plan (IRP) workshop (to be rescheduled - due date is now September 1, 2020)	• Information
April 9, 2020 Via Teleconference	Board DAVIS	• Local / Regional Renewable Request for Offers (RFO) solicitation • River City Bank Revolving Line of Credit • Power Purchase Agreement	• Action • Action • Action
April 23, 2020 Via Teleconference	Advisory Committee DAVIS	• Review Task Groups' projects/tasks "charge" for 2020	• Action

May 14, 2020 Via Teleconference	Board WINTERS	<ul style="list-style-type: none"> • Power Purchase Agreement - YCFCWCD • Greenhouse Gas (GHG)-free attributes • Update on FY20/21 Operating Budget 	<ul style="list-style-type: none"> • Approval • Action • Informational
May 28, 2020 Via Teleconference IRP Workshop	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Integrated Resource Plan (IRP) Public Workshop, CAC to provide recommendation 	<ul style="list-style-type: none"> • Information / Discussion
June 11, 2020 Via Teleconference	Board DAVIS	<ul style="list-style-type: none"> • Final Approval of FY20/21 Operating Budget • Extension of Waiver of Opt-Out Fees for one more year • Re/Appointment of Members to Community Advisory Committee and Appoint City of Winters seats to CAC • SMUD Amendment to Contract re: VCE Collections Policy • Update on Integrated Resource Plan Public Workshop 	<ul style="list-style-type: none"> • Approval • Action • Action • Action • Informational
June 25, 2020 Via Teleconference	Advisory Committee DAVIS	<ul style="list-style-type: none"> • Update on the Integrated Resource Plan (IRP) Process • Update on Request for Offers 	<ul style="list-style-type: none"> • Information • Information
July 9, 2020 Via Teleconference	Board WOODLAND	<ul style="list-style-type: none"> • Update on draft Integrated Resource Plan (IRP due 9/1/20) • Renewable Portfolio Standard (RPS) Procurement Plan • River City Bank Line of Credit 	<ul style="list-style-type: none"> • Informational • Action/Informational • Action
July 23, 2020 Via Teleconference	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Draft Integrated Resource Plan (due 9/1/20) and CAC recommendation to Board • Defining local renewable resources 	<ul style="list-style-type: none"> • Action • Discussion
August 13, 2020 Via Teleconference	Board DAVIS	<ul style="list-style-type: none"> • Adoption of Integrated Resource Plan (due 9/1/2020) • Receive SMUD CPI Increase Amendment • Strategic Plan update • VCE's response to Environmental and Social Justice issues 	<ul style="list-style-type: none"> • Action • Action • Informational • Informational
August 27, 2020 Via Teleconference	Advisory Committee DAVIS	<ul style="list-style-type: none"> • Strategic Plan update • Draft Statement Environmental and Social Justice Issues 	<ul style="list-style-type: none"> • Informational • Discussion
September 10, 2020 Via Teleconference	Board WOODLAND	<ul style="list-style-type: none"> • Delegation of Contracting Authority • River City Bank Revolving Line of Credit • Strategic Plan update • Draft Statement Environmental and Social Justice Issues 	<ul style="list-style-type: none"> • Action • Action • Discussion • Discussion

September 24, 2020 Via Teleconference	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Committee Evaluation of Calendar Year End (Draft Report) • Strategic Plan draft – seek recommendation to Board from CAC • Draft Statement Environmental and Social Justice Issues – seek recommendation to the Board from CAC • Long term procurement update 	<ul style="list-style-type: none"> • Discussion • Discussion/Action • Discussion/Action • Informational
October 8, 2020 Via Teleconference	Board WINTERS	<ul style="list-style-type: none"> • Approval of FY19/20 Audited Financial Statements (James Marta & Co.) • Adoption of 3 year Strategic Plan • Adoption of Statement on Environmental Justice Issues • Long term energy procurement update 	<ul style="list-style-type: none"> • Action • Action • Action • Informational
October 22, 2020 Via Teleconference 4 P.M. START TIME	Advisory Committee DAVIS	<ul style="list-style-type: none"> • Committee Evaluation of Calendar Year End (Draft Report) • Quarterly Power Procurement / Renewable Portfolio Standard Update 	<ul style="list-style-type: none"> • Discussion • Informational
November 12, 2020 Via Teleconference	Board WOODLAND	<ul style="list-style-type: none"> • Certification of Power Content Label • Power Purchase Agreements • Financial Load Forecast • FY2019/2020 Allocation of Net Margin 	<ul style="list-style-type: none"> • Action • Action • Informational • Action
November 26, 2020 Thanksgiving Holiday – Rescheduled to 3 rd Thursday, November 19, 2020 Via Teleconference	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Committee Evaluation of Calendar Year End (Draft Report) • Review CAC Charge (updated 11/15/2018) 	<ul style="list-style-type: none"> • Discussion • Discussion
December 10, 2020 Via Teleconference	Board DAVIS	<ul style="list-style-type: none"> • Enterprise Risk Management Report • Election of Officers for 2020 (at end of agenda) 	<ul style="list-style-type: none"> • Informational • Nominations / Action
December 24, 2020 Rescheduled to 3 rd Thursday, December 17, 2020 Via Teleconference	Advisory Committee DAVIS	<ul style="list-style-type: none"> • Finalization of Committee Calendar Year End Report • Finalize revision to CAC Charge/Recommendation to Board • Discuss 2021 Task Group(s) formation / “Charge” • Election of Officers for 2021 (at end of agenda) 	<ul style="list-style-type: none"> • Action - Approve Report • Action • Discussion • Nominations/Action
January 14, 2021 Via Conference	Board WOODLAND	<ul style="list-style-type: none"> • Receive CAC Calendar Year End Report • Approve Updated CAC Charge • Approve Revised Procurement Guide 	<ul style="list-style-type: none"> • Receive Report • Action • Action

January 28, 2021 Via Teleconference	Advisory Committee WOODLAND	<ul style="list-style-type: none">• Discuss/Finalize 2021 Task Group “Charge”• Quarterly Power Procurement / Renewable Portfolio Standard Update	<ul style="list-style-type: none">• Discuss/Action• Informational
--	--	---	--

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 6

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
George Vaughn, Finance and Operations Director

SUBJECT: Financial Update – September 30, 2020 (unaudited) financial statements (with comparative year to date information) and Actual vs. Budget year to date ending September 30, 2020

DATE: November 12, 2020

RECOMMENDATION:

Accept the following Financial Statements (unaudited) for the period of September 1, 2020 to September 30, 2020 (with comparative year to date information) and Actual vs. Budget year to date ending September 30, 2020.

BACKGROUND & DISCUSSION:

The attached financial statements are prepared in a form to satisfy the debt covenants with River City Bank pursuant to the Line of Credit and are required to be prepared monthly.

The Financial Statements include the following reports:

- Statement of Net Position
- Statement of Revenues, Expenditures and Changes in Net Position
- Statement of Cash Flows

In addition, staff is reporting the Actual vs. Budget variances year to date ending September 30, 2020.

Financial Statements for the period September 1, 2020 – September 30, 2020

In the Statement of Net Position, VCEA as of September 30, 2020 has a total of \$11,365,680 in its checking, money market and lockbox accounts, \$1,100,000 restricted assets for the Debt Service Reserve account and \$1,426,854 restricted assets for the Power Purchases Reserve account. VCEA has incurred obligations from Member agencies and owes as of September 30, 2020 \$177,261. VCE also incurred obligations from SMUD but as of September 30, 2020 has paid it off and owes \$0. VCEA began paying SMUD for the monthly operating expenditures (starting with January 2018 expenditures) and repayment

of the deferred amount of \$1,522,433 over a 24-month period. VCEA began paying the Member agencies for the quarterly reimbursable expenditures starting in June 2019 and repayment of the deferred amount of \$556,188 over a 12-month period.

The term loan with River City Bank includes a current portion of \$395,322 and a long-term portion of \$1,251,853 as of September 30, 2020, for a total of \$1,647,175. At September 30, 2020, VCE's net position is \$17,206,416.

In the Statement of Revenues, Expenditures and Changes in Net Position, VCEA recorded \$6,504,933 of revenue (net of allowance for doubtful accounts) of which \$6,696,337 was billed in September and \$441,799 represent estimated unbilled revenue. The cost of the electricity for the September revenue totaled \$5,289,582. For September, VCEA's gross margin is approximately 19% and the operating income totaled \$846,207. The year-to-date change in net position was \$618,732.

In the Statement of Cash Flows, VCEA cash flows from operations was (\$2,300,272) due to September cash receipts of revenues being lower than the monthly cash operating expenses.

Actual vs. Budget Variances for the year to date ending September 30, 2020

Below are the financial statement line items with variances >\$50,000 and 5%:

Electric Revenue - \$1,934,025 and 10% – variance is due to load being more favorable year-to-date than planned; the COVID and recessionary impacts haven't been as severe as anticipated.

Purchased Power - \$1,901,989 and 11% – variance is due to load being more favorable year-to-date than planned; the COVID and recessionary impacts haven't been as severe as anticipated.

Attachments:

- 1) Financial Statements (Unaudited) September 1, 2020 to September 30, 2020 (with comparative year to date information.)
- 2) Actual vs. Budget for year to date ending September 30, 2020



VALLEY CLEAN ENERGY

VALLEY CLEAN ENERGY ALLIANCE

FINANCIAL STATEMENTS

(UNAUDITED)

FOR THE PERIOD OF SEPTEMBER 1 TO SEPTEMBER 30, 2020

PREPARED ON OCTOBER 28, 2020

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF NET POSITION
SEPTEMBER 30, 2020
(WITH COMPARATIVE INFORMATION FROM PRIOR PERIODS)
(WITH COMPARATIVE PRIOR PERIOD INFORMATION)
(UNAUDITED)

ASSETS

Current assets:

Cash in Yolo County Treasury		
Cash and cash equivalents	\$	11,365,680
Accounts receivable, net of allowance		7,191,842
Accrued revenue		2,625,796
Prepaid expenses		1,875
Inventory - Renewable Energy Credits		1,274,100
Other current assets and deposits		6,883
Total current assets		22,466,176

Restricted assets:

Debt service reserve fund		1,100,000
Power purchase reserve fund		1,426,854
Total restricted assets		2,526,854

Noncurrent assets:

Other noncurrent assets and deposits		100,000
Total noncurrent assets		100,000
TOTAL ASSETS	\$	25,093,030

LIABILITIES

Current liabilities:

Accounts payable	\$	687,541
Accrued payroll		18,824
Interest payable		4,141
Due to member agencies		177,261
Accrued cost of electricity		4,807,385
Other accrued liabilities		25,928
Security deposits - energy supplies		439,140
User taxes and energy surcharges		79,219
Current Portion of LT Debt		395,322
Total current liabilities		6,634,761

Noncurrent liabilities

Term Loan- RCB		1,251,853
Loans from member agencies		
Total noncurrent liabilities		1,251,853
TOTAL LIABILITIES	\$	7,886,614

NET POSITION

Restricted		
Local Programs Reserve		136,898
Restricted		2,526,854
Unrestricted		14,542,664
TOTAL NET POSITION	\$	17,206,416

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN NET POSITION
FOR THE PERIOD OF SEPTEMBER 1, 2020 TO SEPTEMBER 30, 2020
(WITH COMPARATIVE YEAR TO DATE INFORMATION)
(UNAUDITED)

	FOR THE PERIOD ENDING SEPTEMBER 30, 2020	YEAR TO DATE
OPERATING REVENUE		
Electricity sales, net	\$ 6,504,933	\$ 20,482,744
TOTAL OPERATING REVENUES	6,504,933	20,482,744
OPERATING EXPENSES		
Cost of electricity	5,289,582	18,664,174
Contract services	243,679	812,361
Staff compensation	93,441	280,255
General, administration, and other	32,024	109,351
TOTAL OPERATING EXPENSES	5,658,726	19,866,141
TOTAL OPERATING INCOME (LOSS)	846,207	616,603
NONOPERATING REVENUES (EXPENSES)		
Interest income	4,931	18,107
Interest and related expenses	(5,009)	(15,978)
TOTAL NONOPERATING REVENUES (EXPENSES)	(78)	2,129
CHANGE IN NET POSITION	846,129	618,732
Net position at beginning of period	16,360,287	16,587,684
Net position at end of period	\$ 17,206,416	\$ 17,206,416

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF SEPTEMBER 1 TO SEPTEMBER 30, 2020
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

	FOR THE PERIOD ENDING SEPTEMBER 30, 2020	YEAR TO DATE
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from electricity sales	\$ 7,205,363	\$ 19,617,460
Receipts for security deposits with energy suppliers	18,000	(76,500)
Payments to purchase electricity	(8,768,315)	(19,722,316)
Payments for contract services, general, and administration	(659,195)	(1,367,542)
Payments for staff compensation	(91,782)	(273,235)
Other cash payments	(4,343)	(4,343)
Net cash provided (used) by operating activities	(2,300,272)	(1,826,476)
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Principal payments of Debt	(32,944)	(98,831)
Interest and related expenses	(5,274)	(16,272)
Net cash provided (used) by non-capital financing activities	(38,218)	(115,103)
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest income	4,931	18,107
Net cash provided (used) by investing activities	4,931	18,107
NET CHANGE IN CASH AND CASH EQUIVALENTS:	(2,333,559)	(1,923,472)
Cash and cash equivalents at beginning of period	16,226,093	15,816,006
Cash and cash equivalents at end of period	\$ 13,892,534	\$ 13,892,534
Cash and cash equivalents included in:		
Cash and cash equivalents	11,365,680	11,365,680
Restricted assets	2,526,854	2,526,854
Cash and cash equivalents at end of period	\$ 13,892,534	\$ 13,892,534

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF SEPTEMBER 1 TO SEPTEMBER 30, 2020
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

	<u>FOR THE PERIOD ENDING SEPTEMBER 30, 2020</u>	<u>YEAR TO DATE</u>
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING		
Operating Income (Loss)	\$ 846,207	\$ 616,603
(Increase) decrease in net accounts receivable	235,532.00	(1,231,631.00)
(Increase) decrease in accrued revenue	443,322	347,399.00
(Increase) decrease in prepaid expenses	10,011	(1,250.00)
(Increase) decrease in inventory - renewable energy crea	424,700	(1,274,100.00)
(Increase) decrease in other assets and deposits	(4,343)	(4,343.00)
Increase (decrease) in accounts payable	(31,346)	45,141.00
Increase (decrease) in accrued payroll	1,659	7,020.00
Increase (decrease) in due to member agencies	18,900	60,795.00
Increase (decrease) in accrued cost of electricity	(3,903,433)	215,958.00
Increase (decrease) in other accrued liabilities	(381,057)	(550,516.00)
Increase (decrease) security deposits with energy supplie	18,000	(76,500.00)
Increase (decrease) in user taxes and energy surcharges	21,576	18,948.00
Net cash provided (used) by operating activities	<u>\$ (2,300,272)</u>	<u>\$ (1,826,476)</u>

VALLEY CLEAN ENERGY
ACTUAL VS. BUDGET FYE 6-30-2021
FOR THE YEAR TO DATE ENDING 09-30-20

Description	9/30/2021	9/30/2021	YTD Variance	% over/-under
	YTD FY2021 Actuals	YTD FY2021 Budget		
Electric Revenue	\$ 20,482,744	\$ 18,548,719	\$ 1,934,025	10%
Interest Revenues	18,107	22,481	(4,374)	-19%
Purchased Power	18,664,174	16,762,188	1,901,986	11%
Labor & Benefits	280,253	317,620	(37,367)	-12%
Salaries & Wages/Benefits	188,048	194,445	(6,397)	-3%
Contract Labor	69,999	96,594	(26,595)	-28%
Human Resources & Payroll	22,206	26,580	(4,374)	-16%
Office Supplies & Other Expenses	38,395	36,707	1,688	5%
Technology Costs	9,184	5,374	3,810	71%
Office Supplies	429	576	(147)	-26%
Travel	-	1,524	(1,524)	-100%
CalCCA Dues	28,782	28,783	(1)	0%
Memberships	-	450	(450)	-100%
Contractual Services	814,587	831,479	(16,892)	-2%
LEAN Energy	2,225	6,000	(3,775)	-63%
Don Dame	700	2,500	(1,800)	-72%
SMUD - Credit Support	199,155	182,675	16,480	9%
SMUD - Wholesale Energy Services	143,916	144,139	(223)	0%
SMUD - Call Center	180,843	180,670	173	0%
SMUD - Operating Services	103,116	125,000	(21,884)	-18%
Legal Bankruptcy	-	6,150	(6,150)	-100%
Legal General Counsel	10,368	36,900	(26,532)	-72%
Regulatory Counsel	56,829	47,478	9,351	20%
Joint CCA Regulatory counsel	2,771	7,688	(4,917)	-64%
Legislative	15,000	15,375	(375)	-2%
Accounting Services	4,095	6,150	(2,055)	-33%
Audit Fees	43,100	13,838	29,263	211%
PG&E Acquisition Consulting	943	-	943	100%
Marketing Collateral	51,526	56,917	(5,391)	-9%
Rents & Leases	4,343	4,344	(1)	0%
Hunt Boyer Mansion	4,343	4,344	(1)	0%
Other A&G	64,212	84,019	(19,807)	-24%
PG&E Data Fees	60,925	73,188	(12,263)	-17%
Community Engagement Activities & Sponsorships	2,036	1,538	499	32%
Insurance	1,251	1,886	(635)	-34%
New Member Expenses	-	6,500	(6,500)	-100%
Banking Fees	-	308	(308)	-100%
Program Costs	-	600	(600)	-100%
Miscellaneous Operating Expenses	178	1,571	(1,393)	-89%
Contingency	-	63,787	(63,787)	-100%
TOTAL OPERATING EXPENSES	\$ 19,866,142	\$ 18,101,715	\$ 1,764,427	10%
Interest Expense - Munis	-	-	-	#DIV/0!
Interest on RCB loan	15,331	15,626	(295)	-2%
Interest Expense - SMUD	646	646	-	0%
NET INCOME	\$ 618,732	\$ 453,214	\$ 165,518	37%

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 7

To: Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Regulatory Monitoring Report – Keyes & Fox

Date: November 12, 2020

Please find attached Keyes & Fox's October 2020 Regulatory Memorandum dated November 5, 2020, an informational summary of the key California regulatory and compliance-related updates from the California Public Utilities Commission (CPUC).

Attachment: Keyes & Fox Regulatory Memorandum dated November 5, 2020

Valley Clean Energy Alliance

Regulatory Monitoring Report

To: Valley Clean Energy Alliance (“VCE”) Board of Directors

From: Sheridan Pauker, Partner, Keyes & Fox, LLP
Tim Lindl, Partner, Keyes & Fox LLP
Ben Inskeep, Principal Analyst, EQ Research, LLC

Subject: Regulatory Update

Date: November 5, 2020

Summary

Keyes & Fox LLP and EQ Research, LLC, are pleased to provide VCE’s Board of Directors with this monthly informational memo describing key California regulatory and compliance-related updates from the California Public Utilities Commission (CPUC). A Glossary of Acronyms used is provided at the end of this memo.

In summary, this month’s report includes regulatory updates on the following priority issues:

- **PG&E 2021 ERRA Forecast:** In the 2021 ERRA Forecast proceeding, PG&E hosted a workshop, during which PG&E presented its methodology to adjust its system load forecast due to COVID-19 related impacts. PG&E filed rebuttal testimony and its October Supplement testimony. The ALJ issued a Ruling canceling the evidentiary hearing and granted a joint motion to receive exhibits into evidence on behalf of the Joint CCAs, Agricultural Energy Consumers Association, Sunrun, and PG&E. Opening briefs were filed October 30, 2020. In the ERRA Trigger application proceeding (which is different than the PUBA trigger discussed in the next bullet), a Scoping Memo and Ruling was issued.
- **PG&E 2021 PUBA Trigger:** Joint CCAs, including VCE, filed a Protest on October 19, 2020 of PG&E’s expedited trigger application addressing the undercollection of its PCIA Undercollection Balancing Account (PUBA), which proposed to increase in the system average rate for CCA/DA customers in 2021 by \$0.0055/kWh, and by \$0.0068/kWh for residential customers specifically, or 4.0% over present rates. Alliance for Retail Energy Markets/Direct Access Customer Coalition, Cal Advocates, and TURN also separately filed Protests. PG&E filed a reply to the Protests on October 23, 2020. A prehearing conference was held October 30, 2020.
- **PG&E’s 2019 ERRA Compliance:** The ALJ issued a Ruling extending by one week the deadlines for filing briefs and reply briefs. PG&E, Joint CCAs, and Cal Advocates filed a Joint Motion to Adopt Settlement Agreement. Subsequently, PG&E and Joint CCAs filed opening briefs on the remaining issues not covered by the Settlement Agreement.
- **PCIA Rulemaking:** PG&E submitted Advice Letter 5973-E on establishing a prepayment framework for the PCIA in compliance with D.18-10-019 and D.20-08-004. CalCCA, AReM, and DACC filed a Joint Protest.

- **Investigation into PG&E’s Organization, Culture and Governance:** No updates this month. On September 4, 2020, the ALJ issued a Ruling deciding that this proceeding would be used only to monitor PG&E’s progress on safety culture for the time being.
- **Direct Access Rulemaking:** Parties filed comments and replies in response to the ALJ Ruling providing a Staff Report and recommendation to the Legislature regarding potential additional expansion of direct access for nonresidential customers.
- **RA Rulemaking (2019-2020):** No updates this month. Two applications for rehearing remain the only outstanding items to be addressed in this proceeding, which is now closed.
- **RA Rulemaking (2021-2022):** The ALJ issued a Proposed Decision (PD) in Track 3.A that would adopt a local capacity requirement reduction compensation mechanism based on CalCCA’s proposed “Option 2,” with modifications, and the central procurement entity’s (CPE) competitive neutrality rules as proposed by PG&E and SCE, with modifications. The ALJ issued a Ruling denying OhmConnect’s motion for a partial stay of a previous RA decision that limited the procurement of Demand Response to a Statewide and LSE-specific cap of 8.3%. The CPUC, CAISO and CEC scheduled a November 24, 2020, joint public workshop to consider the potential to provide RA credit to hybrid storage/solar behind-the-meter resources. The CPUC also provided notice of two public workshops scheduled for November on a variety of Track 3.B RA issues. On October 30, 2020, VCE submitted Tier 2 Advice Letter 5-E, requesting a waiver of local RA penalties related to limited remaining local RA procurement shortfalls in 2021-2022 in its contemporaneously submitted Year-Ahead RA Filing.
- **2020 IRP Rulemaking:** The ALJ issued an Email Ruling requesting initial comments on individual IRPs, which were subsequently filed by parties on October 23, 2020. The ALJ also issued a Ruling requesting comments and on electric resource portfolios to be used in CAISO’s 2021-22 Transmission Planning Process which will begin in early 2021.
- **2016 IRP Rulemaking:** The CPUC issued an Order denying two December 2019 applications for rehearing of D.19-11-016, which mandated that LSEs undertake additional system RA procurement by 2021-2023. This proceeding is closed.
- **RPS Rulemaking:** The CPUC issued D.20-10-005 resuming and modifying the ReMAT program. Parties filed comments and replies in response to the September 18, 2020 ALJ Ruling providing the Energy Division’s *Staff Proposal for Alignment and Integration of RPS Procurement Planning and Integrated Resource Planning*.
- **Wildfire Fund Non-Bypassable Charge (AB 1054):** Parties filed comments and replies on the ALJ Ruling proposing to continue the Wildfire Non-Bypassable Charge of \$0.00580/kWh in 2021.
- **PG&E’s Phase 1 GRC:** The ALJs issued a Proposed Decision that would resolve PG&E’s Phase 1 GRC. The ALJs also issued a Ruling scheduling oral argument for November 12, 2020.
- **PG&E’s Phase 2 GRC:** Cal Advocates filed testimony.
- **PG&E Regionalization Plan:** The Assigned Commissioner issued a Scoping Memo and Ruling. A workshop was scheduled for November 20, 2020, to discuss potential refinements to PG&E’s regionalization proposal.
- **Investigation of PG&E Bankruptcy Plan:** On October 26, 2020, the CPUC issued D.20-10-018, closing the proceeding.
- **Investigation into PG&E Violations Related to Wildfires:** No updates this month. On June 8, 2020, Thomas Del Monte and the Wild Tree Foundation filed applications for rehearing of D.20-05-019, which approved penalties on PG&E for its role in igniting the 2017-2018 wildfires.
- **Wildfire Cost Recovery Methodology Rulemaking:** No updates this month. (An August PG&E Application for Rehearing remains pending regarding D.19-06-027, establishing criteria and a methodology for wildfire cost recovery, which has been referred to as a "Stress Test" for determining how much of wildfire liability costs that utilities can afford to pay.)

PG&E 2021 ERRA Forecast

In the ERRA Trigger application proceeding, a Scoping Memo and Ruling was issued on September 30, 2020. In the 2021 ERRA Forecast proceeding, PG&E hosted a workshop on October 1, 2020, during which PG&E presented its methodology to adjust its system load forecast due to COVID-19 related impacts. PG&E filed rebuttal testimony on October 8, 2020 and its October Supplement testimony on October 26, 2020. On October 13, 2020, the ALJ issued a Ruling canceling the evidentiary hearing. On October 29, 2020, the ALJ granted an October 26, 2020, PG&E joint motion to receive exhibits into evidence on behalf of the Joint CCAs, Agricultural Energy Consumers Association, Sunrun, and PG&E. Opening briefs were filed October 30, 2020.

- Background:** Energy Resource and Recovery Account (ERRA) forecast proceedings establish the amount of the PCIA and other non-bypassable charges for the following year, as well as fuel and purchased power costs associated with serving bundled customers that utilities may recover in rates. PG&E's 2021 ERRA Forecast application proposed capped PCIA rates of \$0.03115/kWh (system-average 2021 vintage) and \$0.03670/kWh (system-average for 2017 PCIA vintage, which is the system-wide average applicable to most VCE customers). The PCIA rate for most VCE residential customers (*i.e.*, 2017 vintage) would be \$0.03846/kWh, although PG&E will update this figure in November. PG&E's application proposes a total 2021 revenue requirement of \$2.774 billion, comprised of the following components: (1) CAM, \$283 million; (2) PCIA, \$2.803 billion; (3) Ongoing Competitive Transition Charge, \$20 million; (4) Tree Mortality Non-Bypassable Charge, \$73 million; (5) ERRA, \$1.841 billion; (6) PUBA, \$277 million; and *less* (7) Utility-owned generation costs of \$2.522 billion.

PG&E's ERRA Trigger is different than the PUBA trigger in the next section and will affect bundled customers' rates but not VCE's customers' rates. PG&E's ERRA Trigger application states that its ERRA was more than 5% overcollected as of April 30, 2020, and PG&E forecasts that its incremental ERRA overcollection will be 15.7%, or \$793 million, overcollected by December 31, 2020. The Joint CCAs filed a response to PG&E's trigger. Both parties agree a rate change to refund the overcollection is not warranted since the ERRA balance associated with overcollection can be resolved in the utility's 2021 ERRA Forecast Application.

Joint CCA testimony in the 2021 ERRA Forecast proceeding argued that PG&E's PCIA increase request is unreasonable and would result in a single-year PCIA rate increase of between 16% and 21% for vintages 2009 through 2018. Joint CCA recommendations would result in a PCIA revenue requirement of \$2,537.6 million compared to PG&E's proposal of \$2,802.6 million, a 9.5% reduction. The following rates would apply under the Joint CCA's proposed recommendations, including the 2017 rate for VCE's customers:

Vintage	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
2020 Capped	\$0.0243	\$0.0273	\$0.0297	\$0.0296	\$0.0316	\$0.0321	\$0.0319	\$0.0318	\$0.0317	\$0.0317	\$0.0338	\$0.0406	
2020 Uncapped	\$0.0326	\$0.0394	\$0.0414	\$0.0431	\$0.0437	\$0.0438	\$0.0439	\$0.0434	\$0.0427	\$0.0420	\$0.0406	\$0.0406	
2021 Capped	\$0.0293	\$0.0323	\$0.0347	\$0.0346	\$0.0366	\$0.0371	\$0.0369	\$0.0368	\$0.0367	\$0.0367	\$0.0388	\$0.0456	
2021 Uncapped	\$0.0321	\$0.0383	\$0.0400	\$0.0417	\$0.0421	\$0.0423	\$0.0425	\$0.0424	\$0.0433	\$0.0436	\$0.0434	\$0.0270	\$0.0270
2019 ERRA Refund													-\$0.0082
Proposed Rates	\$0.0293	\$0.0323	\$0.0347	\$0.0346	\$0.0366	\$0.0371	\$0.0369	\$0.0368	\$0.0367	\$0.0367	\$0.0306	\$0.0270	\$0.0270
Capped?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	
Proposed % Rate Change	21%	18%	17%	17%	16%	16%	16%	16%	16%	16%	-9%	-34%	

- Details:** PG&E's rebuttal testimony agreed with Joint CCAs in that PG&E had improperly omitted the local RA capacity of six PG&E contracts, which will increase the 2021 Forecast Retained RA Value by \$5.2 million. PG&E will make the corrections through its November Update.

In the second meet-and confer process, nine CCAs including VCE provided PG&E with updated load forecasts, which PG&E adopted. As a result of modifications by CCAs and DA providers,

PG&E's bundled requirement increased slightly from 33,748 GWh to 33,838 GWh (i.e., by 90 GWh).

- **Analysis:** This proceeding will establish the amount of the PCIA for VCE's 2020 rates and the level of PG&E's generation rates for bundled customers. PG&E is proposing another increase to its PCIA to \$0.0367/kWh for the 2017 vintage. In comparison, the last ERRA Forecast proceeding established a capped rate of \$0.0317/kWh for the 2017 vintage, an increase from the previous rate of \$0.0267/kWh.
- **Next Steps:** Reply briefs are due November 9, 2020. PG&E's November Update, due November 9, 2020, will include updates to the PCIA benchmarks for forecasting and true-up purposes; comments on the update are due November 20, 2020. PG&E will file its 2020 Annual Electric True-Up advice letter on November 16, 2020.

A proposed decision will be filed in the ERRA Trigger proceeding by November 29, 2020.

- **Additional Information:** [Ruling](#) canceling evidentiary hearing (October 13, 2020); [Scoping Memo and Ruling](#) in the ERRA Trigger proceeding (September 30, 2020); [Scoping Memo and Ruling](#) (September 12, 2020); [PG&E August Update](#) (August 14, 2020); [PG&E ERRA Trigger Application](#) (July 31, 2020); [PG&E Supplemental Testimony](#) correcting errors in Application (July 17, 2020); [Application](#) (July 1, 2020); Docket Nos. [A.20-07-002](#) (2021 ERRA Forecast); [A.20-07-022](#) (ERRA Trigger).

PG&E 2021 PUBA Trigger

On October 13, 2020, the ALJ issued an Email Ruling establishing the protest deadline and scheduling a prehearing conference for October 30, 2020. Joint CCAs, including VCE, filed a Protest on October 19, 2020 of PG&E's expedited trigger application addressing the undercollection of its PCIA Undercollection Balancing Account (PUBA), which proposed to increase in the system average rate for CCA/DA customers in 2021 by \$0.0055/kWh, and by \$0.0068/kWh for residential customers specifically, or 4.0% over present rates. Alliance for Retail Energy Markets/Direct Access Customer Coalition, Cal Advocates, and TURN also separately filed Protests. PG&E filed a reply to the Protests on October 23, 2020.

- **Background:** The PUBA tracks the differential between capped and uncapped PCIA rates. Once the total revenue differential in the PUBA reaches a trigger threshold, PG&E must file an expedited application to recover part of the amount in the PUBA. Such recovery will take place via a temporary increase to PCIA or PCIA-related rates for VCE's customers.

PG&E's PUBA balance as of the end of August 2020 is undercollected by \$113.0 million, which exceeds the 7% trigger, and PG&E expects the PUBA balance to exceed the 10% threshold by the end of October 2020. PG&E proposes to increase rates for its Departing Load customers, including VCE customers, by developing a vintage-specific rate adder designed to collect the forecasted 2020 year-end PUBA balance of \$252.8 million over 12 months, beginning January 1, 2021. This rate adder would be applied in addition to the authorized PCIA rates. PG&E would decrease bundled customer rates by reducing the bundled generation revenue requirement by the same amount. PG&E's proposal would increase the system average rate for CCA/DA customers by \$0.0055/kWh, and by \$0.0068/kWh for residential customers specifically, or 4.0% over present rates.

- **Details:** Joint CCAs argue in favor of using other ratemaking approaches, such as a 36-month amortization period of PG&E's PUBA, to avoid rate shock for unbundled customers while still making bundled customers whole.
- **Analysis:** If approved, VCE customers would pay a surcharge in 2021 to recover the forecasted PUBA shortfall in addition to the PCIA rate.

The following PUBA Adder rates would apply under PG&E's proposal for 2021:

back to customers. PG&E's rebuttal testimony stated it will make all but \$33.6 million of those adjustments as part of its August 2020 accounting close.

- **Details:** The Settlement Agreement resolves all but two of the disputed issues in Phase I of the proceeding. PG&E agreed with certain accounting errors identified by the Joint CCAs. PG&E also committed to provide additional, specific information requested by the Joint CCAs simultaneous with its ERRA Compliance applications and simplify the presentation of that information, resolving the Joint CCAs concern with transparency of the PG&E data supporting entries to the ERRA, PABA and related balancing accounts. PG&E and the Joint CCAs agreed to engage in discussions about the approach to Resource Adequacy solicitations governed by Appendix S of PG&E's 2014 Bundled Procurement Plan. Finally, PG&E agreed to rebill all commercial and industrial CCA customers assigned an incorrect vintage.

The two remaining issues not covered by the Settlement Agreement are (1) the request in PG&E's rebuttal testimony to reverse the \$92.9 million adjustment it made in response to D.20-02-047 to its PABA regarding the amount of RPS energy the utility retained to serve its bundled customers in 2019; and (2) the utility's decision not to re-vintage four RPS contracts renegotiated during 2019.

- **Analysis:** This proceeding addresses PG&E's balancing accounts, including the PABA, providing a venue for a detailed review of the billed revenues and net CAISO revenues PG&E recorded during 2019. It also determines whether PG&E managed its portfolio of contracts and UOG in a reasonable manner. Efforts from the Joint CCAs to date will reduce the level of the PCIA for VCE's customers in 2021 and/or 2022.
- **Next Steps:** Reply briefs are due November 16, 2020. The schedule for Phase II of this proceeding has not been issued yet.
- **Additional Information:** [Joint Motion to Adopt Settlement Agreement](#) (October 22, 2020); [Ruling](#) modifying extending deadline for briefs and reply briefs (October 12, 2020); [Amended Scoping Memo and Ruling](#) (August 14, 2020); [Scoping Memo and Ruling](#) (June 19, 2020); PG&E's [Application](#) and [Testimony](#) (February 28, 2020); Docket No. [A.20-02-009](#).

PCIA Rulemaking

On October 12, 2020, PG&E submitted Advice Letter 5973-E on establishing a prepayment framework for the PCIA in compliance with D.18-10-019 and D.20-08-004. CalCCA, DACC, and AReM filed protests of PG&E AL 5973-E on November 2, 2020.

Background: D.18-10-019 was issued on October 19, 2018, in Phase 1 of this proceeding and left the current PCIA in place, maintained the current brown power index, and adopted revised inputs to the benchmarks used to calculate the PCIA for energy RPS-eligible resources and resource adequacy capacity. In the Joint IOUs' PFM of D.18-10-019 in this proceeding, filed concurrently with a PFM of D.17-08-026 in R.02-01-011, the Joint Utilities requested changes to the calculations for applying line losses in the PCIA calculations. First, the Joint IOUs argued that the current formula incorrectly applies line loss adjustments to the RA component of the PCIA calculation. Second, the Joint IOUs argued that the PCIA Template is inconsistent with its application of line losses with respect to the calculation of energy market value. The net impact of these two issues, according to the Joint Utilities, is an overstated forecast of portfolio market value with all customers initially underpaying the PCIA.

Phase 2 relied primarily on a working group process to further develop a number of PCIA-related proposals. Three workgroups examined three issues: (1) issues with the highest priority: Benchmark True-Up and Other Benchmarking Issues; (2) issues to be resolved in early 2020: Prepayment; and (3) issues to be resolved by mid-2020: Portfolio Optimization and Cost Reduction, Allocation and Auction.

D.20-08-004, in response to the recommendations of Working Group 2, (1) adopted the consensus framework of PCIA prepayment agreements; (2) adopted the consensus guiding

principles, except for one principle regarding partial payments; (3) adopted evaluation criteria for prepayment agreements; (4) did not adopt any proposed prepayment concepts; and (5) clarified that risk should be incorporated into the prepayment calculations by using mutually acceptable terms and conditions that adequately mitigate the risks identified by Working Group Two.

The CPUC has not yet issued a Proposed Decision regarding Working Group 3.

Details: PG&E AL 5973-E provides a prepayment request processing framework including details on: (1) a solicitation process for requests to prepay the PCIA, (2) how requests will be prioritized and evaluated, (3) guidelines for negotiating the prepayment of the PCIA, and (4) the regulatory approval process. The AL also provides PG&E's new Electric Preliminary Statement Part IK, PCIA Prepayment Balancing Account (PPBA).

The CalCCA/DACC/AReM protest of PG&E AL 5973-E (along with SCE's similar advice letter) questions whether the utilities' annual application window for prepayment negotiation is needed and suggest the application process be open all year. CalCCA/DACC/AReM strongly opposed the size of the requested deposits required to commence negotiations, calling them "wildly excessive." For instance, PG&E's proposal to require 24 months of uncapped PCIA to begin negotiations would result in a deposit in excess of \$200 million for Sonoma Clean Power. Finally, CalCCA/DACC/AReM recommended that utilities be required to report annually on both their successful and unsuccessful prepayment negotiations to facilitate an evaluation of whether they are negotiating in good faith.

- **Analysis:** The Decision on prepayment is expected to make successful prepayments very difficult because it gave utilities significant control over the process and required the prepayment to include a risk premium. The Joint IOUs' PFM of D.18-10-019, if adopted, would increase the PCIA for VCE's customers.
- **Next Steps:** A proposed decision regarding Working Group 3 is expected in Q3 2020.
- **Additional Information:** [CalCCA/DACC/AReM Protest of PG&E AL 5973-E](#) (November 2, 2020); [PG&E AL 5973-E](#) (October 12, 2020); [CalCCA/DACC Response](#) to Joint IOU AL on D.20-03-019 (September 21, 2020); [Joint IOUs PFM of D.18-10-019](#) (August 7, 2020); [D.20-08-004](#) on Working Group 2 PCIA Prepayment (August 6, 2020); [D.20-06-032](#) denying PFM of D.18-07-009 (July 3, 2020); [D.20-03-019](#) on departing load forecast and presentation of the PCIA (April 6, 2020); [Ruling](#) modifying procedural schedule for working group 3 (January 22, 2020); [D.20-01-030](#) denying rehearing of D.18-10-019 as modified (January 21, 2020); [D.19-10-001](#) (October 17, 2019); [Phase 2 Scoping Memo and Ruling](#) (February 1, 2019); [D.18-10-019](#) Track 2 Decisions adopting the Alternate Proposed Decision (October 19, 2018); [D.18-09-013](#) Track 1 Decision approving PG&E Settlement Agreement (September 20, 2018); Docket No. [R.17-06-026](#).

Investigation into PG&E's Organization, Culture and Governance (Safety OII)

No updates this month. On September 4, 2020, the ALJ issued a Ruling deciding that this proceeding would be used only to monitor PG&E's progress on safety culture for the time being.

- **Background:** On December 21, 2018, the CPUC issued a Scoping Memo opening the next phase of an ongoing investigation into whether PG&E's organizational culture and governance prioritize safety. This current phase of the proceeding is considering alternatives to current management and operational structures for providing electric and natural gas in Northern California.

A July 2020 ALJ Ruling described the issues that are potentially still in scope for this proceeding, which include a broad array of issues identified in the December 21, 2018 Scoping Memo, as modified by D.20-05-053 approving PG&E's reorganization plan, plus the ongoing work of NorthStar, the consultant monitoring PG&E. However, the Ruling observed that "it is not clear as a practical matter how many of those issues can be or should be addressed at this time," given

PG&E is now implementing its reorganization plan and has filed its application for regional restructuring. Joint CCAs argued that this proceeding should address whether PG&E should be a “wires-only company” and whether PG&E’s holding company structure should be revoked, and SVCE advocated for addressing whether a distribution system operator model should replace PG&E. Party comments did not explicitly raise the issue of CCA proposals to purchase PG&E electric distribution assets.

- **Details:** The September 4 Ruling filed in the PG&E Safety Culture proceeding (I.15-08-019) and PG&E Bankruptcy proceeding (I.19-09-016) determines that I.15-08-019 will remain open as a vehicle to monitor the progress of PG&E in improving its safety culture, and to address any relevant issues that arise, with the consultant NorthStar continuing in its monitoring role of PG&E. The Ruling declined to close the proceeding (e.g., as requested by PG&E) but also declined to move forward with CCAs’ consideration of whether PG&E’s holding company structure should be revoked and whether PG&E should be a “wires-only company,” as well as developing a plan for service if PG&E’s CPCN is revoked in the future.
- **Analysis:** While the docket remains open to monitor PG&E progress on its safety culture, this proceeding is dormant for the time being. Depending on the issues addressed in the future, this proceeding could have a range of possible impacts on CCAs within PG&E’s territory and their customers, given the broad issues under investigation pertaining to PG&E’s corporate structure and governance. Numerous issues proposed in the PG&E Bankruptcy OII, including municipalization and sale of PG&E assets, were deferred and stated to be more properly within the scope of this proceeding. However, under the September 4 Ruling, the focus is now on monitoring PG&E’s progress on safety culture.
- **Next Steps:** The proceeding remains open, but there is no procedural schedule at this time.
- **Additional Information:** [Ruling](#) updating case status (September 4, 2020); [Ruling](#) on case status (July 15, 2020); [Ruling](#) on proposals to improve PG&E safety culture (June 18, 2019); [D.19-06-008](#) directing PG&E to report on safety experience and qualifications of board members (June 18, 2019); [Scoping Memo](#) (December 21, 2018); Docket No. [I.15-08-019](#).

Direct Access Rulemaking

On October 16, 2020, and October 26, 2020, respectively, parties filed comments and replies in response to the ALJ Ruling providing a Staff Report and recommendation to the Legislature regarding a potential additional expansion of direct access (DA) for nonresidential customers.

- **Background:** In Phase 1 of this proceeding, the CPUC allocated the additional 4,000 GWh of direct access load required by SB 237 (2018, Hertzberg) among the three IOU territories with implementation to begin January 1, 2021.

For Phase 2, the CPUC will address the SB 237 mandate requiring the CPUC to, by June 1, 2020, provide recommendations to the Legislature on “implementing a further direct transactions reopening schedule, including, but not limited to, the phase-in period over which further direct transactions shall occur for all remaining nonresidential customer accounts in each electrical corporation’s service territory.” The Commission is required to make certain findings regarding the consistency of its recommendation with state climate, air pollution, reliability and cost-shifting policies.

- **Details:** The September 28, 2020 Ruling attached a Staff Report constituting the draft CPUC recommendations to the Legislature required by SB 237. The Staff Report recommends that the Legislature:
 - Not make a determination as to whether to further expand DA until at least 2024, after the conclusion of the 2021-24 RPS compliance period and the fulfillment of procurement ordered by D.19-11-016.

- Condition any further DA expansion on the performance of Energy Service Providers (ESPs) with respect to IRP, RPS and RA requirements through 2024.
- Make any further DA expansion in increments of 10% of nonresidential load per year, conditioned on ESP ongoing compliance with IRP, RPS and RA requirements.
- “[C]onsider the CPUC’s authority in allowing CCAs to recover the costs of investments that are stranded because of unforeseen load departure to address these potential impacts.”
- "Amend P.U. Code Section 949.25 to provide the CPUC with the authority to revoke ESP licenses **and CCA registration** for repeated non-compliance with [RA], RPS or IRP requirements."

CalCCA’s comments argued that the CPUC should add a condition for reopening DA that will foster attainment of state goals and ensure competitive neutrality for all LSEs. CalCCA recommended establishing a Phase 3, Track 1 process for further development of DA reopening conditions, including competitively neutral switching rules, rules governing CCA stranded cost recovery, clear compliance metrics, and ESP transparency measures. Furthermore, CalCCA recommended establishing a Phase 3, Track 2 to be implemented following the issuance of 2021-2024 Renewable Portfolio Standard (RPS) compliance reports to assess readiness for DA reopening.

ESPs argued against delaying a Legislative determination on further DA reopening, for a faster pace of DA reopening, and that access to additional load should depend on the compliance of each ESP, rather than compliance of all ESPs. Both DA advocates and IOUs opposed stranded asset recovery by CCAs.

- **Analysis:** This proceeding will impact the CPUC’s recommendations to the Legislature regarding the potential future expansion of DA in California, including a potential lifting of the existing cap on nonresidential DA transactions altogether. Further expansion of DA in California could result in non-residential customer departures from VCE and make it more difficult for VCE to forecast load and conduct resource planning. CalCCA has argued that further expansion of nonresidential DA is likely to adversely impact attainment of the state’s environmental and reliability goals and will result in cost-shifting to both bundled and CCA customers. The Staff report recognizes this concern and recommends that if DA is further expanded, the Legislature consider permitting CCAs to recover stranded costs from departing DA customers. The Staff report also recommends the Legislature amend the statute to allow the CPUC to revoke both ESP licenses and CCA registration for repeated non-compliance of RA, RPS, or IRP requirements.
- **Next Steps:** A proposed decision attaching the final staff report is anticipated to be issued next.
- **Additional Information:** [Ruling](#) and [Staff Report](#) (September 28, 2020); [Amended Scoping Memo and Ruling](#) adding issues and a schedule for Phase 2 (December 19, 2019); Docket No. [R.19-03-009](#); see also [SB 237](#).

RA Rulemaking (2019-2020)

No updates this month. Two applications for rehearing remain the only outstanding items to be addressed in this proceeding, which is now closed.

- **Background:** This proceeding had three tracks, which have now concluded. [Track 1](#) addressed 2019 local and flexible RA capacity obligations and several near-term refinements to the RA program. D.19-10-020 purported to affirm existing RA rules regarding imports, but adopted a distinction in the import RA compliance requirements for resource-specific and non-resource specific contracts and required, for the first time, that non-resource-specific resources self-schedule (i.e., bid as a price taker) in the CAISO energy market.

In [Track 2](#), the CPUC previously adopted multi-year Local RA requirements and initially declined to adopt a central buyer mechanism (D.19-02-022 issued March 4, 2019).

The second Track 2 Decision, D.20-06-002, adopted implementation details for the central procurement of multi-year local RA procurement to begin for the 2023 compliance year in the PG&E and SCE (but not SDG&E) distribution service areas, including identifying PG&E and SCE as the central procurement entities for their respective distribution service areas and adopting a hybrid central procurement framework. The Decision rejected a settlement agreement between CalCCA and seven other parties that would have created a residual central buyer structure (and did not specify the identity of the central buyer) and a multi-year requirements for system and flexible RA. Under D.20-06-002, if an LSE procures its own local resource, it may (1) sell the capacity to the CPE, (2) utilize the resource for its own system and flexible RA needs (but not for local RA), or (3) voluntarily show the resource to meet its own system and flexible RA needs, and reduce the amount of local RA the CPE will need to procure for the amount of time the LSE has agreed to show the resource. Under option (3), by showing the resource to the CPE, the LSE does not receive one-for-one credit for shown local resources. A competitive solicitation (RFO) process will be used by the CPEs to procure RA products. Costs incurred by the CPE will be allocated ex post based on load share, using the CAM mechanism. D.20-06-002 also established a Working Group (co-led by CalCCA) to address: (a) the development of an local capacity requirements reduction crediting mechanism, (b) existing local capacity resource contracts (including gas), and (c) incorporating qualitative and possible quantitative criteria into the RFO evaluation process to ensure that gas resources are not selected based only on modest cost differences.

In Track 3, D.19-06-026 adopted CAISO's recommended 2020-2022 Local Capacity Requirements and CAISO's 2020 Flexible Capacity Requirements and made no changes to the System capacity requirements. It established an IOU load data sharing requirement, whereby each non-IOU LSE (e.g., CCAs) will annually request data by January 15 and the IOU will be required to provide it by March 1. It also adopted a "Binding Load Forecast" process such that an LSE's initial load forecast (with CEC load migration and plausibility adjustments based on certain threshold amounts and revisions taken into account) becoming a binding obligation of that LSE, regardless of additional changes in an LSE's implementation to new customers.

On October 30, 2019, CalCCA filed a PFM of D.19-06-026, seeking the creation of an RA waiver process in 2020 for system and flexible RA obligations.

Details: The only two remaining items to be addressed in this proceeding are two applications for rehearing filed by Western Power Trading Forum (WPTF). First, on July 17, 2020, WPTF filed an Application for Rehearing of D.20-06-002, the Track 2 Decision creating a multi-year central procurement regime for local RA capacity. It requested rehearing and reconsideration of the rejected settlement agreement between WPTF, CalCCA, and other parties, arguing that D.20-06-002 will discourage the procurement of local resources by individual LSEs, discriminates against natural gas resources while increasing the need for CAISO backstop procurement, may undermine reliability by making it more difficult to integrate renewables with the larger western grid, and creates a "sale for resale" procurement construct that could place it under FERC's jurisdiction as a wholesale, rather than a retail, transaction.

Second, on August 5, 2020, WPTF filed an Application for Rehearing of D.20-06-028 with respect to the self-scheduling requirements for non-resource specific RA imports.

- **Analysis:** D.20-06-002 established a central procurement entity and mostly resolved the central buyer issues, although several details are being refined through a Working Group. Moving to a central procurement entity beginning for the 2023 RA compliance year will impact VCE's local RA procurement and compliance, including affecting VCE's three-year local RA requirements as part of the transition to the central procurement framework. Eventually, it will eliminate the need for monthly local RA showings and associated penalties and/or waiver requests from individual LSEs, but it also eliminates VCE's autonomy with regard to local RA procurement and places it in the hands of PG&E.

The Track 1 Decision on RA imports most directly impacted LSEs relying on RA imports to meet their RA obligations by increasing the difficulty of procuring such RA in the future.

- **Next Steps:** The only issues remaining to be addressed in this proceeding are WPTF's Applications for Rehearing. Remaining RA issues will be addressed in the successor RA rulemaking, R.19-11-009.
- **Additional Information:** [D.20-09-003](#) denying PFM's filed by PG&E, CalCCA, and Joint Parties (September 16, 2020); WPTF's [Application for Rehearing](#) of D.20-06-028 (August 5, 2020); WPTF's [Application for Rehearing](#) of D.20-06-002 (July 17, 2020); [D.20-06-028](#) on Track 1 RA Imports (approved June 25, 2020); [D.20-06-002](#) establishing a central procurement mechanisms for local RA (June 17, 2020); [D.20-03-016](#) granting limited rehearing of D.19-10-021 (March 12, 2020); [D.20-01-004](#) on qualifying capacity value of hybrid resources (January 17, 2020); [D.19-12-064](#) granting motion for stay of D.19-10-021 (December 23, 2019); [D.19-10-021](#) affirming RA import rules (October 17, 2019); [D.19-06-026](#) adopting local and flexible capacity requirements (July 5, 2019); Docket No. [R.17-09-020](#).

RA Rulemaking (2021-2022)

On October 20, 2020, the ALJ issued a Ruling denying OhmConnect's motion for a partial stay of a previous RA decision that limited the eligible procurement of Demand Response to a statewide and LSE-specific cap of 8.3%. On October 20, 2020, the CPUC, CAISO and CEC scheduled a November 24, 2020, joint public workshop to consider the potential to provide RA credit to hybrid storage/solar behind-the-meter resources. On October 23, 2020 the ALJ issued a Proposed Decision (PD) in Track 3.A that would adopt a local capacity requirement reduction compensation mechanism based on CalCCA's proposed "Option 2," with modifications, and the central procurement entity's (CPE) competitive neutrality rules as proposed by PG&E and SCE, with modifications. Also on October 23, 2020, the CPUC provided notice of two public workshops scheduled for November on a variety of Track 3.B RA issues. On October 30, 2020, VCE submitted Tier 2 Advice Letter 5-E, requesting a waiver of local RA penalties related to limited remaining local RA procurement shortfalls in 2021-2022 in its contemporaneously submitted Year-Ahead RA Filing.

- **Background:** This proceeding is divided into 4 tracks. The first two tracks have concluded, and the proceeding focused on Track 3 issues. Track 3 is divided into Track 3.A and Track 3.B, which are proceeding in parallel. Track 3.A issues include the following topics: (1) evaluation of CAISO's updated LCR reliability criteria; (2) evaluation of an LCR reduction compensation mechanism; (3) consideration of the CPE's Competitive Neutrality Rules; (4) NQC for BTM hybrid resources; and (4) other time-sensitive issues.

Track 3.B focuses on an examination of the broader RA capacity structure to address energy attributes and hourly capacity requirements, given the increasing penetration of use-limited resources, greater reliance on preferred resources, rolling off of a significant amount of long-term tolling contracts held by utilities, and material increases in energy and capacity prices experienced in California over the past years. Other refinements to the RA program identified during Track 1 or Track 2 will also be considered, including refinements to the MCC buckets adopted in D.20-06-031.

A future Track 4 will consider the 2022 program year requirements for System and Flexible RA, and the 2022-2024 Local RA requirements.

- **Details:** OhmConnect's Motion requested an immediate narrow partial stay of D.20-06-031 in advance of the October 31, 2020 Year-Ahead RA compliance filings, until the issues discussed in its motion are fully considered and resolved in Track 3. OhmConnect's motion took issue with the adopted refinement to the Maximum Cumulative Capacity (MCC) Buckets that included adopting an 8.3% Statewide and LSE-specific cap on DR resources to meet RA requirements. OhmConnect pointed out that although the Decision made it appear like this cap would still allow for a doubling of DR resources, under the current construct, if an LSE chooses not to procure DR up to its 8.3% cap, the resulting "headroom" is not actually available to other LSEs that might be interested in procuring greater amounts of DR capacity. The ALJ denied the motion, saying this issue had already been considered and decided by the CPUC.

The Track 3.A PD would address the issues of the financial credit mechanism and competitive neutrality rules for the central procurement entities, PG&E and SCE. For reference, in adopting the central procurement framework in D.20-06-002, the CPUC recognized that a financial credit mechanism could provide LSEs with additional incentives for investments in preferred and energy storage local resources in constrained local areas, but rejected a CalCCA proposal to give a one-for-one MW value to LSEs for existing preferred or energy storage local resources shown to the CPE. The PD would find that the most workable solution proposed was CalCCA's proposed "Option 2," with modifications, which allows the CPE to evaluate the shown resource alongside bid resources to assess the effectiveness of the portfolio. The financial credit mechanism would apply only to new preferred or energy storage resources (i.e., non-fossil-based resources) with a contract executed on or after June 17, 2020.

The PD would also adopt PG&E's competitive neutrality proposal for PG&E's service territory and SCE's competitive neutrality proposal for SCE's service. The PD would reject assertions by AReM and CalCCA that PG&E's proposed rule contains insufficient detail as compared to SCE's proposal, such as the lack of enforcement for inadvertent disclosure.

Finally, the PD would find that the Local Capacity Requirements Working Group should continue to discuss recommendations and develop solutions for consideration in CAISO's 2022 LCR process, and notes there will be an opportunity to provide comments on the behind-the-meter hybrid solar/storage workshop, scheduled for November 2020, in Track 4 of this proceeding.

- **Analysis:** Regulatory developments under consideration in this proceeding could have a significant impact on VCE's capacity procurement obligations and RA compliance filing requirements. A broad array of changes to the RA construct are under consideration, including the consideration of hourly capacity requirements in light of the increasing deployment of use-limited resources; modifications to maximum cumulative capacity buckets and whether the RA program should cap use-limited and preferred resources such as wind and solar; the potential expansion of multi-year local forward RA to system or flexible resources; RA penalties and waivers; and Marginal ELCC counting conventions for solar, wind and hybrid resources. The resolution of these issues could impact the extent to which VCE is permitted to rely on use-limited resources such as solar and wind to meet its RA obligations, the amount of RA that is credited to these types of resources, and what penalties (and waivers) would apply should there be a deficiency in meeting an RA requirement.
- **Next Steps:** In Track 3.A, comments on the PD are due November 12, replies are due November 17, and the PD may be heard, at the earliest, at the Commission's December 3, 2020 Business Meeting. The PD would direct the draft Local Capacity Requirements Working Group Report and/or proposals to be due January 22, 2021, and the final Working Group Report and/or proposals by February 12, 2021.

In Track 3.B public workshops on Track 3.B issues are scheduled for November 18, 2020, and November 23, 2020 (9:30-4:30pm). Revised Track 3.B proposals are due December 18, 2020, comments on revised Track 3.B proposals are due January 15, 2021, a workshop on revised Track 3.B proposals is anticipated for February 2021, second revised Track 3.B proposals and comments on additional process are due March 9, 2021, a Proposed Decision is expected May 2021, and a final Decision on Track 3.B and Track 4 is expected June 2021.

A joint public workshop to consider the potential to provide RA credit to hybrid storage/solar behind-the-meter resources is scheduled for November 24, 2020.

The schedule and scope of issues for Track 4 will be established in a later Scoping Memo.

- **Additional Information:** [Proposed Decision](#) on Track 3.A issues (October 23, 2020); [Ruling](#) denying OhmConnect motion for partial stay of 8.3% DR cap (October 20, 2020); [Ruling](#) (September 23, 2020); [Ruling](#) providing Energy Division's Track 3.B proposal (August 7, 2020); [Amended Scoping Memo](#) on Track 3 (July 7, 2020); [D.20-06-031](#) on local and flexible RA requirements and RA program refinements (June 30, 2020); [Ruling](#) suspending Track 3 schedule (June 23, 2020); [2021 Final Flexible Capacity Needs Assessment](#) (May 15, 2020); [2021 Final](#)

[Local Capacity Technical Study](#) (May 1, 2020); [Scoping Memo and Ruling](#) (January 22, 2020); [Order Instituting Rulemaking](#) (November 13, 2019); Docket No. [R.19-11-009](#).

2020 IRP Rulemaking

On October 9, 2020, the ALJ issued an Email Ruling requesting initial comments on individual IRPs, which were subsequently filed by parties on October 23, 2020. On October 20, 2020, the ALJ issued a Ruling requesting comments and on electric resource portfolios to be used in CAISO's 2021-22 Transmission Planning Process (TPP) which will begin in early 2021.

- **Background:** In the CPUC's IRP process, the Reference System Portfolio (RSP) is essentially a proposed statewide IRP portfolio that sets a statewide benchmark for later IRPs filed by individual LSEs. The CPUC ultimately adopts a Preferred System Portfolio (PSP) after LSEs submit individual IRPs to be used in statewide planning and future procurement. On September 1, 2020, LSEs including VCE filed their 2020 IRPs, which included updates on each LSE's progress towards completing additional system RA procurement ordered for the 2021-2023 years under D.19-11-016.
- The June 15, 2020 ALJ Ruling proposed a three-year cycle for the IRP process, instead of the current structure of conducting each cycle every two years. There would be opportunities for new procurement requirements at least twice during every three-year cycle, beginning with a Q1 2021 Ruling proposing resource procurement, followed by the issuance of a PD/Decision in Q2 2021 ordering additional procurement.

The September 24 Scoping Memo and Ruling clarifies that the issues planned to be resolved into this proceeding are organized into the following tracks:

1. **General IRP oversight issues:** The Assigned Commissioner indicates that a Proposed Decision is forthcoming on the issues identified in the June 15 Ruling regarding the possibility of moving from a two-year to a three-year IRP cycle. Other issues to be determined in this track include IRP filing requirements and interagency work implementing SB 100.
 2. **Procurement track:** First, the proceeding will resolve capacity procurement issues with respect to D.19-11-016, as discussed in the June 5 Ruling. The CPUC will then focus on examining LSE plans to replace Diablo Canyon capacity and conduct an overall assessment and gap analysis to inform a procurement order that could direct LSEs to procure additional capacity. Other issues to be addressed in this track include (1) evaluation of development needs for long-duration storage, out-of-state wind, offshore wind, geothermal, and other resources with long development lead times; (2) local reliability needs; and (3) analysis of the need for specific natural gas plants in local areas. Additional procurement requirements may also be considered.
 3. **Preferred System Portfolio Development:** The CPUC will aggregate LSE portfolios, analyze the aggregate portfolio, and adopt a PSP.
 4. **Transmission Planning Process (TPP):** The PSP analysis will likely lead to a portfolio to be transmitted by the CPUC to the CAISO for use in its TPP analysis.
 5. **Reference System Portfolio Development:** To the extent that a new round of RSP analysis is conducted for the next IRP cycle, this proceeding will be the venue for developing and vetting the resource assumptions associated with that analysis in preparation for the next IRP cycle.
- **Details:** The October 20 ALJ Ruling on portfolios for use in the TPP included three attachments. The "Framework for TPP Portfolio Selection" document guides the Commission's portfolio recommendations annually (for this and future TPP cycles). The "Descriptions of the Proposed Portfolios for the 2021-22 TPP" document includes a Staff recommendation to use a 46 million metric ton (MMT) target by 2030, but updating it with more recent data and assumptions from the

CEC’s 2019 Integrated Energy Policy Report as both the reliability and policy-driven base case. The “Methodology for Resource-to-Busbar Mapping and Assumptions for the 2021-22 TPP” document details how resources will be mapped to specific locations on the transmission system and augments the specific approaches for mapping battery storage resources and non-battery resources.

In response to the October 9 ALJ Ruling, parties filed comments on individual LSE IRPs, but no party provided any comments that were directly critical of VCE’s IRP narrative.

- **Analysis:** This proceeding impacts VCE’s compliance requirements, including its IRP filing, as well as issues that could impact VCE’s autonomy over its procurement decisions and cost recovery of related procurement directives. The September 24 Scoping Memo and Order indicates that the CPUC could issue a decision on Diablo Canyon replacement capacity in May 2021; this decision could direct VCE and other LSEs to procure additional capacity if it finds LSE IRPs contained insufficient resources to ensure reliability with the retirement of Diablo Canyon. In addition, the June 15, 2020 Ruling proposes changes to the IRP cycle that could change the frequency of IRP filings to once every three years and provide the CPUC two opportunities per three-year cycle to order additional procurement. Under the newly created IRP Citation Program, if the CPUC identifies any deficiencies in VCE’s IRP filings, it will have 10 days to cure the identified deficiencies, after which time it would be subject to a financial penalty.
- **Next Steps:** Comments and replies, respectively, in response to the ALJ Ruling on portfolios to use in the 2021-2022 Transmission Planning Process are due November 10, 2020, and November 20, 2020.

Through January 2021, the schedule is as follows:

1. **General IRP oversight issues:** A Proposed Decision on moving from two-year to three-year IRP cycle is anticipated to be issued soon.
 2. **Procurement track:** Fall 2020: Commission staff conducts analysis of LSE commitments to address Diablo Canyon replacement power, as included in individual IRPs. October 2020: Proposed decision addressing backstop procurement and cost allocation (emanating from D.19-11-016). November 2020: Commission decision on backstop procurement and cost allocation. January 2021: Ruling circulating Diablo Canyon replacement power analysis, gap analysis, and proposing procurement strategy for any additional needed power, along with proposed broader framework for IRP procurement.
 3. **Preferred System Portfolio Development:** Fall 2020: (1) Modeling Advisory Group meeting examining GHG emissions benchmarking and modeling differences; and (2) Ruling on resubmittals of information for deficient LSE IRPs, if needed.
 4. **TPP:** November 2020: Party comments and reply comments on proposed portfolio(s) for 2021-2022 TPP. January 2021: Proposed Decision recommending portfolio(s) for 2021-22 TPP.
 5. **Reference System Portfolio Development:** N/A.
- **Additional Information:** [Ruling](#) on Portfolios for 2021-2022 Transmission Planning Process (October 20, 2020); [Email Ruling](#) requesting comments on individual LSE IRPs (October 9, 2020); [Scoping Memo and Ruling](#) (September 24, 2020); [Resolution E-5080](#) (August 7, 2020); [Ruling](#) on IRP cycle and schedule (June 15, 2020); [Ruling](#) on backstop procurement and cost allocation mechanisms (June 5, 2020); [Order Instituting Rulemaking](#) (May 14, 2020); Docket No. [R.20-05-003](#).

2016 IRP Rulemaking

On October 27, 2020, the CPUC issued an Order (D.20-10-028) denying two December 2019 applications for rehearing of D.19-11-016, which mandated that LSEs undertake additional system RA procurement by 2021-2023. This proceeding is closed.

- **Background:** In the CPUC's IRP process, the RSP is essentially a proposed statewide IRP portfolio that sets a statewide benchmark for later IRPs filed by individual LSEs. The CPUC ultimately adopts a Preferred System Portfolio (PSP) to be used in statewide planning and future procurement.

D.19-11-016 directed VCE to procure 6.3 MW, 9.4 MW, and 12.6 MW of additional resources, to be online by line by August 1, 2021, August 1, 2022, and August 1, 2023, respectively. In addition, D.20-03-028 established a 2019-2020 RSP based on a GHG target for the electric sector for 2030 of 46 million metric tons (MMT), while also requiring LSEs to file an IRP scenario based on a more aggressive 38 MMT target in their IRPs due September 1, 2020.

D.20-09-026 granted CalCCA's Petition for Modification of D.19-11-016, which required LSEs to procure additional system RA to come online in 2021-2023. First, it granted CalCCA's request and determine that the methodology included in D.20-06-031 will be used to determine Qualifying Capacity for hybrid resources used to comply with the requirements of D.19-11-016 (unless or until the methodology is modified again). Second, D.20-09-026 effectively punted on deciding the issue of cost recovery to the new IRP proceeding, R.20-05-003. CalCCA's PFM had argued that the Commission should modify the cost recovery mechanism adopted in D.19-11-016 by requiring an IOU that provides system resource adequacy backstop procurement to an LSE to bill that entity directly for all costs associated with the procurement. However, the Decision granted CalCCA's request to modify D.19-11-016 by eliminating the language that would have limited the mechanism to a customer-billed non-bypassable charge. Finally, the Decision closed this docket.

- **Details:** The Order denied two applications for rehearing. In one application for rehearing, Protect Our Communities (POC) argued that the entire Decision is in error. POC's primary objection was to the foundational basis for the establishment of the procurement requirement, a potential shortage of RA and potential reliability issues stemming from that. It had argued that the justification is based on a CPUC misinterpretation of an unreliable analysis. It also argued that the Decision erroneously concluded that renewables-paired storage cannot provide reliable power as an alternative to fossil fuel resources, and that the result of the procurement, as well as the recommended extensions of once-through-cooling compliance deadlines, will cause further environmental harm and are contrary to California's clean energy policies.

A second application for rehearing by environmental parties opposed specific provisions of the decision that would have allowed fossil fuel generators to be eligible for the additional procurement. In denying rehearing, the CPUC found that D.20-03-028 had addressed some of the issues raised.

- **Analysis:** In rejecting the applications for rehearing, D.20-10-028 leaves in place the procurement mandate established under D.19-11-016 and did not modify any of its determinations.
- **Next Steps:** The proceeding is now closed. All other IRP issues will be addressed through R.20-05-003.
- **Additional Information:** [D.20-10-028](#) denying Applications for Rehearing of D.19-11-016 (October 27, 2020); [D.20-09-026](#) (approved at CPUC's September 24, 2020 meeting); [D.20-07-009](#) denying CESA PFM of D.19-11-016 (July 21, 2020); [D.20-06-025](#) dismissing GenOn Holdings Application for Rehearing (June 22, 2020); [Ruling](#) correcting LSE load forecasts (May 20, 2020); PG&E's [Advice 5826-E](#) (May 18, 2020); [D.20-03-028](#) on RSP and 2020 IRP filing requirements (April 6, 2020); [List of Baseline Resources](#) (December 2, 2019); [D.19-11-016](#) (November 13, 2019); [Ruling](#) initiating procurement track (June 20, 2019); [D.19-04-040](#) on 2018 IRPs and 2020 IRP requirements (May 1, 2019); Docket No. [R.16-02-007](#).

RPS Rulemaking

On October 16, 2020, the CPUC issued D.20-10-005 resuming and modifying the ReMAT program. Parties filed comments and replies, respectively, on October 9, 2020, and October 20, 2020 in response to the September 18, 2020 ALJ Ruling providing the Energy Division's *Staff Proposal for Alignment and Integration of RPS Procurement Planning and Integrated Resource Planning*.

- **Background:** This proceeding addresses ongoing RPS issues. VCE submitted its 2020 RPS Procurement Plan on July 6, 2020 and its 2019 RPS Compliance Report on August 3, 2020. On August 12, 2020, VCE filed a Motion requesting to update its 2020 RPS Procurement Plan to make several minor clerical corrections to its Plan and noting to the CPUC that VCE anticipated terminating its PPA with Rugged Solar in August 2020.

On February 27, 2020, the ALJ issued a Ruling requesting comments on a Staff Proposal making changes to confidentiality rules regarding the RPS program. Among other proposals, the Energy Division has proposed to make CCAs' RPS procurement contract terms (e.g., price, quantity, resource type, location, etc.) publicly available 30 days after deliveries begin. The contract price would also be publicly available six months after a contract is signed (if that occurs sooner than 30 days after deliveries begin).

Staff's Proposed Framework for integrating RPS Procurement Plan requirements into the IRP proceeding uses a two-phased approach that makes a relatively minor change to RPS reporting in the current IRP cycle, while fully integrating all elements of RPS Procurement Plans into the next IRP cycle, proposed to commence in the 2023 calendar year (instead of 2022, under the current two-year cycle, although the issue of a two-year versus three-year cycle is not discussed):

1. Phase I: 2021-2022: Staff proposes to maintain the status quo in Phase I, where LSEs would continue to prepare and submit annual RPS Procurement Plans, subject to subsequent rulings issued by the Assigned Commissioner and Assigned ALJ. The single deviation from the current RPS Plans procedure, as proposed by staff, is to transition the Cost Quantification reporting requirement away from the RPS Plans and establish an annual data response for Cost Quantification reporting due February 15 of each calendar year, continuing through Phase II and beyond.
2. Phase II: 2023 and Beyond:
 - *IRP Filing Years ("On-Years," e.g., 2023, 2026, etc. if the CPUC adopts a three-year IRP cycle, as has been separately proposed): Full Integration of RPS Requirements.* In Phase II, the CPUC intends to fully combine RPS Procurement Plans filings with the IRP process. With the exception of the proposed February 15 Cost Quantification filing, retail sellers would only be required to file IRPs in the IRP filing years, and the modified IRP would satisfy that year's RPS Procurement Plan requirements. The IRP Narrative Template will be modified to include the necessary RPS reporting items in two of the current IRP chapters and will also add a chapter specifically devoted to capturing any RPS-required information that does not align into an existing IRP section. If an LSE modifies its planned RPS procurement outside of an IRP year, it would be required to file a Motion to Update.
 - *IRP "Off-Years" (e.g., 2024, 2025; 2027, 2028, etc.): Statutorily Mandated RPS Reporting.* LSEs would be required to file Tier 3 advice letters that contain the statutorily-required RPS information. The information required will not vary from year to year. All RPS Plan requirements in IRP off-years would be due July 15 of each calendar year. If an LSE's procurement (or sales) needs change or if further procurement authorizations are required in IRP off-years, LSEs would be required to file a Motion to Amend their IRP as part of the RPS off-year filing.

Details: CalCCA's comments in response to the Staff proposal aligning IRP and RPS compliance filings were generally supportive of the proposal, while recommending some modifications. CalCCA recommended that Staff withdraw the proposed additional reporting requirement on

February 15 as it will not be feasible for LSEs to provide accurate or complete year-end data by this time. CalCCA also pointed out additional efficiencies that could be gained by further streamlining certain reporting requirements.

The ReMAT program is a feed-in tariff program for renewable facilities of 3 MW or less. The revisions in D.20-10-005 update the ReMAT to bring the program into compliance with a 2017 federal district court order (the Winding Creek Order), which found that the bi-monthly program period capacity caps for ReMAT and the pricing mechanism were not compliant with PURPA (i.e., did not represent avoided costs). The changes would not apply to already executed ReMAT contracts. It adopts, with modifications, a June 2020 Staff Proposal for revising the program and directing the filing of Tier 2 advice letters by SCE and PG&E by November 6, 2020, to implement the revisions. The revised tariffs and standard contracts are to become effective immediately upon approval by the Energy Division. The ReMAT pricing calculation used in D.20-10-005 produced the following prices, as detailed in Appendix A of the Decision: (1) As Available Non-Peaking: \$57.40/MWh; (2) As-Available Peaking: \$52.34/MWh; (3) Baseload: \$73.50/MWh.

- **Analysis:** The Staff proposal on integrating RPS/IRP issues would largely maintain the existing compliance framework through 2022, limiting any benefits that could arise from better coordinating these compliance filings until 2023 and thereafter. Beginning in 2023, the Staff proposal would reduce RPS Procurement Plan filing requirements by integrating them with the IRP filing in IRP filing years, and significantly slimming them down to the statutory requirements in IRP off-years, made via an Advice Letter filing that would be subject to full Commission approval.

D.20-08-043, which reopened the Bioenergy Market Adjusting Tarrif (BioMAT) program, will impact VCE customer rates, as the program and associated cost recovery is through a non-bypassable charge would be extended through 2025. It does not allow VCE to directly enter into BioMAT contracts.

The reopening of the ReMAT program could impact VCE by reopening a program that could compete with VCE with respect to the procurement of small-scale renewable energy facilities.

The previously issued Staff Proposal on RPS confidentiality rules in this proceeding included provisions that, if adopted, would result in VCE being required to provide more transparency on various RPS information, such as RPS PPA pricing and other contract information.

Other issues to be addressed in this proceeding could further impact future RPS compliance obligations.

Next Steps: A proposed decision aligning RPS/IRP filings is anticipated to be issued in Q4 2020.

A PD/Decision on the 2020 RPS Procurement Plans is also anticipated in Q4 2020, after which retail sellers may file "Final" 2020 RPS Procurement Plans, also expected in Q4 2020.

PG&E and SCE will filed Tier 2 advice letters implementing D.20-10-005 reopening and revising the ReMAT program by November 6, 2020.

It is unclear if the CPUC intends to issue a PD regarding RPS confidentiality and transparency issues, as had been proposed in a February 2020 Ruling.

- **Additional Information:** [D.20-10-005](#) resuming and modifying the ReMAT program (October 16, 2020); [D.20-09-022](#) on new CCA 2019 RPS Procurement Plans (approved at CPUC's September 24, 2020 meeting); [Ruling](#) on [Staff proposal](#) aligning RPS/IRP filings (September 18, 2020); [D.20-08-043](#) resuming and modifying the BioMAT program (September 1, 2020); [VCE Motion to Update](#) its 2020 RPS Procurement Plan (August 12, 2020); [Ruling](#) extending procedural schedule on RPS Procurement Plan review (July 10, 2020); Assigned Commissioner [Ruling \(ACR\)](#) establishing 2020 RPS Procurement Plan requirements (May 6, 2020); [D.20-02-040](#) correcting D.19-12-042 on 2019 RPS Procurement Plans (February 21, 2020); [Ruling](#) on RPS confidentiality and transparency issues (February 27, 2020); [D.19-12-042](#) on 2019 RPS Procurement Plans (December 30, 2019); [D.19-06-023](#) on implementing SB 100 (May 22, 2019); [Ruling](#) extending procedural schedule (May 7, 2019); [Ruling](#) identifying issues, schedule and 2019 RPS

Procurement Plan requirements (April 19, 2019); [D.19-02-007](#) (February 28, 2019); [Scoping Ruling](#) (November 9, 2018); Docket No. [R.18-07-003](#).

Wildfire Fund Non-Bypassable Charge (AB 1054)

On October 14, 2020, and October 21, 2020, respectively, parties filed comments and replies on the ALJ Ruling proposing to continue the Wildfire Non-Bypassable Charge (NBC) of \$0.00580/kWh for January 1, 2021 through December 31, 2021.

- **Background:** This rulemaking implemented AB 1054 and extended a non-bypassable charge on ratepayers to fund the Wildfire Fund. The scope of this proceeding was limited to consideration of whether the CPUC should authorize ratepayer funding of the Wildfire Fund established by AB 1054, enacted in July 2019, via the continuation of an existing non-bypassable charge (Department of Water Resources bond charge) that would have otherwise expired by the end of 2021. On August 26, 2019, the Bankruptcy Court tentatively granted PG&E's request to participate in the Wildfire Fund.

D.19-10-056, issued in October 2019, approved the establishment of a non-bypassable charge on IOU customers to provide revenue for the newly established state Wildfire Fund pursuant to 2019 AB 1054. The charge will only be assessed on customers of utilities that participate in the Wildfire Fund (i.e., PG&E, SCE, and SDG&E), and will expire at the end of 2035. The Decision also provides that once a large IOU commits to Wildfire Fund participation, it may not later revoke its participation. The annual revenue requirement for the charge among the large IOUs will total \$902.4 million, allocated at \$404.6 million for PG&E, \$408.2 million for SCE, and \$89.6 million for SDG&E. There was a June 30, 2020, deadline for PG&E to satisfactorily complete its insolvency proceeding under AB 1054, and therefore become eligible to participate in the Wildfire Fund. The Wildfire Fund NBC will be collected on a \$/kWh basis, with the revenue requirement allocated based on each class's share of energy sales. Residential CARE and medical baseline customers are exempt. The Wildfire Fund NBC cannot take effect until the DWR Bond charge sunsets, which may take place as early as the second half of 2020.

- **Details:** The September 30 Ruling proposed to maintain the Wildfire Fund NBC at its current level for 2021.
- **Analysis:** This proceeding established a new non-bypassable charge of \$0.00580/kWh from eligible VCE customers beginning October 1, 2020, to fund the Wildfire Fund under AB 1054.
- **Next Steps:** The Wildfire Fund NBC went into effect on October 1, 2020. The ALJ will next issue a proposed decision adopting the 2021 Wildfire Fund NBC.
- **Additional Information:** [Ruling](#) requesting comments on 2021 Wildfire Fund NBC (September 30, 2020); [D.20-09-023](#) adopting 2020 Wildfire NBC (September 30, 2020); [D.20-07-014](#) approving servicing orders (July 24, 2020); [Ruling](#) on Wildfire NBC implementation (July 3, 2020); [D.20-02-070](#) denying Application for Rehearing (March 2, 2020); [D.19-10-056](#) approving a non-bypassable charge (October 24, 2019); [Scoping Memo and Ruling](#) (August 14, 2019); [Order Instituting Rulemaking](#) (August 2, 2019); Docket No. [R.19-07-017](#). See also [AB 1054](#).

PG&E's Phase 1 GRC

On October 23, 2020, the ALJs issued a Proposed Decision (PD) that would resolve PG&E's Phase 1 GRC. On October 29, 2020, the ALJs issued a Ruling scheduling oral argument.

- **Background:** PG&E's three-year GRC covers the 2020-2022 period. For 2020, it has requested an additional \$1.058 billion (from \$8.518 billion to \$9.576 billion), or a 12.4% increase over its 2019 authorized revenue requirement, comprised of increases related to its gas distribution (\$2.097 billion total, or a \$134 million increase), electric distribution (\$5.113 billion total, or a \$749 million increase), and generation (\$2.366 billion total, or a \$175 million increase) services. If

approved, it would increase a typical monthly residential electric (500 kWh) and natural gas (34 therms) customer bill by \$10.57, or 6.4%, comprised of an electric bill increase of \$8.73 and a gas bill increase of \$1.84. For 2021 and 2022, PG&E requested total increases of \$454 million and \$486 million, respectively. PGE's GRC does not include a request for cost recovery related to 2017 and 2018 wildfire liabilities.

The Settlement Agreement, filed December 30, 2019, would result in an increase in PG&E's 2020 revenue requirement of \$575 million (*i.e.*, \$483 million lower than PG&E's original request), with additional increases of \$318 million, or 3.5% in 2021, and \$367 million, or 3.9%, in 2022. The Settlement Agreement would result in PG&E withdrawing its proposal for a non-bypassable charge related to its hydroelectric facilities. It would require PG&E to develop new and enhanced reporting to provide increased visibility into the work it performed. It also provides for PG&E's ability to purchase insurance coverage up to \$1.4 billion to protect against wildfire risk and other liabilities, reflected in PG&E's forecast as a cost of \$307 million. The consolidated 2020 electric and gas bill impact would be 3.4%.

- **Details:** The PD adopts, with modifications, the Settlement Agreement filed in December 2019. The PD adopts a 2020 test year revenue requirement of \$9.102 billion, which is an increase of \$584 million, or 6.9%, over the authorized base revenue requirement for 2019. In addition, it allows PG&E to raise rates an additional \$339 million, or 3.7%, for 2021 and \$344 million, or 3.6%, for 2022. However, both the 2020 and 2021 impacts would be incorporated in 2021, resulting in an average residential customer seeing a monthly bill increase of \$12.55 (\$9.86 for electric and \$2.69 for gas), or 7.6%, in 2021. Modifications to the Settlement Agreement include the reduction of the authorized Community Wildfire Safety Program capital forecasts for 2021 and 2022, as well as more stringent filing requirements for recovery of undercollections tracked by certain regulatory accounts and for closure of up to 10 customer services branch offices. The PD applies the 4% cap on the percentage of residential customer accounts that PG&E can disconnect from utility service in this GRC cycle pursuant to D.20-06-003.

The PD would allow PG&E to maintain its current functionalization of Customer Care costs, allocating Customer Care costs between gas distribution and electric distribution functions, based on the number of gas and electric service agreements. However, it would direct PG&E to provide in its next GRC a better showing of its cost functionalization process in response to Joint CCA arguments, including directing PG&E to provide detailed testimony showing and justifying how it allocates costs across its various utility functions, including how it derives its functional allocations. The PD would not adopt Joint CCA's recommendation to reject the \$10 million decommissioning revenue requirement for PG&E generation assets. The PD would also not adopt Joint CCA recommendations regarding Resilience Zone issues, such as a request to accommodate generation that the CCAs procure, determining it is out of the scope and more appropriately addressed in R.19-09-009. Likewise, the PD would find the issue raised by Joint CCAs regarding access to grid modernization data is more appropriately addressed in R.14-08-013.

- **Analysis:** PG&E's GRC proposals included shifting substantial costs associated with its hydroelectric generation from its generation rates (applicable only to its bundled customers) into a non-bypassable charge affecting all of its distribution customers, including VCE customers, which would negatively affect the competitiveness of VCE's rates relative to PG&E's. However, that proposal would be withdrawn under the Settlement Agreement and Proposed Decision. The remaining CCA-related issues in the case include the Joint CCAs' recommendations that the Commission:
 1. Revise the allocation of certain customer-service costs since unbundled customers use those services far less than bundled customers.
 2. Ensure CCAs can connect clean generation to PG&E's temporary microgrids during PSPS events.
 3. Revise the settlement's exorbitant decommissioning costs for PG&E's PCIA-eligible facilities.

4. Revise the settlement to ensure grid modernization data is accessible to CCAs to ensure a level playing field in the provision of grid services.
- **Next Steps:** Opening and reply comments, respectively, are due November 12, 2020, and November 17, 2020. Oral argument is set for November 12, 2020.
 - **Additional Information:** [Ruling](#) setting oral argument (October 29, 2020); [Proposed Decision](#) (October 23, 2020); [PG&E Motion](#) to update the Settlement Agreement (August 13, 2020); [Ruling](#) adopting confidential modeling procedures (August 13, 2020); [E-mail Ruling](#) granting in part PG&E's Motion for Official Notice and Joint CCAs Motion to file sur-reply (June 5, 2020); Joint CCAs' [PG&E Motion](#) for Official Notice of Facts (January 27, 2020); [Joint Motion](#) for Settlement Agreement (January 14, 2020); [E-Mail Ruling](#) modifying procedural schedule (December 2, 2019); [E-Mail Ruling](#) suspending briefing deadlines (November 25, 2019); [D.19-11-014](#) (November 14, 2019); [Ruling](#) setting public participation hearings (May 7, 2019); [Scoping Memo and Ruling](#) (March 8, 2019); [Joint CCAs' Protest](#) (January 17, 2019); [Application](#) and [PG&E GRC Website](#) (December 13, 2018); Docket No. [A.18-12-009](#).

PG&E's Phase 2 GRC

Cal Advocates filed testimony on October 23, 2020.

- **Background:** PG&E's 2020 Phase 2 General Rate Case (GRC) addresses marginal cost, revenue allocation and rate design issues covering the next three years. PG&E's pending Phase 1 GRC (filed in December 2018 via a separate proceeding) will set the revenue requirement that will carry through to the rates ultimately adopted in this proceeding.

In this proceeding, PG&E seeks modifications to its rates for distribution, generation, and its public purpose program (PPP) non-bypassable charge. PG&E proposes to implement a plan to move all customer classes to their full cost of service over a six-year period (the first three years of which are covered by this GRC Phase 2) via incremental annual steps. PG&E proposes to use marginal costs for purposes of revenue allocation and to adjust distribution one-sixth of the way to full cost of service each year over a six-year transition period.

Of note, PG&E is proposing changes to the DA/CCA event-based fees that were not updated in the 2017 Phase 2 GRC proceeding. In addition, PG&E proposes to remove the PCIA revenue from bundled generation revenue and allocate that cost separately to bundled customers, collecting the PCIA from bundled customers on a non-time differentiated, per-kWh basis (i.e., the same way it is collected from DA/CCA customers). PG&E will continue to display the PCIA with other generation charges on customer bills, but will unbundle the PCIA as part of unbundled charges in each rate schedule.

PG&E's final EUS plan describes how the IOUs' study will identify the essential usage of electricity for the IOUs' residential customers. The EUS will determine what constitutes essential usage for residential customers (e.g., cooking, lighting, space conditioning) in the different IOU service territories and climate zones. The apparent use case is that essential service be reflected in the Tier I baseline quantities.

D.20-09-021 authorized each large IOU to file a Tier 1 advice letter that will establish an EUS cost recovery balancing account for tracking each IOUs' respective share of the actual costs associated with the EUS, with a cost allocation of: PG&E, 45%; SCE, 43%; and SDG&E, 12%. The IOUs estimate that the final EUS report will be completed in January 2022.

- **Details:** No updates this month.
- **Analysis:** This proceeding will not impact the transparency between a bundled and unbundled customer's bills because of the Working Group 1 decision in the PCIA rulemaking. However, it will affect the allocation of PG&E's revenues requirements among VCE's different rate classes. It will also affect distribution and PPP charges paid by VCE customers to PG&E. Further, PG&E

includes a cost-of-service study the purpose of which is to establish the groundwork for separating net metering customers into a separate customer class in the utility’s next rate case. If PG&E’s proposed CCA fee revisions are adopted, it will increase the cost VCE pays to PG&E for various services.

- **Next Steps:** Two public participation hearings are scheduled for November 6, 2020. Intervenor testimony is due November 20, 2020. Rebuttal testimony is due February 15, 2021. An evidentiary hearing is tentatively scheduled for March 1-12, 2021. A CPUC decision is anticipated for September 2021.
- **Additional Information:** [Notice](#) of virtual public participation hearing (October 15, 2020); [D.20-09-021](#) on EUS budget (September 28, 2020); [Ruling](#) scheduling public participation hearings (August 20, 2020); [Ruling](#) extending procedural schedule (July 13, 2020); [Exhibit \(PG&E-5\)](#) (May 15, 2020); [Scoping Memo and Ruling](#) (February 10, 2020); [Application, Exhibit \(PG&E-1\); Overview and Policy, Exhibit \(PG&E-2\): Cost of Service, Exhibit \(PG&E-3\): Revenue Allocation, Rate Design and Rate Programs, and Exhibit \(PG&E-4\): Appendices](#) (November 22, 2019); Docket No. [A.19-11-019](#).

PG&E Regionalization Plan

The Assigned Commissioner issued a Scoping Memo and Ruling on October 2, 2020. On October 30, 2020, a workshop was scheduled for November 20, 2020 to discuss potential refinements to PG&E’s regionalization proposal.

- **Background:** PG&E was directed to file a regionalization proposal as a condition of CPUC approval of its Plan of Reorganization in I.19-09-016. On June 30, 2020, PG&E filed its regionalization proposal, which describes how it plans to reorganize operations into new regions. PG&E proposes to divide its service area into five new regions: North Coast, Sierra, Bay Area, Central Coast, and Central Valley. The regional boundaries will align with county boundaries. Yolo County would be part of PG&E Region 1 (North Coast), grouped together with the following counties: Colusa, Glenn, Humboldt, Lake, Mendocino, Napa, Sacramento, Solano, Sonoma, and Trinity. PG&E will appoint a Regional Vice President by June 2021 to lead each region, along with Regional Safety Directors to lead its safety efforts in each region.

The new regions would include five functional groups that report to the Regional Vice President encompassing various functions including: (1) Customer Field Operations, (2) Local Electric Maintenance and Construction, (3) Local Gas M&C, (4) Regional Planning and Coordination, and (5) Community and Customer Engagement. Other functions will remain centralized, such as electric and gas operations, risk management, enterprise health and safety, the majority of existing Customer Care and regulatory and external affairs, supply, power generation, human resources, finance, and general counsel. PG&E will propose in a separate proceeding the enterprise-level safety and operational metrics it is developing that could also be considered to evaluate the effectiveness of its regionalization implementation. PG&E proposes a phased implementation, with progress establishing all regions in 2021, although some functions would not be fully shifted until 2022. PG&E also proposes to establish a Regional Plan Memorandum Account to record any incremental costs PG&E may incur in connection with development and implementation of regionalization.

In August, parties filed protests and responses to PG&E’s application. Of note, South San Joaquin Irrigation District filed a Protest arguing that PG&E’s regionalization effort should not create a moratorium or interfere with municipalization efforts. In addition, five CCAs filed responses or protests to PG&E’s application, with MCE and EBCE filing protests and City of San Jose, City and County of San Francisco, and Pioneer Community Energy filing responses. CCA responses/protests sought more information on the implications of regionalization on CCA customers, CCA operations, and CCA-PG&E coordination; PG&E’s overarching purpose, goals, and metrics to judge success of regionalization; the delineation between centralized and decentralized functions in PG&E’s application; and budgets and cost recovery related to

regionalization, among other issues. CCAs also identified various concerns specific to their CCAs (e.g., EBCE's and MCE's service areas would both be split across two PG&E regions; SJCE expressed concern with its service area being assigned to the Central Coast region; Pioneer expressed concern that it would be the only CCA in its region, which would be the only region not to be "anchored" by an urban area).

- Details:** Per the Scoping Memo and Ruling, the scope of this proceeding will include examining (1) whether PG&E should be authorized to implement its Regionalization Proposal, as modified in this proceeding; (2) whether PG&E's proposed five regional boundaries are reasonable; (3) whether PG&E's proposals for regional leadership and a regional organizational structure are consistent with the Commission's direction; (4) whether PG&E's proposed implementation timeline for regionalization is reasonable; (5) whether PG&E's regionalization proposal is reasonable, including its impact on safety and its cost effectiveness; (6) the adequacy and completeness of PG&E's regionalization plan; (7) the process and timeline for regionalization, the cost of regionalization, the criteria to be used for identifying and delineating regions, and the division of responsibilities and decision-making between PG&E's central office and its regional offices; and (8) issues relating to potential cost recovery and the corresponding ratemaking treatment. The Scoping Memo and Ruling did not discuss how municipalization proposals would be impacted by PG&E's regionalization plan, which had been the subject of a Protest of PG&E's application filed by South San Joaquin Irrigation District.
- Analysis:** As noted in the responses and protests of CCAs, the implications of PG&E's regionalization plan on CCA operations, customers, and costs is largely unclear based on the information presented in PG&E's application. PG&E's regionalization plan could impact PG&E's responsiveness and management of local government relations and local and regional issues, such as safety, that directly impact VCE customers beginning in 2021. It could also impact municipalization efforts, although this issue has not been explicitly addressed and remains unclear at this time. As part of Region 1, VCE would be grouped with several coastal and northern counties.
- Next Steps:** A workshop will be held November 20, 2020, comments are due December 16, 2020, an updated PG&E proposal is due January 14, 2021, a workshop will be held the week of January 25, 2021, and comments are due February 24, 2021. PG&E must engage its Regional Vice Presidents and Regional Safety Directors by June 1, 2021.
- Additional Information:** [Scoping Memo and Ruling](#) (October 2, 2020); [Application](#) (June 30, 2020); [A.20-06-011](#).

Investigation of PG&E Bankruptcy Plan

On October 26, 2020, the CPUC issued D.20-10-018, closing the proceeding.

- Background:** This case addressed regulatory review and approval of PG&E's bankruptcy plan, in particular whether the plan meets the AB 1054 Wildfire Fund requirements, which imposes a June 30, 2020 deadline. Under AB 1054, in order for PG&E to be eligible to participate in the Wildfire Fund, its plan must be "neutral, on average, to ratepayers." This proceeding considered the ratemaking implications of the proposed plan and settlement agreement, whether the plan satisfactorily resolves claims for monetary fines or penalties for PG&E's pre-petition conduct, whether to approve the governance structure of the utility and the appropriate disposition of potential changes to PG&E's corporate structure and authorization to operate, whether to make any other approvals related to the confirmation and implementation of the plan, and any other findings necessary to approve a proposed settlement, including but not limited to whether doing so is in the public interest.

D.20-05-053 approved the financial elements of PG&E's reorganization plan, including:

1. \$13.5 billion Fire Victim Trust. The reorganization plan also specifies that the Fire Victim Trust would be funded through \$6.75 billion in cash, and \$6.75 billion in stock of reorganized PG&E Corp.
2. \$11 billion settlement with insurance claim holders and companies.
3. Reinstatement of \$9.575 billion in existing, prepetition PG&E-funded debt claims.
4. Refinancing of \$11.85 billion in existing, prepetition PG&E debt with newly issued debt.
5. Payment in full of general unsecured claims and certain other liabilities, with interest at the legal rate.
6. A \$7.5 billion post-emergence 30-year securitization transaction.

D.20-05-053 also approved, with modifications, numerous proposals put forth by CPUC President Batjer for providing more oversight of PG&E along with management and operational changes at PG&E. The Decision did not address the Joint CCAs' recommendation that the CPUC develop a plan to phase out PG&E's retail electric generation service to customers or CCA requests that the CPUC require PG&E to undertake asset sales, instead determining that the PG&E Safety Culture proceeding (I.15-08-019) is the more appropriate forum for these issues. The Decision also rejected the Joint CCAs' request to revoke PG&E's existing holding company structure. Among other determinations, the Decision:

7. Requires that PG&E implement regional restructuring, resulting in local PG&E operating regions led by an officer of the utility that reports directly to the CEO. PG&E is required to file an application for regionalization by June 30, 2020.
8. Requires PG&E to have a separate Chief Risk Officer (CRO) and Chief Safety Officer (CSO). It establishes an Independent Safety Monitor that would functionally act in the same capacity as the federal court monitor after the termination of the federal monitor. The details on implementing the Independent Safety Monitor would be determined in the future.
9. Clarifies and expands the authority of the Safety and Nuclear Oversight (SNO) Committees of PG&E's boards of directors (e.g., the SNO Committees would have oversight over PG&E's Wildfire Mitigation Plan and PSPS program, among others).
10. Provides for the establishment of additional requirements applicable to the boards of directors of PG&E and PG&E Corp., but allows their membership to remain largely the same.
11. Finds that PG&E may not seek cost recovery for 2017/2018 wildfire claims except via the proposed securitization.
12. Declines to adopt a safety-based earnings adjustment mechanism, but it will continue to be considered in the future, either in the PG&E Safety Culture proceeding (I.15-08-019) or another proceeding.
13. Requires PG&E to reimburse the CPUC for, and bar cost recovery on, various costs the CPUC incurred for outside expertise in relation to the Chapter 11 bankruptcy cases.
14. Adopt an Enhanced Oversight and Enforcement process for PG&E, revised and detailed in Appendix A, designed to provide a clear roadmap for how the CPUC will closely monitor PG&E's performance. The proposal specifies various steps that PG&E could progress through if repeatedly found to be non-compliant, with the last step being a review and possible revocation of its certificate of public convenience and necessity.

The Decision excluded consideration of municipalization issues and did not address VCE's bid to PG&E to purchase the transmission and distribution assets of PG&E as part of PG&E's restructuring, along with other proposals for more significant reforms of PG&E's structure and operations.

- **Details:** Per D.20-10-018, issues that were brought up but not resolved in this proceeding can be addressed in the PG&E Safety Culture proceeding (I.15-08-019), although that proceeding is now only monitoring PG&E's progress in this area.
- **Analysis:** D.20-10-018 closes the proceeding.
- **Next Steps:** The proceeding is now closed.
- **Additional Information:** [D.20-10-018](#) closing the proceeding (October 26, 2020); [Ruling](#) (July 15, 2020); [D.20-05-053](#) (June 1, 2020); [PG&E Motion](#) for official notice and [Plan of Reorganization](#) (March 24, 2020); [Order Instituting Investigation](#) (October 4, 2019); Docket No. [I.19-09-016](#).

Investigation into PG&E Violations Related to Wildfires

No updates this month. On June 8, 2020, Thomas Del Monte and the Wild Tree Foundation filed applications for rehearing of D.20-05-019, which approved penalties on PG&E for its role in igniting the 2017-2018 wildfires.

- **Background:** The scope of the proceeding included violations of law by PG&E with respect to the 2017 and 2018 wildfires, including the 2017 Tubbs Fire and the 2018 Camp Fire, what penalties should be assessed, what remedies or corrective actions should occur, and what if any systemic issues contributed to the ignition of the wildfires. SED issued a Fire Report on June 13, 2019 that found deficiencies in PG&E's vegetation management practices and procedures and equipment operations in severe conditions. CAL FIRE also found that PG&E's electrical facilities ignited all but one of the fires addressed in this investigation. This investigation ordered PG&E to take immediate corrective actions to come into compliance with CPUC requirements.

The terms of the Settlement Agreement between PG&E, SED, the CPUC's Office of the Safety Advocate, and CUE would have resulted in \$1.675 billion in PG&E penalties. Specifically, PG&E would not have been permitted seek rate recovery of wildfire-related expenses and capital expenditures totaling \$1.625 billion. In addition, PG&E would have been required to spend \$50 million in shareholder-provided settlement funds on specified System Enhancement Initiatives.

The Presiding Officer's Decision provided for penalties on PG&E totaling \$2.137 billion. The total included an increase of \$198 million in the disallowances for wildfire-related expenditures that was provided in the Settlement Agreement. It also increased PG&E's System Enhancement Initiatives and corrective actions by \$64 million and added a \$200 million fine payable to the General Fund. In total, these changes increased PG&E's penalties by \$462 million relative to the Settlement Agreement. The Presiding Officer's Decision also required any tax savings associated with the shareholder payments under the settlement agreement, as modified by this decision, to be returned to the benefit of ratepayers.

D.20-05-019 approved with modifications the Settlement Agreement, as provided in Commissioner Rechtschaffen's "Decision Different." It approved penalties totaling \$2.137 billion, however the \$200 million fine payable to the General Fund is permanently suspended, resulting in an effective penalty total of \$1.937 billion. In addition, the decision required any tax savings associated with the shareholder obligations for *operating expenses* under the Settlement Agreement (but not tax savings associated with capital expenditures, in order to avoid any potential legal conflict with IRS normalization rules) to be returned to the benefit of ratepayers in PG&E's next GRC. Finally, the decision rejected PG&E's attempt to classify the \$200 million fine as a Fire Victim Claim or Fire Claim.

- **Details:** The Wild Tree Foundation and Thomas Del Monte each filed Applications for Rehearing (attached) of D.20-05-019, which approved penalties on PG&E for its role in igniting the 2017-2018 wildfires. The Applications for Rehearing both challenge the permanent suspension of the \$200 million fine imposed on PG&E, as well as other aspects of the settlement that was approved with modifications.

- **Analysis:** D.20-05-019 resulted in the largest penalty in CPUC history. It required additional spending by PG&E to mitigate future wildfire risk, potentially positively impacting the quality of service experienced by VCE customers. The decision did not hinder PG&E's reorganization plan from moving forward, whereas PG&E had argued that provisions in the original Presiding Officer's Decision could have imperiled the plan.
- **Next Steps:** The applications for rehearing are the only remaining items in this proceeding.
- **Additional Information:** [Thomas Del Monte Application for Rehearing](#) (June 8, 2020); [Wild Tree Foundation Application for Rehearing](#) (June 8, 2020); [D.20-05-019](#) (May 8, 2020); [Decision Different](#) of Commissioner Rechtschaffen (April 20, 2020); [Motion](#) by Commissioner Rechtschaffen (March 27, 2020); [Presiding Officer's Decision](#) approving the settlement agreement with modifications (February 27, 2020); [Joint Motion for Approval of Settlement Agreement](#) (December 17, 2019); [Amended Scoping Memo and Ruling](#) (October 28, 2019); GO 95 [Rule 31.1](#); GO 95 [Rule 35](#); GO 95 [Rule 38](#); [Order Instituting Investigation](#) (June 27, 2019); Docket No. [I.19-06-015](#).

Wildfire Cost Recovery Methodology Rulemaking

No updates this month. An August 7, 2019, PG&E Application for Rehearing remains pending regarding the CPUC's recent Decision establishing criteria and a methodology for wildfire cost recovery, which has been referred to as a "Stress Test" for determining how much of wildfire liability costs that utilities can afford to pay (D.19-06-027).

- **Background:** SB 901 requires the CPUC to determine, when considering cost recovery associated with 2017 California wildfires, that the utility's rates and charges are "just and reasonable." In addition, and notwithstanding this basic rule, the CPUC must "consider the electrical corporation's financial status and determine the maximum amount the corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service."

D.19-06-027 found that the Stress Test cannot be applied to a utility that has filed for Chapter 11 bankruptcy protection (i.e., PG&E) because under those circumstances the CPUC cannot determine essential components of the utility's financial status. In that instance, a reorganization plan will inevitably address all pre-petition debts, include 2017 wildfire costs, as part of the bankruptcy process. The framework proposed for adoption in the PD is based on an April 2019 Staff Proposal, with some modifications. The framework requires a utility to pay the greatest amount of costs while maintaining an investment grade rating. It also requires utilities to propose ratepayer protection measures in Stress Test applications and establishes two options for doing so.

PG&E's application for rehearing challenges the CPUC's prohibition on applying the Stress Test to utilities like itself that have filed for Chapter 11 bankruptcy. PG&E's rationale is that SB 901 requires the CPUC to determine that the stress test methodology to be applied to all IOUs. Several parties filed responses to PG&E's application for rehearing disagreeing with PG&E.

- **Details:** N/A.
- **Analysis:** This proceeding established the methodology the CPUC will use to determine, in a separate proceeding, the specific costs that the IOUs (other than PG&E) may recover associated with 2017 or future wildfires.
- **Next Steps:** The only matter remaining to be resolved in this proceeding is PG&E's application for rehearing. This proceeding is otherwise closed.
- **Additional Information:** [PG&E Application for Rehearing](#) (August 7, 2019); [D.19-06-027](#) (July 8, 2019); [Assigned Commissioner's Ruling](#) releasing Staff Proposal (April 5, 2019); [Scoping Memo](#)

[and Ruling](#) (March 29, 2019); [Order Instituting Rulemaking](#) (January 18, 2019); Docket No. [R.19-01-006](#). See also [SB 901](#), enacted September 21, 2018.

Glossary of Acronyms

AB	Assembly Bill
AET	Annual Electric True-up
ALJ	Administrative Law Judge
BioMAT	Bioenergy Market Adjusting Tariff
BTM	Behind the Meter
CAISO	California Independent System Operator
CAM	Cost Allocation Mechanism
CARB	California Air Resources Board
CEC	California Energy Commission
CPE	Central Procurement Entity
CPUC	California Public Utilities Commission
CPCN	Certificate of Public Convenience and Necessity
CTC	Competition Transition Charge
DA	Direct Access
DWR	California Department of Water Resources
ELCC	Effective Load Carrying Capacity
ERRA	Energy Resource and Recovery Account
EUS	Essential Usage Study
GRC	General Rate Case
IEPR	Integrated Energy Policy Report
IFOM	In Front of the Meter
IRP	Integrated Resource Plan
IOU	Investor-Owned Utility
ITC	Investment Tax Credit
LSE	Load-Serving Entity
MCC	Maximum Cumulative Capacity
OII	Order Instituting Investigation
OIR	Order Instituting Rulemaking
PABA	Portfolio Allocation Balancing Account
PD	Proposed Decision
PG&E	Pacific Gas & Electric
PFM	Petition for Modification
PCIA	Power Charge Indifference Adjustment

PSPS	Public Safety Power Shutoff
PUBA	PCIA Undercollection Balancing Account
QC	Qualifying Capacity
RA	Resource Adequacy
RDW	Rate Design Window
ReMAT	Renewable Market Adjusting Tariff
RPS	Renewables Portfolio Standard
SCE	Southern California Edison
SED	Safety and Enforcement Division (CPUC)
SDG&E	San Diego Gas & Electric
TCJA	Tax Cuts and Jobs Act of 2017
TOU	Time of Use
TURN	The Utility Reform Network
UOG	Utility-Owned Generation
WMP	Wildfire Mitigation Plan
WSD	Wildfire Safety Division (CPUC)

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 8

TO: Board of Directors
FROM: Mitch Sears, Interim General Manager, VCEA
SUBJECT: Customer Enrollment Update (Information)
DATE: November 12, 2020

RECOMMENDATION

Receive and review the attached Customer Enrollment update as of November 3, 2020.

Item 8 - Enrollment Update

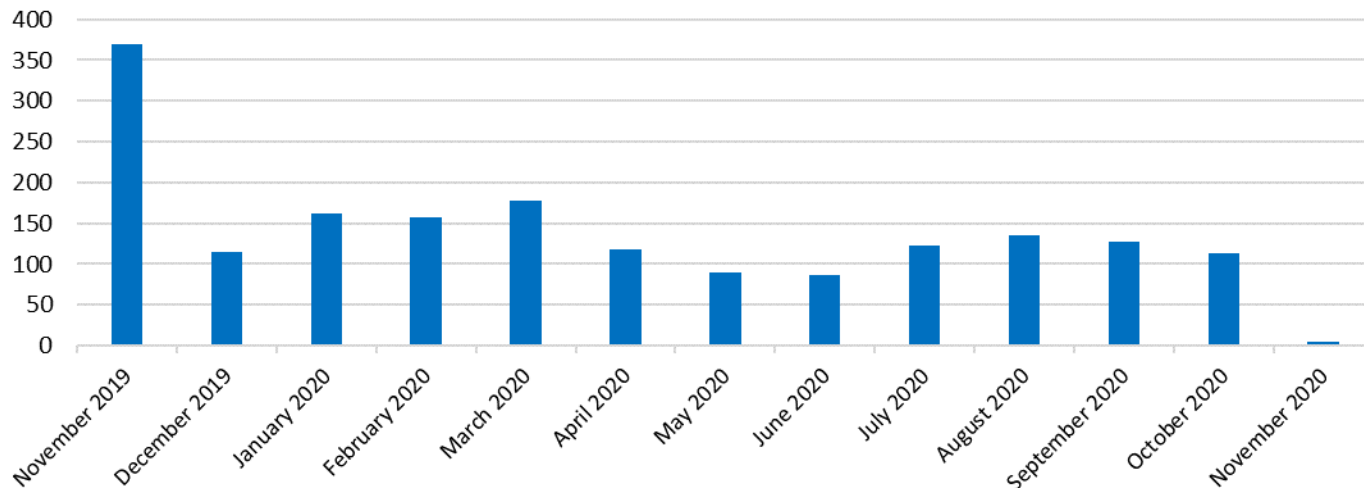
	Davis	Woodland	Yolo Co	Total	Residential	Commercial	Industrial	Ag	NEM	Non-NEM
VCEA customers	26,884	20,304	10,593	57,781	50,119	5,792	7	1,863	8,609	49,172
Eligible customers	28,201	23,166	12,104	63,471	55,003	6,330	7	2,131	9,288	54,183
Participation Rate	95%	88%	88%	91%	91%	92%	100%	87%	93%	91%

- There are currently 964 NEM customers (556 in November and 408 in December) not included in this table. They will enroll throughout the remainder of 2020.

% of Load Opted Out

Residential	Commercial	Industrial	Ag	Total
9%	8%	0%	12%	9%

Monthly Opt Outs

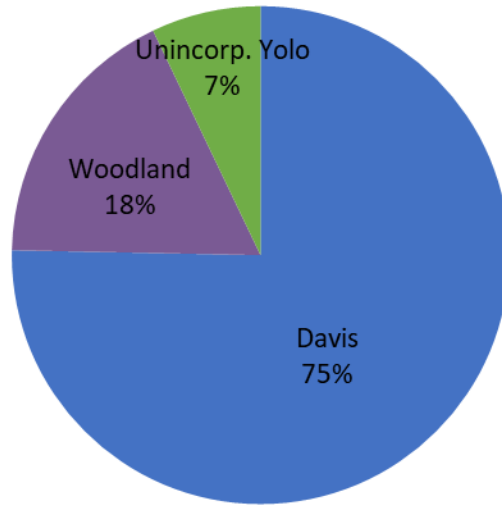


Status Date: 11/3/20

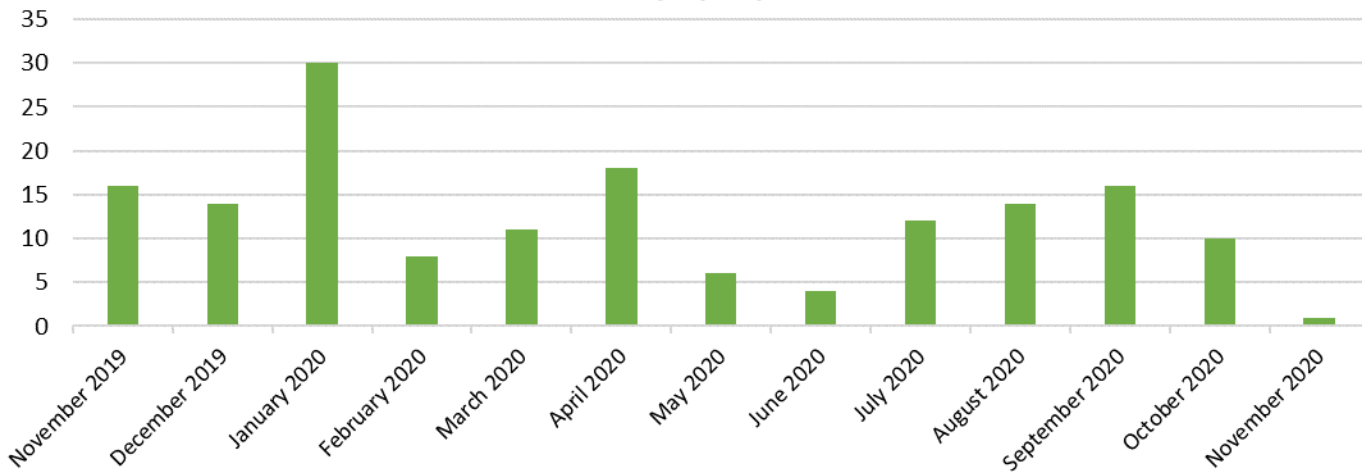


Item 8 - Enrollment Update

239 Opt Ups



Monthly Opt Ups



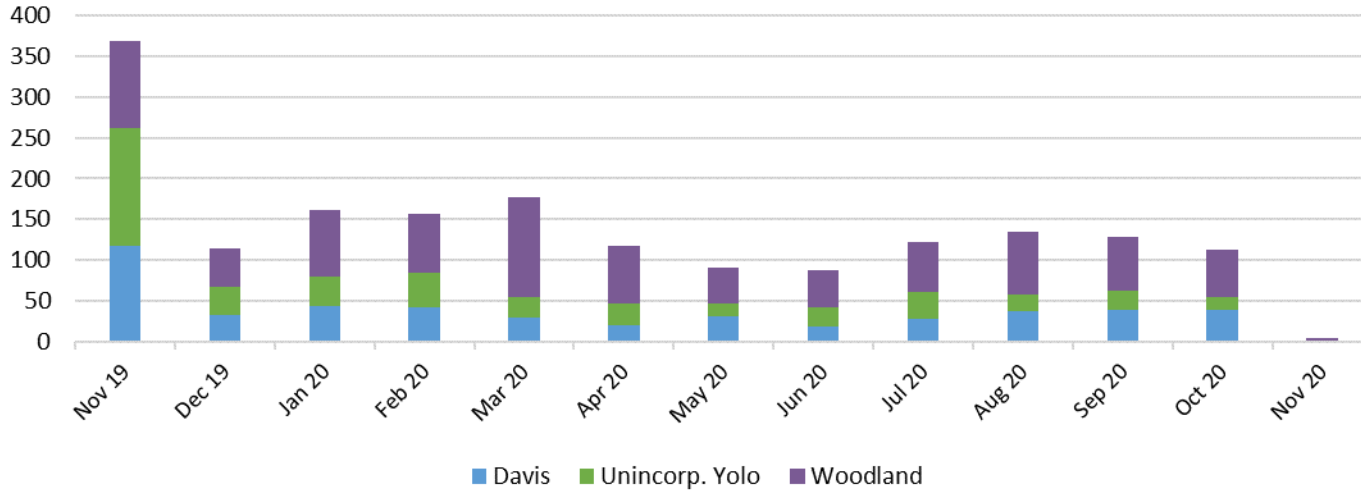
Status Date: 11/3/20



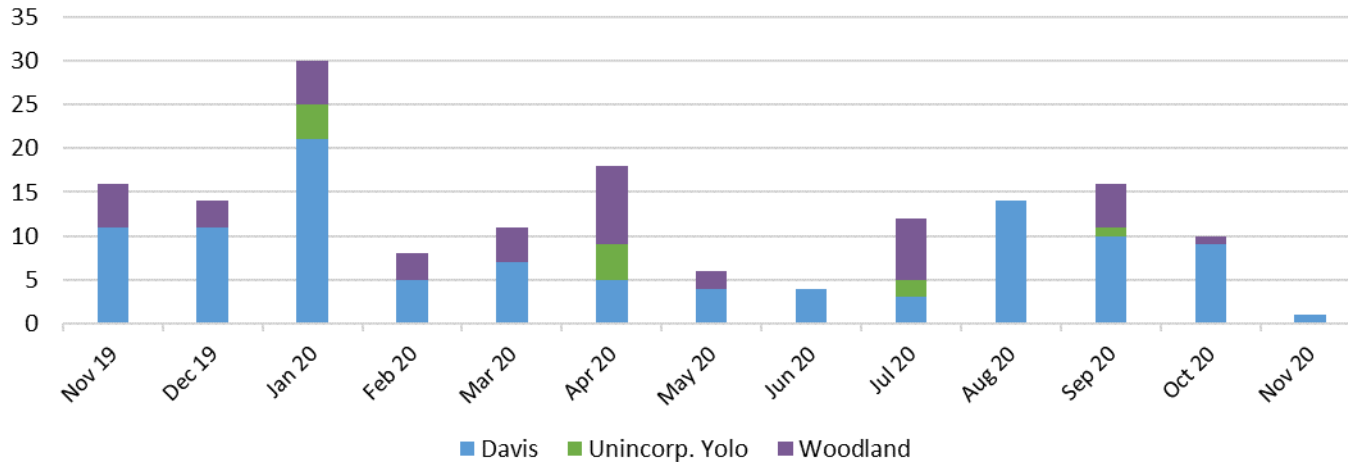
VALLEY
CLEAN ENERGY

Item 8 - Enrollment Update

Monthly Opt Outs



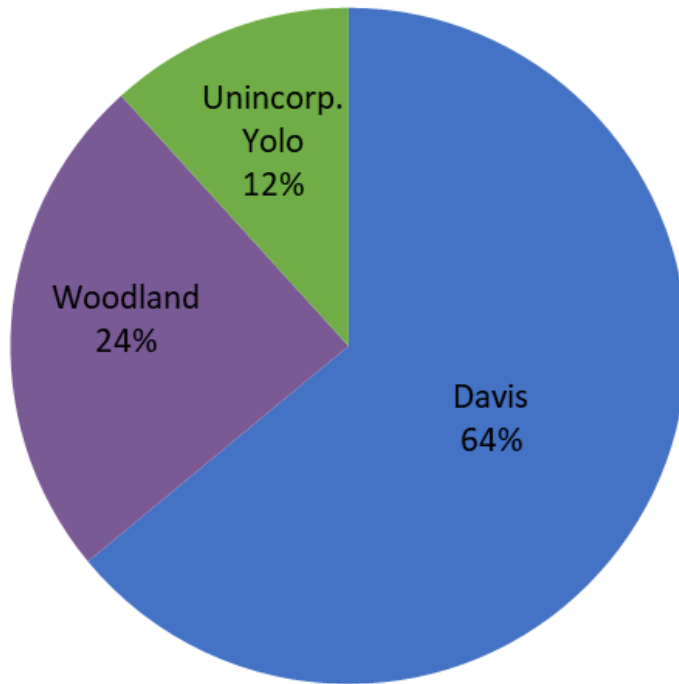
Monthly Opt Ups



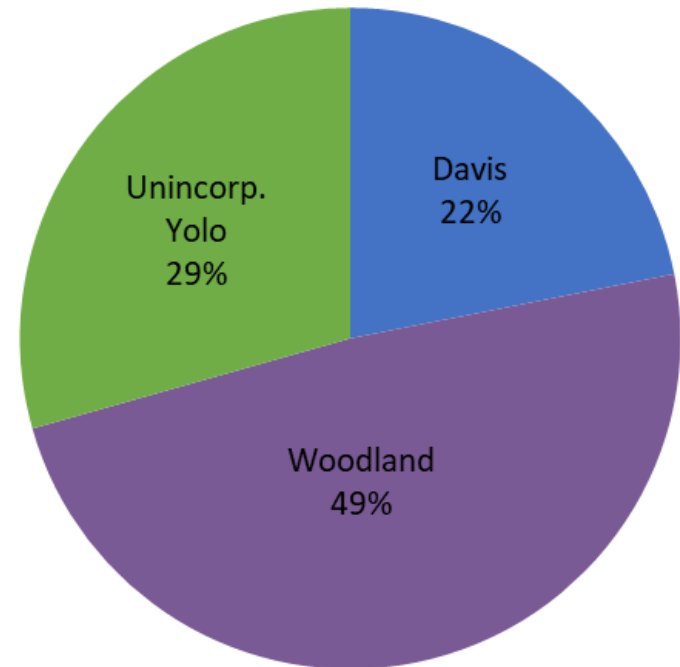
VALLEY
CLEAN ENERGY

Item 8 - Enrollment Update

375 Opt Ups



9028 Opt Outs



VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 9

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk / Administrative Analyst

SUBJECT: Community Advisory Committee October 22, 2020 Meeting Summary

DATE: November 12, 2020

This report summarizes the Community Advisory Committee’s meeting held via zoom on Thursday, October 22, 2020 at 4 p.m.

A. **2020 Year End Review – Committee Evaluation of Calendar Year Activities:** The CAC reviewed individual Task Group year end reports and discussed the accomplishments, challenges, and opportunities for what can be improved in the upcoming year. A summary of the year will be drafted and presented to the CAC at their next meeting with the goal of having a 2020 year-end report to the Board in December. At the November CAC meeting, members will discuss 2021 plans and recommendations from CAC members and Staff. In December, officers will be elected and task groups for 2021 will be determined.

B. **Adopted VCE Strategic Plan:** VCE staff Mitch Sears and George Vaughn provided an overview of the changes to the Strategic Plan adopted at the Board’s October meeting. Staff informed the CAC that two objectives and a new section on “Timing, Measurement, & Updates” have been added. The Board will ratify the changes at their November meeting. Moving forward, Staff will develop and share a detailed timeline and action list with the Board and CAC.

C. **Quarterly Power Procurement / Renewable Portfolio Standard update:** VCE Staff Gordon Samuel, along with SMUD staffer Bill Her, provided an overview of 2020 power procurement targets compared to the current load forecast. In addition, a snapshot of the year to date deliverables was provided highlighting the different renewable technologies procured. The CAC has requested similar updates to be provided quarterly.

D. **VCE Customer Dividend Program update:** Mr. Sears and Mr. Vaughn provided the background and highlights of the Dividend Program. Mr. Vaughn reviewed the Program’s guidelines, Board options, and factors to consider by the Board in determining the Fiscal Year (FY) 2020 Net Margin allocation. Staff will be providing detailed options to the Board at their November meeting and will seek a decision on the allocation.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 10

TO: Board of Directors

FROM: George Vaughn, Director of Finance and Internal Operations
Rebecca Boyles, Director of Marketing and Customer Care

SUBJECT: Approval of Amendment One (1) to Automate Mailing Services, Mailing House Vendor, to extend through June 30, 2022 and increase the agreement amount

DATE: November 12, 2020

RECOMMENDATION

Adopt a resolution authorizing the Interim General Manager, in consultation with VCE Legal Counsel, to execute Amendment One (1) to VCE's existing agreement with Automate Mailing Services (Automate) extending the termination date to June 30, 2022 and increasing the agreement amount.

BACKGROUND & DISCUSSION

VCE and other CCAs print and send various mailings to customers for both regulatory and general communication purposes (e.g. Enrollment notices). Since October 2018, VCE has contracted with Automate Mailing Services for these services. After requesting informal proposals from various mailing house vendors, in October 2018, the VCE Board authorized the Interim General Manager via Resolution 2018-027 to execute a two-year agreement with Automate for a not to exceed amount of \$100,000. The agreement is set to expire on December 7, 2020.

The Automate agreement provides for printing, mailing and processing services for VCE's notices, letters and other bulk mailings. These services are time sensitive in nature and mission critical to the organization. Automate has provided prompt service, competitive market rates for contracted services, and has met or exceeded contract provisions. Based on the competitive rates and performance, staff is recommending an extension of the services agreement with Automate.

The recommended amendment would extend the Automate agreement by 18 months and add \$40,000 to the original \$100,000 not to exceed amount for a total amount of \$140,000. Additionally, Exhibit A – Scope of Services, Exhibit C - Schedule of Services, Exhibit D – Budget, Payment, Rates, and the rates listed in Exhibit D will be updated to reflect these changes. All other provisions of the contract remain unchanged.

In the first 23 months of the contract (December, 2018 through October, 2020), Automate expenditures have totaled \$77,392, or \$3,365 per month. By increasing the contract to

\$140,000, there will be \$62,608 remaining to cover 20 months (November, 2020 through June, 2022), which will allow average spending of \$3,130 per month.

FISCAL IMPACT

The costs associated with providing mailing services are included in VCE’s current adopted FY2020/21 Budget. The proposed Automate agreement extension is consistent with the amount budgeted for these types of services in FY2020/21.

ATTACHMENTS

1. Resolution including the following exhibits:
 - a. Amendment One (1)
 - b. Amendment A – Scope of Services
 - c. Amendment C – Schedule of Services
 - d. Amended Exhibit D – Budget, Payment, Rates

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020 - ____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING AMENDMENT ONE (1) TO THE AUTOMATE MAILING SERVICES FOR PRINTING, MAILING AND PROCESSING SERVICES AND AUTHORIZING THE INTERIM GENERAL MANAGER TO EXECUTE AMENDMENT ONE

WHEREAS, on October 18, 2018 via Resolution 2018-027 between VCE and Automate Mailing Services (AMS) executed an agreement for printing, mailing and processing services for VCE's notices, letters and other bulk mailings, said agreement will expire on December 7, 2020; and

WHEREAS, AMS has met or exceeded contract provisions for these time sensitive and mission critical services; and

WHEREAS, both parties have agreed to extend the contract through June 30, 2022, increase the not to exceed amount by \$40,000.00 to the original \$100,000 not to exceed amount for a total of \$140,000, and update Exhibits A, C and D; and,

WHEREAS, the new not to exceed amount of \$140,000 through June 30, 2022 is within VCE's fiscal year budget for 2020/2021 and will be budgeted in fiscal year 2021/2022.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. The VCE Interim General Manager is hereby authorized on behalf of VCE to execute Amendment One (1) to the AMS Agreement for printing, mailing and processing services; which Amendment One (1) is attached hereto as Exhibit A; and,
2. Amendment No. One makes the following changes to the Agreement:
 - a. the termination date is extended to June 30, 2022;
 - b. the not to exceed amount is increased to \$140,000; and,
 - c. Exhibits A, C and D, are updated and replaced as set forth in the attached Amendment One (1) to AMS' Agreement.
3. The Interim General Manager is authorized to execute the agreement amendment substantially in the form attached hereto as Exhibit A on behalf of VCE, and, in consultation with legal counsel, is authorized to approve minor changes to the agreement so long as the term and price are not changed.

PASSED, APPROVED AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Don Saylor, VCE Chair

Alisa M. Lembke, VCE Board Secretary

EXHIBIT A

**AMENDMENT ONE (1) TO
AUTOMATE MAILING SERVICES AGREEMENT**

AMENDMENT NO. ONE (1)
TO THE AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
VALLEY CLEAN ENERGY ALLIANCE
AND
AUTOMATE MAILING SERVICE

1. Parties and Date.

This Amendment No. One (1) is made and entered into as of this ___ day of November 2020, amending the Consultant Services Agreement dated October 18, 2018 by and between Valley Clean Energy Alliance, a Joint Powers Agency, (“VCE”) and Automate Mailing Service (“AMS”). VCE and AMS are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

2.1 Automate Mailing Service. VCE and AMS have entered into an agreement entitled “Agreement for Consultant Services” dated October 18, 2018 and effective December 7, 2018 (“Agreement”) for the purpose of retaining AMS to provide the services described in the Agreement.

2.2 Amendment Purpose. VCE and AMS desire to amend the Agreement to extend the Agreement for an additional eighteen (18) months to revise the scope of services, and increase the not-to-exceed compensation amount to \$140,000.

2.3 Amendment Authority. This Amendment No. One (1) is authorized pursuant to Section 6.10 of the Agreement.

3. Terms.

3.1 Amendment. Section 1.4 of the Agreement is hereby amended in its entirety to read as follows:

1.4 Term The term of this Agreement, as amended, shall began on December 7, 2018 for a period of two years. The term of this agreement is extended for an additional eighteen (18) months and shall end on June 30, 2022, unless amended as provided in the Agreement, or when terminated as provided in Article 5.

3.2 Amendment. Section 4.1 of the Agreement is hereby amended in its entirety to read as follows:

4.1 Compensation This is a “time and materials” based agreement. Consultant shall receive compensation, including authorized reimbursements, for services rendered under this Agreement at the rates, in the amounts and at the times set forth in **Exhibit D**. Notwithstanding the provisions of Exhibit D the total compensation shall not exceed One Hundred Forty Thousand and no/100 dollars (\$140,000.00) without written approval of VCE. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3 Amendment. Exhibits A, C and D of the Agreement are hereby replaced in their entirety by the Exhibits A, C and D attached hereto, which are incorporated herein.

3.4 Continuing Effect of Agreement. Except as amended by this Amendment No. One (1), all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. One (1). From and after the date of this Amendment No. One (1), whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. One (1).

3.5 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. One (1).

3.6 Severability. If any portion of this Amendment No. One (1) is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

[Signatures on Next Page]

**SIGNATURE PAGE FOR AMENDMENT NO. ONE (1) TO THE AGREEMENT FOR
CONSULTANT SERVICES
BETWEEN VALLEY CLEAN ENERGY ALLIANCE
AND AUTOMATE MAILING SERVICE**

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. ONE (1) as of
the day of November 2020.

VALLEY CLEAN ENERGY ALLIANCE

AUTOMATE MAILING SERVICE

By: _____
Mitch Sears
Interim General Manager

By: _____
Its: _____
President

Printed Name: _____
Phillip Keely

APPROVED AS TO FORM:

By: _____
Harriet Steiner
VCE Attorney

EXHIBIT A

SCOPE OF SERVICES

Automate Mailing Services will perform the following:

Provide color and/or black/white press printing of postcards, letters, marketing materials and/or any other item as requested. Paper and/or card stock to be used shall be, whenever possible, recycled or post-consumer waste (PCW) material and/or a portion thereof. Setup data and setup production costs may be included in the printing of items. VCE and/or its Contractor(s) to provide artwork and text.

Provide print proofs for VCE approval, prior to the printing of any product.

Provide postage and services for the mailing of items either 1st or 3rd class. Automate shall provide postage options to VCE who shall approve the option, including the cost estimate based on the costs on Exhibit C. Services include data process, confirmation of addresses through the National Change of Address (NCOA) data base and deliver to Post Office.

EXHIBIT C

SCHEDULE OF SERVICES

All other printing and mailing services will be upon the request of VCE and/or its Contractor(s) with mutually agreed upon target printing and mailing dates.

EXHIBIT D

BUDGET, PAYMENT, RATES

BUDGET: \$140,000 total not to exceed for mailing and/or printing needs covering through June 30, 2022.

The following rates can be used as guidelines for costs for future mailings and/or printing needs. Please note that these rates are subject to change.

STANDARD PRINT COSTS

8.5X5.5" POSTCARDS 4/4 ON 100# VELVET COVER 10% PCW

QTY 5,000 - \$925

QTY 10,000 - \$1175

QTY 25,000 - \$1675

QTY 50,000 - \$2575

QTY 75,000 - \$3375

6 X11" POSTCARDS 4/4 ON 100# VELVET COVER 10% PCW

QTY 5,000 - \$1050

QTY 10,000 - \$1375

QTY 25,000 - \$1975

QTY 50,000 - \$3275

QTY 75,000 - \$4275

2 PMS COLOR #10 REGULAR ENVELOPES ON 24# WHITE WOVE

QTY 5,000 - \$500

QTY 10,000 - \$650

QTY 25,000 - \$950

QTY 50,000 - \$1500

QTY 75,000 - \$2000

FULL COLOR #10 REGULAR ENVELOPES ON 24# WHITE WOVE

QTY 5,000 - \$650

QTY 10,000 - \$1025

QTY 25,000 - \$2500

QTY 50,000 - \$4500

QTY 75,000 - \$6500

8.5X11 LETTERS 4/4 ON 60 OR 70 LB OFFSET

QTY 5,000 - \$350

QTY 10,000 - \$500

QTY 25,000 - \$1000

QTY 50,000 - \$1750

QTY 75,000 - \$2450

STANDARD MAILING COSTS:

MINIMUMS SET AT 1,000

SETUP PRODUCTION - \$25

SETUP DATA - \$25

NCOA - \$45

LETTER FOLDING - \$10/THOUSAND

VARIABLE LETTER FOLDING - \$15/THOUSAND

MACHINE INSERTING - \$32/THOUSAND

APPLYING LIVE STAMPS - \$10/THOUSAND

ADDRESS AND DELIVER LESS THAN 5000 PIECES - \$35/THOUSAND

ADDRESS AND DELIVER MORE THAN 5000 PIECES - \$25/THOUSAND

STANDARD POSTAGE RATES:

FIRST CLASS LETTERS - \$.39-\$.44 PER PIECE (IF WEIGHS 1 OZ. OR LESS)

THIRD CLASS LETTERS - \$.23-\$.30 PER PIECE

FIRST CLASS FLATS - \$.43-\$.72 PER PIECE (IF WEIGHS 1 OZ. OR LESS)

THIRD CLASS FLATS - \$.36-\$.66 PER PIECE

LETTER DIMENSIONS	MINIMUM	MAXIMUM
HEIGHT	3 ½ INCHES	6 1/8 INCHES
LENGTH	5 INCHES	11 ½ INCHES

FLAT DIMENSIONS	MINIMUM	MAXIMUM
HEIGHT	6 1/8 INCHES	12 INCHES
LENGTH	11 ½ INCHES	15 INCHES

NOTES:

- **PRESORTED ("BULK") 1ST CLASS MAILINGS NEED MINIMUM OF 500 RECORDS/ADDRESSES**
- **PRESORTED 3RD CLASS NEEDS MINIMUM OF 250 RECORDS/ADDRESSES**

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 11

TO: Board of Directors

FROM: George Vaughn, Director of Finance and Internal Operations
Rebecca Boyles, Director of Marketing and Customer Care

SUBJECT: Approval of Amendment One (1) to Green Ideals, Marketing Consultant Agreement, to extend one year

DATE: November 12, 2020

RECOMMENDATION

Adopt a resolution authorizing the Interim General Manager, in consultation with VCE Legal Counsel, to execute an amendment extending VCE's existing contract one year with Green Ideals, for communications and outreach vendor consultant services.

BACKGROUND & DISCUSSION

After issuing a request for proposals for community outreach and marketing services in November 2018, the VCE Board authorized the Interim General Manager to execute a two-year agreement with Green Ideals for communications and outreach services via Resolution 2018-031. The agreement is set to expire on November 21, 2020 and the not to exceed amount is \$425,000. The Resolution provided a no-cost extension of up to one (1) year at agreed prices with all other terms and conditions remaining the same.

Through the September 30, 2020 financial close, approximately \$119,000 remains in the original contract not-to-exceed amount of \$425,000. This remaining amount will enable spending of approximately \$8,500 per month for the duration of the contract extension and allows the approval of the recommended one-year extension, at recent monthly expenditure rates, to be covered by the original not-to-exceed amount. Average spending on this contract over the past six months is \$8,522 per month, although average spending for the first 23 months of the contract in total has been \$13,292 per month. Staff will attempt to maintain the remaining budget of \$8,500 per month, but in the event that contract funds run out prior to the contract expiration, staff may request additional funding as necessary.

The Green Ideals agreement provides the following scope of services: 1) program branding, design, identity; 2) community outreach / stakeholder engagement; 3) develop and manage marketing campaigns and maintain a social media presence; and, 4) develop communication outreach plan.

Green Ideals has provided valuable support to staff, including development and implementation of program branding through the development of marketing materials, assisting with community outreach in developing a marketing and communications plan, developing press releases, op eds, advertisements, correspondence, and electric vehicle and energy efficiency materials, launching and updating VCE's website, and, assisting with numerous other projects. These marketing and community outreach services are considered mission critical to the organization. Green Ideals has provided prompt service, competitive market rates for contracted services, and has met or exceeded contract provisions. Based on the competitive rates and performance, staff is recommending an extension of the services agreement with Green Ideals.

The recommended amendment will extend the Green Ideals contract one year to November 21, 2021 and update Exhibit D – Budget, Payment, Rates. All other provisions of the contract remain unchanged, including the not to exceed amount.

FISCAL IMPACT

Costs for the Green Ideals contract is a time and materials-based contract not to exceed \$425,000 for two years, with the option of a third-year extension at no additional cost. Through September 30, 2020, \$306,000 has been spent on the contract, leaving \$119,000 available in the contract. VCE has funds in its fiscal year 2020/2021 budget available to cover the current fiscal year expenditures, and any remaining and necessary expenses will be budgeted in fiscal year 2021/2022.

ATTACHMENTS

1. Resolution including the following exhibits:
 - a. Amendment One (1)
 - b. Amended Exhibit D – Budget, Payment, Rates

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020 - ____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING AMENDMENT ONE (1) TO THE GREEN IDEALS AGREEMENT FOR CONSULTANT SERVICES FOR COMMUNICATIONS AND OUTREACH VENDOR AND AUTHORIZING THE INTERIM GENERAL MANAGER TO SIGN

WHEREAS, on November 15, 2018 via Resolution 2018-031 an agreement was entered into between VCE and Green Ideals (GI) for communications and outreach vendor consultant services, said agreement will expire on November 21, 2020; and

WHEREAS, within Resolution 2018-031, it provides the option for a no-cost extension of up to one (1) year by mutual agreement at agreed prices with all other terms and conditions remaining the same; and

WHEREAS, the relationship between VCE and GI has been successful and both parties have agreed to execute the option for a no-cost extension, extending the contract to November 21, 2021; and,

WHEREAS, of the not to exceed amount of \$425,000, approximately \$119,000 remains available in the contract, which is available to cover the current fiscal year 2020/2021 expenditures, and any remaining and necessary expenses will be budgeted in fiscal year 2021/2022.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. authorizes the VCE Interim General Manager to execute on behalf of VCE Amendment One (1) to the GI Agreement for communication and outreach services taking the no-cost extension per authority provided in Resolution 2018-031; and,
2. updating Exhibit D, as set forth in the attached Exhibit D – Amendment One (1) to GI’s Agreement; and,
3. The Interim General Manager is authorized to execute the agreement amendment substantially in the form attached hereto as Exhibit A on behalf of VCE, and, in consultation with legal counsel, is authorized to approve minor changes to the agreement so long as the term and price are not changed.

PASSED, APPROVED AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____, 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Don Saylor, VCE Chair

Alisa M. Lembke, VCE Board Secretary

EXHIBIT A

**AMENDMENT ONE (1) TO
GREEN IDEALS AGREEMENT FOR CONSULTANT SERVICES**

AMENDMENT NO. ONE (1)
TO THE AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
VALLEY CLEAN ENERGY ALLIANCE
AND
GREEN IDEALS

1. Parties and Date.

This Amendment No. One (1) to the Consultant Services Agreement is made and entered into as of this day of November 2020, by and between Valley Clean Energy Alliance, a Joint Powers Agency, existing under the laws of the State of California with its principal place of business at 604 2nd Street, Davis, California 95616 (“VCE”) and Green Ideals, with its principal place of business at 47 Creek Road, Fairfax, California 94930 (“GI”). VCE and GI are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

2.1 Green Ideals. VCE and GI have entered into an agreement entitled “Agreement for Consultant Services” effective November 21, 2018 (“Agreement”) as VCE Agreement No. 2018-01 for the purpose of retaining GI to provide the services described in the Agreement.

2.2 Amendment Purpose. VCE and GI desire to amend the Agreement to extend the Agreement for an additional year and to update Exhibit D.

2.3 Amendment Authority. This Amendment No. One (1) is authorized pursuant to Section 6.10 of the Agreement.

3. Terms.

3.1 Amendment. Section 1.4 of the Agreement is hereby amended in its entirety to read as follows:

1.4 Term The term of this Agreement shall be extended from an expiration date of November 21, 2020 to a new expiration date of November 21, 2021, unless amended as provided in this Agreement, or when, or when terminated as provided in Article 5.

3.2 Amendment. Exhibit D of the Agreement is hereby replaced in its entirety by Exhibit D attached hereto, which is incorporated herein.

3.3 Continuing Effect of Agreement. Except as amended by this Amendment No. One (1), all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. One (1). From and after the date of this Amendment No. One (1), whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. One (1).

3.4 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. One (1).

3.5 Severability. If any portion of this Amendment No. One (1) is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

[Signatures on Next Page]

**SIGNATURE PAGE FOR AMENDMENT NO. ONE (1) TO THE AGREEMENT FOR
CONSULTANT SERVICES
BETWEEN VALLEY CLEAN ENERGY ALLIANCE
AND GREEN IDEALS**

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. ONE (1) as of
the day of November 2020.

VALLEY CLEAN ENERGY ALLIANCE

GREEN IDEALS

By: _____
Mitch Sears
Interim General Manager

By: _____
Its: Managing Director/Principal

Printed Name: Susan Bierzychudek

APPROVED AS TO FORM:

By: _____
Harriet Steiner
VCE Attorney

EXHIBIT D

BUDGET, PAYMENT, RATES

Budget: \$425,000 for marketing and outreach services covering through November 21, 2021.

Payment: VCEA will pay uncontested invoices within 30 days of receipt.

Billing Rates

Green Ideals

Susan Bierzychudek	\$175/hour	Project Director/Principal
Julie Contreras	\$150/hour	Design Director

Media Solutions

Cynthia Metler	\$150/hour	VP
Kelly Wheeler	\$125/hour	Senior Media Buyer
Alisha Harris	\$120/hour	Account Executive
David Alvarado	\$100/hour	Media Buyer/Coordinator

Digital Marketing Labs

Kyle Cassano	\$160/hour	President/CEO
Todd Wilkinson	\$140/hour	Project Manager

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 12

TO: Board of Directors

FROM: Gordon Samuel, Assistant General Manager and Director of Power Services

SUBJECT: Accept and attest to the veracity of VCE’s Power Content Label for the Standard Green and Ultra Green products for 2019

DATE: November 12, 2020

RECOMMENDATION

Attest to the veracity of the information presented in Valley Clean Energy’s 2019 Power Source Disclosure Annual Reports and Power Content Label for the Standard Green and Ultra Green products.

BACKGROUND

California Public Utilities Code requires all retail sellers of electric energy, including Valley Clean Energy (VCE), to disclose “accurate, reliable, and simple-to-understand information on the sources of energy” that are delivered to their respective customers.¹ Applicable regulations direct retail sellers to provide such communications no later than October 1st of each year. Due to a delay in the release of the Power Content Label template, the California Energy Commission (CEC) has extended this year’s deadline from October 1, 2020 to December 31, 2020. The format for requisite communications is highly prescriptive, offering little flexibility to retail sellers when presenting such information to customers. This format has been termed the “Power Content Label” by the CEC.

Information presented in the Power Content Label includes the appropriate share of total energy supply based on resource type, including both renewable and conventional fuel sources. In the event that a retail seller meets a certain percentage of its supply obligation from unspecified resources, the report must identify such purchases as “unspecified sources of power.” Unspecified sources of power refers to electricity that cannot be sourced back to a specific generator, such as energy purchased through open market transactions.

During the 2019 calendar year, VCE delivered a substantial portion of its electric energy supply from various renewable energy sources, including eligible hydroelectric, solar, and wind. For VCE Standard Green customers, 45.3% of the energy delivered was from renewable energy resources. For Ultra Green customers, 100% of the energy delivered was generated from

¹ California Public Utilities Code Section 398.1(b).

renewable energy resources. A copy of VCE's Power Content Label listing the energy resources used during 2019 is attached.

Consistent with applicable regulations and CEC guidance, VCE will complete required customer communications in accordance with the December 31, 2020 deadline. All customers currently enrolled in the VCE program will receive the Power Content Label via mail.

To fulfill its Power Content Label reporting obligation, VCE may provide the CEC with the Board's attestation regarding the veracity of the information presented in VCE's 2019 Power Source Disclosure Annual Reports and Power Content Label for the Standard Green and Ultra Green products. Staff recommends VCE self-certify both the Standard Green and Ultra Green products in lieu of submitting them to a third-party Certified Public Accountant for a formal audit. VCE's technical consultants (SMUD) prepared the Power Source Disclosure annual reports and Power Content Label, which were subsequently reviewed by another VCE consultant (EQ Research). EQ Research's review, as detailed in the attached report, verified that the information contained in the annual reports and Power Content Label is accurate.

Based on the foregoing, staff requests that the Board accept this determination and attest to the veracity of the information included in VCE's Power Source Disclosure annual reports and Power Content Label for the Standard Green and Ultra Green products for the 2019 calendar year.

ATTACHMENTS

1. 2019 Annual Power Source Disclosure Report for the Standard Green Product
2. 2019 Annual Power Source Disclosure Report for the Ultra Green Product
3. 2019 Power Content Label
4. EQ Research Report re 2019 Power Source Disclosure Annual Reports and Power Content Label



ANNUAL REPORT TO THE CALIFORNIA ENERGY COMMISSION: Power Source Disclosure
For the Year Ending December 31, 2019

Retail suppliers are required to use the posted template and are not allowed to make edits to this format. Please complete all requested information.

GENERAL INSTRUCTIONS

RETAIL SUPPLIER NAME
Valley Clean Energy Alliance

ELECTRICITY PORTFOLIO NAME
Standard Green

CONTACT INFORMATION

Name	Gordon Samuel
-------------	---------------

Title	Assistant General Manager & Director of Power Services
--------------	--

Mailing Address	604 2nd Street
------------------------	----------------

City, State, Zip	Davis, CA 95616
-------------------------	-----------------

Phone	1-855-699-8232
--------------	----------------

E-mail	info@valleycleanenergy.org
---------------	--

Website URL for PCL Posting	https://valleycleanenergy.org/power-sources/
------------------------------------	---

Submit the Annual Report and signed Attestation in PDF format with the Excel version of the Annual Report to PSDprogram@energy.ca.gov. Remember to complete the Retail Supplier Name, Electricity Portfolio Name, and contact information above, and submit separate reports and attestations for each additional portfolio if multiple were offered in the previous year.

NOTE: Information submitted in this report is not automatically held confidential. If your company wishes the information submitted to be considered confidential an authorized representative must submit an application for confidential designation (CEC-13), which can be found on the California Energy Commissions's website at <https://www.energy.ca.gov/about/divisions-and-offices/chief-counsels-office>.

If you have questions, contact Power Source Disclosure (PSD) staff at PSDprogram@energy.ca.gov or (916) 654-3954.



INTRODUCTION

Retail suppliers are required to submit separate Annual Reports for each electricity portfolio offered to California retail consumers in the previous calendar year. Enter the Retail Supplier Name and Electricity Portfolio Name at the top of Schedule 1, Schedule 2, Schedule 3, and the Attestation.

A complete Annual Report includes the following tabs:

PSD Intro
Instructions
Schedule 1 - Procurements and Retail Sales
Schedule 2 - Retired Unbundled Renewable Energy Credits (RECs)
Schedule 3 - Annual Power Content Label Data
Asset-Controlling Supplier (ACS) Procurement Calculator
PSD Attestation

INSTRUCTIONS

Schedule 1: Procurements and Retail Sales

Retail suppliers of electricity must complete this schedule by entering information about all power procurements and generation that served the identified electricity portfolio covered in this filing in the prior year. The schedule is divided into sections: directly delivered renewables, firm-and-shaped imports, specified non-renewables, and procurements from ACSs. Insert additional rows as needed to report all procurements or generation serving the subject product. Provide the annual retail sales for the subject product in the appropriate space. At the bottom of Schedule 1, provide the retail suppliers' other electricity end-uses that are not retail sales, such as transmission and distribution losses.

Any retail supplier that offered multiple electricity portfolios in the prior year must submit separate Annual Reports for each portfolio offered.

Specified Purchases: A Specified Purchase refers to a transaction in which electricity is traceable to specific generating facilities by any auditable contract trail or equivalent, such as a tradable commodity system, that provides commercial verification that the electricity claimed has been sold once and only once to retail consumers. For specified purchases, include the following information for each line item:

Facility Name - Provide the name used to identify the facility.

Fuel Type - Provide the resource type (solar, natural gas, etc.) that this facility uses to generate electricity.

Location - Provide the state or province in which the facility is located.

Identification Numbers - Provide all applicable identification numbers from the Western Renewable Energy Generation Information System (WREGIS), the Energy Information Agency (EIA), and the California Renewables Portfolio Standard (RPS).

Gross Megawatt Hours Procured - Provide the quantity of electricity procured in MWh from the generating facility.

Megawatt Hours Resold - Provide the quantity of electricity resold at wholesale.

Net Megawatt Hours Procured - The Schedule automatically calculates the quantity of electricity procured minus resold electricity.

Unspecified Power: Unspecified Power refers to electricity that is not traceable to specific generation sources by any auditable contract trail or equivalent, or to power purchases from a transaction that expressly transferred energy only and not the RECs associated from a facility. Do not enter procurements of unspecified power. The schedule will calculate unspecified power procurements automatically.

Schedule 2: Retired Unbundled RECs

Complete this schedule by entering information about unbundled REC retirements in the previous calendar year. Unbundled RECs will be automatically displayed on Schedule 3 as a percentage of retail sales.

Schedule 3: Annual Power Content Label Data

This schedule is provided as an automated worksheet that uses the information from Schedule 1 to calculate the power content, or resource mix, for each electricity portfolio. The percentages calculated on this worksheet should be used for your Power Content Label.



ACS Resource Mix Calculator

Retail suppliers may report specified purchases from ACS system power if the ACS provided its fuel mix of its specified system mix to the Energy Commission. Use the calculator to determine the resource-specific procurement quantities, and transfer them to Schedule 1.

Attestation

This template provides the attestation that must be submitted with the Annual Report to the Energy Commission, stating that the information contained in the applicable schedules is correct and that the power has been sold once and only once to retail consumers. This attestation must be included in the package that is transmitted to the Energy Commission. Please provide the complete Annual Report in Excel format and the complete Annual Report with signed attestation in PDF format as well.



ANNUAL REPORT TO THE CALIFORNIA ENERGY COMMISSION: Power Source Disclosure
SCHEDULE 1: PROCUREMENTS AND RETAIL SALES
For the Year Ending December 31, 2019
Valley Clean Energy Alliance
Standard Green

Instructions: Enter information about power procurements underlying this electricity portfolio for which your company is filing the Annual Report. Insert additional rows as needed. All fields in white should be filled out. Fields in grey auto-populate as needed and should not be filled out. For firm-and-shaped imports, provide the EIA ID of the substitute power, not the generator ID of the RECs. For EIA IDs for unspecified power or specified system mixes from asset-controlling suppliers, enter "unspecified", "BPA," "Powerex,", or "Tacoma" as applicable. For specified procurements of ACS power, use the ACS Procurement Calculator to calculate the resource breakdown comprising the ACS system mix. Procurements of unspecified power must not be entered as line items below; unspecified power will be calculated automatically in cell L9. Unbundled RECs must not be entered on Schedule 1 ; these products must be entered on Schedule 2. At the bottom portion of the schedule, provide the other electricity end-uses that are not retail sales including, but not limited to transmission and distribution losses or municipal street lighting. Amounts should be in megawatt-hours.

Retail Sales (MWh)	641,646
Net Specified Procurement (MWh)	491,514
Unspecified Power (MWh)	150,132
Procurement to be adjusted	-
Net Natural Gas	-
Net Coal & Other Fossil Fuels	-
Net Nuclear, Large Hydro & Renewables	491,514

DIRECTLY DELIVERED RENEWABLES

Facility Name	Fuel Type	State or Province	WREGIS ID	RPS ID	N/A	EIA ID	Gross MWh		Adjusted Net MWh		N/A
							Procured	MWh Resold	Procured	Procured	
Indian Valley Hydro - Indian Valley Hydro	Eligible hydro	CA	W607	60161A		50129	7,944		7,944	7,944	
American Falls Solar II, LLC - American Falls Solar	Solar	ID	W5375	63451A		60012	1,709		1,709	1,709	
American Falls Solar, LLC - American Falls Solar	Solar	ID	W5376	63450A		60011	789		789	789	
Campbell Hill - Campbell Hill	Wind	WY	W1383	61017A		57090	12,389		12,389	12,389	
Elkhorn Valley Wind Farm - Elkhorn Valley Wind Farm	Wind	OR	W186	61034A		56623	14,496		14,496	14,496	
Grand View 2 West - Grand View 2 West	Solar	ID	W5070	61595A		60068	18,393		18,393	18,393	
Grand View 5 East - Grand View 5 East	Solar	ID	W5069	61595A		60068	6,359		6,359	6,359	
ID Solar 1 - ID Solar 1, LLC	Solar	ID	W5076	63560A		60445	16,492		16,492	16,492	
Murphy Flat - Murphy Flat Power, LLC	Solar	ID	W5395	63449A		60009	1,044		1,044	1,044	
Neal Hot Springs Unit #1 - Neal Hot Springs Geothermal	Geothermal	OR	W3155	62427A		58022	4,044		4,044	4,044	
Orchard Ranch Solar, LLC - Orchard Ranch Solar	Solar	ID	W5373	63448A		60010	1,265		1,265	1,265	
Seven Mile Hill II - Seven Mile Hill II	Wind	WY	W976	60808A		56843	273		273	273	
Simcoe Solar, LLC - Simcoe Solar, LLC	Solar	ID	W5372	63447A		60748	1,314		1,314	1,314	
Spring Canyon - Spring Canyon	Wind	CO	W896	60775A		56320	1,161		1,161	1,161	
Top of the World - Top of the World	Wind	WY	W1749	61199A		57327	21,288		21,288	21,288	
North Sky River - North Sky River - Phase I	Wind	CA	W3206	61385A		58154	31,652		31,652	31,652	
Topaz Solar Farms LLC - Topaz 10-16	Solar	CA	W3226	61698A		57695	27,519		27,519	27,519	
Biglow Canyon Wind Farm - Biglow Canyon 3	Wind	OR	W1588	63056A		56485	4,327		4,327	4,327	
Biglow Canyon Wind Farm - Biglow Phase 2	Wind	OR	W1268	63055A		56485	998		998	998	
Centinela Solar Energy - CSE - Block 1F	Solar	CA	W3961	60837A		58430	8,541		8,541	8,541	
Centinela Solar Energy - CSE - Block 1G	Solar	CA	W3964	60837A		58430	121		121	121	
Centinela Solar Energy - CSE - Block 1H	Solar	CA	W4011	60837A		58430	14,738		14,738	14,738	



**ANNUAL REPORT TO THE CALIFORNIA ENERGY COMMISSION: Power Source
 SCHEDULE 3: ANNUAL POWER CONTENT LABEL DATA
 for the year ending December 31, 2019
 Valley Clean Energy Alliance
 Standard Green**

Instructions: No data input is needed on this schedule. Retail suppliers should use these auto-populated calculations to fill out their Power Content Labels.

	Adjusted Net Procured (MWh)	Percent of Total Retail Sales
Renewable Procurements	290,853	45.3%
Biomass & Biowaste	-	0.0%
Geothermal	4,044	0.6%
Eligible Hydroelectric	7,944	1.2%
Solar	133,548	20.8%
Wind	145,317	22.6%
Coal	-	0.0%
Large Hydroelectric	200,661	31.3%
Natural gas	-	0.0%
Nuclear	-	0.0%
Other	-	0.0%
Unspecified Power	150,132	23.4%
Total	641,646	100.0%

Total Retail Sales (MWh)	641,646
---------------------------------	----------------

Percentage of Retail Sales Covered by Retired Unbundled RECs	0.0%
---	-------------



ASSET CONTROLLING SUPPLIER RESOURCE MIX CALCULATOR

Instructions: Enter total net specified procurement of ACS system resources into cell A8, A23, or A38. In Column E, the calculator will determine quantities of resource-specific net procurement for entry on Schedule 1.

Powerex				
Net MWH Procured	N/A	Resource Type	Resource Mix Factors	Resource-Specific Procurements from ACS
		Biomass & biowaste		-
		Geothermal		-
		Eligible hydroelectric		-
		Solar		-
		Wind		-
		Coal		-
		Large hydroelectric	0.915	-
		Natural gas	0.013	-
		Nuclear	0.006	-
		Other	0.032	-
		Unspecified Power	0.034	-

Bonneville Power Administration				
Net MWH Procured	N/A	Resource Type	Resource Mix Factors	Resource-Specific Procurements from ACS
		Biomass & biowaste		-
		Geothermal		-
		Eligible hydroelectric		-
		Solar		-
		Wind		-
		Coal		-
		Large hydroelectric	0.85	-
		Natural gas		-
		Nuclear	0.11	-
		Other		-
		Unspecified Power	0.04	-

Tacoma Power				
Net MWH Procured	N/A	Resource Type	Resource Mix Factors	Resource-Specific Procurements from ACS
		Biomass & biowaste		-
		Geothermal		-
		Eligible hydroelectric		-
		Solar		-
		Wind		-
		Coal		-
		Large hydroelectric	0.896	-
		Natural gas		-
		Nuclear	0.064	-
		Other		-
		Unspecified Power	0.04	-



**ANNUAL REPORT TO THE CALIFORNIA ENERGY COMMISSION: Power Source Disclosure
ATTESTATION FORM
for the year ending December 31, 2019
Valley Clean Energy Alliance
Standard Green**

I, Gordon Samuel, Assistant General Manager & Director of Power Services, declare under penalty of perjury, that the statements contained in this report including Schedules 1, 2, and 3 are true and correct and that I, as an authorized agent of Valley Clean Energy Alliance, have authority to submit this report on the company's behalf. I further declare that the megawatt-hours claimed as specified purchases as shown in these Schedules were, to the best of my knowledge, sold once and only once to retail customers.

Name: Gordon Samuel

Representing (Retail Supplier): Valley Clean Energy Alliance

Signature: _____

A handwritten signature in black ink, appearing to read "Gordon Samuel", written over a horizontal line.

Dated: July 16, 2020

Executed at: Davis, California



ANNUAL REPORT TO THE CALIFORNIA ENERGY COMMISSION: Power Source Disclosure
For the Year Ending December 31, 2019

Retail suppliers are required to use the posted template and are not allowed to make edits to this format. Please complete all requested information.

GENERAL INSTRUCTIONS

RETAIL SUPPLIER NAME
Valley Clean Energy Alliance

ELECTRICITY PORTFOLIO NAME
UltraGreen

CONTACT INFORMATION

Name	Gordon Samuel
-------------	---------------

Title	Assistant General Manager & Director of Power Services
--------------	---

Mailing Address	604 2nd Street
------------------------	----------------

City, State, Zip	Davis, CA 95616
-------------------------	-----------------

Phone	1-855-699-8232
--------------	----------------

E-mail	info@valleycleanenergy.org
---------------	--

Website URL for PCL Posting	https://valleycleanenergy.org/power-sources/
------------------------------------	---

Submit the Annual Report and signed Attestation in PDF format with the Excel version of the Annual Report to PSDprogram@energy.ca.gov. Remember to complete the Retail Supplier Name, Electricity Portfolio Name, and contact information above, and submit separate reports and attestations for each additional portfolio if multiple were offered in the previous year.

NOTE: Information submitted in this report is not automatically held confidential. If your company wishes the information submitted to be considered confidential an authorized representative must submit an application for confidential designation (CEC-13), which can be found on the California Energy Commissions's website at <https://www.energy.ca.gov/about/divisions-and-offices/chief-counsels-office>.

If you have questions, contact Power Source Disclosure (PSD) staff at PSDprogram@energy.ca.gov or (916) 654-3954.



INTRODUCTION

Retail suppliers are required to submit separate Annual Reports for each electricity portfolio offered to California retail consumers in the previous calendar year. Enter the Retail Supplier Name and Electricity Portfolio Name at the top of Schedule 1, Schedule 2, Schedule 3, and the Attestation.

A complete Annual Report includes the following tabs:

PSD Intro
Instructions
Schedule 1 - Procurements and Retail Sales
Schedule 2 - Retired Unbundled Renewable Energy Credits (RECs)
Schedule 3 - Annual Power Content Label Data
Asset-Controlling Supplier (ACS) Procurement Calculator
PSD Attestation

INSTRUCTIONS

Schedule 1: Procurements and Retail Sales

Retail suppliers of electricity must complete this schedule by entering information about all power procurements and generation that served the identified electricity portfolio covered in this filing in the prior year. The schedule is divided into sections: directly delivered renewables, firm-and-shaped imports, specified non-renewables, and procurements from ACSs. Insert additional rows as needed to report all procurements or generation serving the subject product. Provide the annual retail sales for the subject product in the appropriate space. At the bottom of Schedule 1, provide the retail suppliers' other electricity end-uses that are not retail sales, such as transmission and distribution losses.

Any retail supplier that offered multiple electricity portfolios in the prior year must submit separate Annual Reports for each portfolio offered.

Specified Purchases: A Specified Purchase refers to a transaction in which electricity is traceable to specific generating facilities by any auditable contract trail or equivalent, such as a tradable commodity system, that provides commercial verification that the electricity claimed has been sold once and only once to retail consumers. For specified purchases, include the following information for each line item:

Facility Name - Provide the name used to identify the facility.

Fuel Type - Provide the resource type (solar, natural gas, etc.) that this facility uses to generate electricity.

Location - Provide the state or province in which the facility is located.

Identification Numbers - Provide all applicable identification numbers from the Western Renewable Energy Generation Information System (WREGIS), the Energy Information Agency (EIA), and the California Renewables Portfolio Standard (RPS).

Gross Megawatt Hours Procured - Provide the quantity of electricity procured in MWh from the generating facility.

Megawatt Hours Resold - Provide the quantity of electricity resold at wholesale.

Net Megawatt Hours Procured - The Schedule automatically calculates the quantity of electricity procured minus resold electricity.

Unspecified Power: Unspecified Power refers to electricity that is not traceable to specific generation sources by any auditable contract trail or equivalent, or to power purchases from a transaction that expressly transferred energy only and not the RECs associated from a facility. Do not enter procurements of unspecified power. The schedule will calculate unspecified power procurements automatically.

Schedule 2: Retired Unbundled RECs

Complete this schedule by entering information about unbundled REC retirements in the previous calendar year.

Unbundled RECs will be automatically displayed on Schedule 3 as a percentage of retail sales.

Schedule 3: Annual Power Content Label Data

This schedule is provided as an automated worksheet that uses the information from Schedule 1 to calculate the power content, or resource mix, for each electricity portfolio. The percentages calculated on this worksheet should be used for your Power Content Label.



ACS Resource Mix Calculator

Retail suppliers may report specified purchases from ACS system power if the ACS provided its fuel mix of its specified system mix to the Energy Commission. Use the calculator to determine the resource-specific procurement quantities, and transfer them to Schedule 1.

Attestation

This template provides the attestation that must be submitted with the Annual Report to the Energy Commission, stating that the information contained in the applicable schedules is correct and that the power has been sold once and only once to retail consumers. This attestation must be included in the package that is transmitted to the Energy Commission. Please provide the complete Annual Report in Excel format and the complete Annual Report with signed attestation in PDF format as well.



**ANNUAL REPORT TO THE CALIFORNIA ENERGY COMMISSION: Power Source
 SCHEDULE 3: ANNUAL POWER CONTENT LABEL DATA
 for the year ending December 31, 2019
 Valley Clean Energy Alliance
 UltraGreen**

Instructions: No data input is needed on this schedule. Retail suppliers should use these auto-populated calculations to fill out their Power Content Labels.

	Adjusted Net Procured (MWh)	Percent of Total Retail Sales
Renewable Procurements	1,006	100.0%
Biomass & Biowaste	-	0.0%
Geothermal	-	0.0%
Eligible Hydroelectric	341	33.9%
Solar	336	33.4%
Wind	329	32.7%
Coal	-	0.0%
Large Hydroelectric	-	0.0%
Natural gas	-	0.0%
Nuclear	-	0.0%
Other	-	0.0%
Unspecified Power	-	0.0%
Total	1,006	100.0%

Total Retail Sales (MWh)	1,006
---------------------------------	--------------

Percentage of Retail Sales Covered by Retired Unbundled RECs	0.0%
---	-------------



ASSET CONTROLLING SUPPLIER RESOURCE MIX CALCULATOR

Instructions: Enter total net specified procurement of ACS system resources into cell A8, A23, or A38. In Column E, the calculator will determine quantities of resource-specific net procurement for entry on Schedule 1.

Powerex				
Net MWH Procured	N/A	Resource Type	Resource Mix Factors	Resource-Specific Procurements from ACS
		Biomass & biowaste		-
		Geothermal		-
		Eligible hydroelectric		-
		Solar		-
		Wind		-
		Coal		-
		Large hydroelectric	0.915	-
		Natural gas	0.013	-
		Nuclear	0.006	-
		Other	0.032	-
		Unspecified Power	0.034	-

Bonneville Power Administration				
Net MWH Procured	N/A	Resource Type	Resource Mix Factors	Resource-Specific Procurements from ACS
		Biomass & biowaste		-
		Geothermal		-
		Eligible hydroelectric		-
		Solar		-
		Wind		-
		Coal		-
		Large hydroelectric	0.85	-
		Natural gas		-
		Nuclear	0.11	-
		Other		-
		Unspecified Power	0.04	-

Tacoma Power				
Net MWH Procured	N/A	Resource Type	Resource Mix Factors	Resource-Specific Procurements from ACS
		Biomass & biowaste		-
		Geothermal		-
		Eligible hydroelectric		-
		Solar		-
		Wind		-
		Coal		-
		Large hydroelectric	0.896	-
		Natural gas		-
		Nuclear	0.064	-
		Other		-
		Unspecified Power	0.04	-



**ANNUAL REPORT TO THE CALIFORNIA ENERGY COMMISSION: Power Source Disclosure
ATTESTATION FORM
for the year ending December 31, 2019
Valley Clean Energy Alliance
UltraGreen**

I, Gordon Samuel, Assistant General Manager & Director of Power Services, declare under penalty of perjury, that the statements contained in this report including Schedules 1, 2, and 3 are true and correct and that I, as an authorized agent of Valley Clean Energy Alliance, have authority to submit this report on the company's behalf. I further declare that the megawatt-hours claimed as specified purchases as shown in these Schedules were, to the best of my knowledge, sold once and only once to retail customers.

Name: Gordon Samuel

Representing (Retail Supplier): Valley Clean Energy Alliance

Signature: _____

Dated: July 16, 2020

Executed at: Davis, California

2019 POWER CONTENT LABEL			
Valley Clean Energy			
https://valleycleanenergy.org/power-sources/			
ENERGY RESOURCES	Standard Green	UltraGreen	2019 CA Power Mix
Eligible Renewable¹	45.3%	100.0%	31.7%
Biomass & Biowaste	0.0%	0.0%	2.4%
Geothermal	0.6%	0.0%	4.8%
Eligible Hydroelectric	1.2%	33.9%	2.0%
Solar	20.8%	33.4%	12.3%
Wind	22.6%	32.7%	10.2%
Coal	0.0%	0.0%	3.0%
Large Hydroelectric	31.3%	0.0%	14.6%
Natural Gas	0.0%	0.0%	34.2%
Nuclear	0.0%	0.0%	9.0%
Other	0.0%	0.0%	0.2%
Unspecified sources of power²	23.4%	0.0%	7.3%
TOTAL	100%	100%	100%
Percentage of Retail Sales Covered by Retired Unbundled RECs³	0.0%		
<p>¹The eligible renewable percentage above does not reflect RPS compliance, which is determined using a different methodology.</p> <p>²Unspecified power is electricity that has been purchased through open market transactions and is not traceable to a specific generation source.</p> <p>³Renewable energy credits (RECs) are tracking instruments issued for renewable generation. Unbundled renewable energy credits (RECs) represent renewable generation that was not delivered to serve retail sales. Unbundled RECs are not reflected in the power mix or GHG emissions intensities above.</p>			
For specific information about this electricity product, contact:	Valley Clean Energy 1-855-699-8232		
For general information about the Power Content Label, please visit:	http://www.energy.ca.gov/pcl/		
For additional questions, please contact the California Energy Commission at:	Toll-free in California: 844-454-2906 Outside California: 916-653-0237		

Valley Clean Energy Alliance

POWER SOURCE DISCLOSURE INDEPENDENT REVIEW OF
STANDARD GREEN PRODUCT AND ULTRAGREEN PRODUCT
FOR REPORTING YEAR 2019

To: Gordon Samuel, Asst. General Manager & Director of Power Resources

From: Miriam Makhyou, CEO, EQ Research, LLC
Blake Elder, Sr. Energy Policy Research Analyst, EQ Research, LLC

Date: October 27, 2020

Introduction

Valley Clean Energy Alliance (VCEA) has engaged EQ Research, LLC (EQ Research) to assist with an independent review of VCEA's Standard Green Power Source Disclosure (PSD) Annual Report and UltraGreen PSD Annual Report (together, the "Annual Reports") for the year ending December 31, 2019. We have performed the procedures enumerated below to assist VCEA with complying with the auditing and verification requirements of the PSD Program, as defined in Section 1394.2 of the California Code of Regulations, Title 20.

EQ Research obtained the underlying documentation¹ used by VCEA to complete the Annual Reports from VCEA and accepts the accuracy of the information provided by VCEA. EQ Research did not access VCEA's Western Renewable Energy Generation Information System (WREGIS) account information to verify the authenticity of the information provided by VCEA but was provided an export of information from WREGIS.²

Review Procedures and Findings

EQ Research based its detailed review of the Annual Reports on the audit procedures detailed in Section 1394.2(b) of the PSD program regulations. The procedures and associated findings for the Annual Reports is detailed below.

¹ All files referenced in this report can be accessed at: <https://eqresearch.sharefile.com/d-s9d43479fc1a4e28b>.

² See 2019 Standard Green RPS Retirement and 2019 UltraGreen RPS Retirement files in the Sharefile link.

Standard Green PSD Report Review and UltraGreen PSD Report Review

(b) Audit Procedures (1)(A)

EQ Research used the following primary publicly available sources in order to validate the information in the Annual Reports:

Source 1 (EIA): Energy Information Administration (EIA), Form EIA-923 detailed data, 2019 Zip File, EIA923_Schedules_2_3_4_5_M_12_2019_Final.xlsx, Page 1 Generation and Fuel Data, accessed on September 21, 2020 from <https://www.eia.gov/electricity/data/eia923/>

Source 2 (CEC): California Energy Commission (CEC), California's Renewables Portfolio Standard (RPS) Public Search exported to Excel, accessed on October 18, 2020 from <https://rps.energy.ca.gov/Pages/Search/SearchApplications.aspx>

EQ Research agreed the specified purchases³ by (a) facility name, (b) facility number provided by EIA, RPS ID, (c) kilowatt-hours, and (d) fuel type from the information used to prepare used to prepare the Annual Reports is consistent with what is presented in the Annual Reports Schedule 1⁴ with three exceptions regarding the facility names in the Annual Reports as compared to the facility names from EIA and CEC:

For Standard Green, "Grand View 5 East" is "Grand View PV Solar Two" (EIA ID 60068 and RPS ID 61595).

For Standard Green, "CSolar IV South" is "Tenaska Imperial Solar Energy Center South" (EIA ID 57490 and RPS ID 61657).

The above two exceptions have been clarified by VCEA through screenshots of its WREGIS accounts. See Appendix A. Facility Name Differences Validated by WREGIS Account Screenshots.

On Row 62 of the Standard Green Annual Report the large hydro plant listed as "Kerr" (after Kerr Dam) has been officially known since 2015 as the Seli's Ksanka Qlispe' Dam. It is listed in the EIA 923 Data as "Selis Ksanka Qlispe" (EIA Plant ID 2188).

The final above exception is identified in Appendix B. Specified Facility Review Results.

EQ Research verified that the MWh listed in the Annual Reports do not exceed the annual MWhs from EIA 923 data as expected (see Appendix B. Specified Facility Review Results).

EQ Research also tested the mathematical accuracy of Schedule 1 and noted no exceptions.

(b) Audit Procedures (1)(B)(1)

EQ Research agreed the facility name, facility numbers provided by EIA and RPS, kilowatt hours, and the fuel type from the invoice match the information used to prepare Schedule 1 of the Annual Reports.

EQ Research verified the above information by reviewing a sample of nine invoices of power purchases represented in the 2019 Annual Reports against the information used to prepare Schedule 1 of the Annual Reports and against the CEC and EIA data mentioned in (b) Audit Procedures (1)(A) above.

³ There were no resales.

⁴ This information was checked against information in the following links: Source for RPS IDs: <https://rps.energy.ca.gov/Pages/Search/SearchApplications.aspx>; Source for EIA IDs: <https://www.eia.gov/electricity/data/eia923/>

See Appendix C. Sample of Purchases VCEA used to Prepare Schedule 1 which shows two limitations to EQ Research's review that have been clarified by VCEA as being limited only by the sample provided with no exceptions to note otherwise:

VCEA confirmed that outside of the sample of nine invoices reviewed by EQ Research, there are additional invoices that were not reviewed by EQ Research for the remaining 54,252 RECs from SDG&E amounting to 59,000 RECs.

VCEA confirmed that there is another invoice that was not reviewed by EQ Research for the remaining 6,073 RECs from the Indian Valley Hydro Project amounting to 8,285 RECs.

(b) Audit Procedures (1)(B)(2)

This is not applicable since there are no facilities in the Annual Reports owned by VCEA.

(b) Audit Procedures (1)(B)(3)

EQ Research verified a match between the date of generation from the nine invoices in the sample to the reporting period of the information used to prepare Schedule 1.

See the "Energy Delivery Term" column in Appendix C. Sample of Purchases VCEA used to Prepare Schedule 1.

(b) Audit Procedures (1)(B)(4)

This requirement is not applicable since VCEA did not use unbundled recs in its Annual Reports.

(b) Audit Procedures (1)(C)

The requirement that the auditor shall agree any excluded emissions meet the requirements pursuant to section 1393(d) is not applicable to 2019 deliveries for the 2020 reports but VCEA has taken notice of this requirement for 2020 deliveries for the 2021 reports.

(b) Audit Procedures (2)

EQ Research obtained a copy of the 2019 Power Content Label to be provided to VCE customers for the Standard Green and UltraGreen products. EQ Research verified that the resource portfolio percentages listed for each product on the 2019 Power Content Label match the respective percentages listed in Schedule 3 of the Annual Reports.

This report is intended solely for the information and use of the specified parties listed above and is not intended to be and should not be used by anyone other than those specified parties.

Appendix A. Facility Name Differences Validated by WREGIS Account Screenshots

RPS ID:
 Suffix:
 Facility Name:
 Application Status:
 Resource Type:
 WREGIS GU ID:

Search

Results

Export To:

RPS ID	Suffix	Facility Name	Eligibility Date	Status	Primary Resource
61595	A	Grand View PV Solar Two	07/06/2011	Approved	Photovoltaic

RPS ID:
 Suffix:
 Facility Name:
 Application Status:
 Resource Type:
 WREGIS GU ID:

Search

Results

Export To:

RPS ID	Suffix	Facility Name	Eligibility Date	Status	Primary Resource
61657	A	Tenaska Imperial Solar Energy Center South	08/08/2011	Approved	Photovoltaic

Appendix B. Specified Facility Review Results

Renewable?	Ultragreen?	Standard Green?	EIA ID	RPS ID	Facility Name Vlookup using EIA ID	Facility Name VLOOKUP using RPS ID	Facility Name from VCEA Annual Reports	MWh Generation Vlookup using EIA ID	MWh Generation Annual EIA - Adjusted Net MWh Procured by VCEA in 2019	Adjusted Net MWh Procured in 2019 by VCEA	EIA MWh - VCEA Reported MWh	% EIA MWh to VCEA Reported MWh	Technology VLOOKUP using RPS ID	Fuel Type VCEA
1	1	1	58154	61385A	North Sky River Energy LLC	North Sky River	North Sky River - North Sky River - Phase I	425,137	424,808	329	(329)	-0.08%	Wind	Wind
1	1	1	58430	60837A	Centinela Solar Energy	Centinela Solar Energy	Centinela Solar Energy - CSE - Block 1F	483,717	483,546	171	(171)	-0.04%	Photovoltaic	Solar
1	1	1	58430	60837A	Centinela Solar Energy	Centinela Solar Energy	Centinela Solar Energy - CSE - Block 2B	483,717	483,552	165	(165)	-0.03%	Photovoltaic	Solar
1	1	1	50129	60161A	Indian Valley Dam Hydro Project	Indian Vly Hydro Elec Ptm.	Indian Valley Hydro - Indian Valley Hydro	8,285	7,944	341	(341)	-4.23%	Small Hydroelectric	Eligible hydro
1	1	1	58154	61385A	North Sky River Energy LLC	North Sky River	North Sky River - North Sky River - Phase I	425,137	393,485	31,652	(31,652)	-8.04%	Wind	Wind
1	1	1	58430	60837A	Centinela Solar Energy	Centinela Solar Energy	Centinela Solar Energy - CSE - Block 1F	483,717	475,176	8,541	(8,541)	-1.80%	Photovoltaic	Solar
1	1	1	58430	60837A	Centinela Solar Energy	Centinela Solar Energy	Centinela Solar Energy - CSE - Block 2B	483,717	479,109	4,608	(4,608)	-0.96%	Photovoltaic	Solar
1	1	1	50129	60161A	Indian Valley Dam Hydro Project	Indian Vly Hydro Elec Ptm.	Indian Valley Hydro - Indian Valley Hydro	8,285	341	7,944	(7,944)	-2329.62%	Small Hydroelectric	Eligible hydro
1	1	1	60012	63451A	American Falls Solar II	American Falls Solar II, LLC	American Falls Solar II, LLC - American Falls Solar II, LLC	44,078	42,369	1,709	(1,709)	-4.03%	Photovoltaic	Solar
1	1	1	60011	63450A	American Falls Solar II	American Falls Solar II, LLC	American Falls Solar II, LLC - American Falls Solar II, LLC	43,789	43,000	789	(789)	-1.83%	Photovoltaic	Solar
1	1	1	57090	61017A	Campbell Hill Windpower	Campbell Hill - Three Buttes	Campbell Hill - Campbell Hill	323,963	311,574	12,389	(12,389)	-3.84%	Wind	Wind
1	1	1	56623	61034A	Elkhorn Valley Wind Farm	Elkhorn Valley Wind Farm	Elkhorn Valley Wind Farm - Elkhorn Valley Wind Farm	305,671	291,175	14,496	(14,496)	-4.98%	Wind	Wind
1	1	1	60068	61595A	Grand View Solar Two	Grand View PV Solar Two	Grand View 2 West - Grand View 2 West	180,168	161,775	18,393	(18,393)	-11.37%	Photovoltaic	Solar
1	1	1	60068	61595A	Grand View Solar Two	Grand View PV Solar Two	Grand View 5 East - Grand View 5 East	180,168	173,809	6,359	(6,359)	-3.66%	Photovoltaic	Solar
1	1	1	60445	63560A	ID Solar	ID Solar 1, LLC	ID Solar 1 - ID Solar 1, LLC	94,128	77,636	16,492	(16,492)	-21.24%	Photovoltaic	Solar
1	1	1	60009	63449A	Murphy Flat Solar	Murphy Flat Power, LLC	Murphy Flat - Murphy Flat Power, LLC	46,442	45,398	1,044	(1,044)	-2.30%	Photovoltaic	Solar
1	1	1	58022	62427A	Neal Hot Springs Geothermal Project	Neal Hot Springs Unit 1	Neal Hot Springs Unit #1 - Neal Hot Springs Geothermal	185,456	181,412	4,044	(4,044)	-2.23%	Geothermal	Geothermal
1	1	1	60010	63448A	Orchard Ranch Solar	Orchard Ranch Solar, LLC	Orchard Ranch Solar, LLC - Orchard Ranch Solar, LLC	48,438	47,173	1,265	(1,265)	-2.68%	Photovoltaic	Solar
1	1	1	56843	60808A	Seven Mile Hill II	Seven Mile Hill II	Seven Mile Hill II - Seven Mile Hill II	385,943	385,670	273	(273)	-0.07%	Wind	Wind
1	1	1	60748	63447A	Simcoe Solar	Simcoe Solar, LLC	Simcoe Solar, LLC - Simcoe Solar, LLC	48,338	47,024	1,314	(1,314)	-2.79%	Photovoltaic	Solar
1	1	1	56320	60775A	Spring Canyon	Spring Canyon Energy	Spring Canyon - Spring Canyon	171,157	169,996	1,161	(1,161)	-0.68%	Wind	Wind
1	1	1	57327	61199A	Top of the World Windpower Project	Top of the World	Top of the World - Top of the World	548,878	527,590	21,288	(21,288)	-4.03%	Wind	Wind
1	1	1	57695	61698A	Topaz Solar Farm	Topaz Solar Farms LLC	Topaz Solar Farms LLC - Topaz 1D-1E	1,255,722	1,226,203	27,519	(27,519)	-2.24%	Photovoltaic	Solar
1	1	1	56485	63056A	Biglow Canyon Wind Farm	Biglow Canyon Wind Farm Phase 3	Biglow Canyon Wind Farm - Biglow Canyon 3	983,163	978,836	4,327	(4,327)	-0.44%	Wind	Wind
1	1	1	56485	63055A	Biglow Canyon Wind Farm	Biglow Canyon Wind Farm Phase 2	Biglow Canyon Wind Farm - Biglow Canyon 2	983,163	982,165	998	(998)	-0.10%	Wind	Wind
1	1	1	58430	60837A	Centinela Solar Energy	Centinela Solar Energy	Centinela Solar Energy - CSE - Block 1G	483,717	483,596	121	(121)	-0.03%	Photovoltaic	Solar
1	1	1	58430	60837A	Centinela Solar Energy	Centinela Solar Energy	Centinela Solar Energy - CSE - Block 1H	483,717	468,979	14,738	(14,738)	-3.14%	Photovoltaic	Solar
1	1	1	58430	60837A	Centinela Solar Energy	Centinela Solar Energy	Centinela Solar Energy - CSE - Block 2C	483,717	480,776	2,941	(2,941)	-0.61%	Photovoltaic	Solar
1	1	1	58430	60837A	Centinela Solar Energy	Centinela Solar Energy	Centinela Solar Energy - CSE - Block 2D	483,717	481,985	1,732	(1,732)	-0.36%	Photovoltaic	Solar
1	1	1	58430	60837A	Centinela Solar Energy	Centinela Solar Energy	Centinela Solar Energy - CSE - Blocks 1A, 1B, & 1C	483,717	476,550	7,167	(7,167)	-1.50%	Photovoltaic	Solar
1	1	1	58430	60837A	Centinela Solar Energy	Centinela Solar Energy	Centinela Solar Energy - CSE - Blocks 1D & 1E	483,717	467,175	16,542	(16,542)	-3.54%	Photovoltaic	Solar
1	1	1	57490	61657A	Imperial Solar Energy Center South	Tenaska Imperial Solar Energy Center South	CSolar IV South - ISEC South 1-3	281,501	279,227	2,274	(2,274)	-0.81%	Photovoltaic	Solar
1	1	1	61582	63686A	Voyager Wind II	Voyager Wind 2	Voyager Wind 2 - Voyager Wind 2	458,595	399,862	58,733	(58,733)	-14.69%	Wind	Wind
1	1	1	6433		Boundary	N/A	Boundary Hydroelectric Units	3,300,777	3,243,701	57,076	(57,076)	-1.76%	N/A	Large hydro
1	1	1	2188		Sells Kanka Qlisp	N/A	Kerr	836,964	824,789	12,175	(12,175)	-1.48%	N/A	Large hydro
1	1	1	3888		Wanapum	N/A	Mid-C Hydro - Wanapum (Grant County PUD)	4,252,008	4,241,686	10,322	(10,322)	-0.24%	N/A	Large hydro
1	1	1	3886		Wells	N/A	Mid-C Hydro - Wells (Douglas County PUD)	3,687,032	3,645,944	41,088	(41,088)	-1.13%	N/A	Large hydro
1	1	1	425		Middle Fork	N/A	Middle Fork Hydro	788,857	788,857	80,000	(80,000)	-11.29%	N/A	Large hydro

Appendix C. Sample of Purchases VCEA used to Prepare Schedule 1

Contract	Total MWh on Invoice	Total from CPUC		Energy Delivery Term	Invoice or		Resource	Match Check	Match T/F	Remaining MWh	
		Contract Spreadsheet	VCEA MWh		PO#	PCC1/2					
0819 PG&E REC.pdf	159,500	59,500	59,500	04/01/2019 - 04/30/2019	146415		1 North Sky River and Topaz Solar Farms	59,500	TRUE	-	MATCHED
1119 SDGE.pdf	4,748	59,000	4,748	Nov-19	156215		1	4,748	FALSE	54,252	VCEA confirmed that there are additional invoices for the remaining 54,252 RECs from SDG&E amounting to 59,000 RECs.
1219 PGE29 VCEA.pdf	4,327	5,325	4,327	Aug-19	393715		2 Biglow Canyon Wind Farm	5,325	TRUE	-	MATCHED
012020 PGE29 VCEA.pdf	998		998	Sep-19	396010		2 Biglow Canyon Wind Farm				
1907 Indian Valley Hydro Project.pdf	2,212	8,285	2,212	Jul-19	4500110130		1 Indian Valley Hydro	2,212	FALSE	6,073	VCEA confirmed that there is another invoice for the remaining 6,073 RECs.
DTET_VALLEYCEA - BU_US\$ _136032.60 _2932191_3.pdf	18,540	101,016	18,540	3/25/19	2932191		2 Various	101,016	TRUE	-	MATCHED
DTET_VALLEYCEA - BU_US\$ _221914.75 _2843711_3.pdf	33,950		33,950	10/29/19	2843711		2 Various				
DTET_VALLEYCEA - BU_US\$ _304912.90 _2941879_3.pdf	48,526		48,526	4/13/2019-4/14/2019	2941879		2 Various				
SENA76.pdf	2,070	58,733	2,070	N/A 2019	2347991		1 Voyager Wind 2	58,733	TRUE	-	MATCHED
SENA76.pdf	1,004		1,004	N/A 2019	2348007		1 Voyager Wind 2				
SENA76.pdf	55,569		55,569	N/A 2019	2348009		1 Voyager Wind 2				
SENA76.pdf	90		90	N/A 2019	2350446		1 Voyager Wind 2				

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 13

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
George Vaughn, Director of Finance & Internal Operations

SUBJECT: Ratify Final VCE Strategic Plan

DATE: November 12, 2020

RECOMMENDATION

Ratification of the attached final Three-Year Strategic Plan (Plan), which reflects the changes directed by the Board at the October 8th Board Meeting.

BACKGROUND

At the October 8th, 2020 Board Meeting, the Board reviewed the draft Plan and approved it to be finalized with several edits. The edits, which are included in the final attached Plan, are:

- Adding Objective 3.7 about emerging and historically marginalized communities
- Adding Objective 6.1 about developing a roadmap towards formation of a local Publicly Owned Utility (POU)
- Two grammatical corrections

Note: the CAC reviewed and supported this final version of the Strategic Plan at its September 22nd, 2020 CAC Meeting..

The next step in the planning process is for VCE staff to develop and share a detailed timeline and action plan before the end of December.

CONCLUSION

Staff requests that the Board ratify the attached final Three-Year Strategic Plan (Plan), which reflects the changes directed by the Board at the October 8th Board Meeting.

ATTACHMENTS

1. VCE Three-Year Strategic Plan



**Valley Clean Energy
Strategic Plan
Approved by VCE Board October 8, 2020
January 2021 - December 2023**

VCE MISSION

Deliver cost-competitive clean electricity, product choice, price stability, energy efficiency, and greenhouse gas emission reductions.

VCE VISION

Valley Clean Energy Alliance (VCEA) is a joint-powers authority working to implement a state-authorized Community Choice Energy (CCE) program. Participating VCEA governments include the City of Davis, the City of Woodland and County of Yolo. The purpose of the VCEA is to enable the participating jurisdictions to determine the sources, modes of production and costs of the electricity they procure for the residential, commercial, agricultural and industrial users in their areas. PG&E would continue to deliver the electricity procured by VCEA and perform billing, metering, and other electric distribution utility functions and services. Customers within the participating jurisdictions would have the choice not to participate in the VCEA program.

Near-Term¹ Vision

The near-term vision for VCEA is to provide electricity users with greater choice over the sources and prices of the electricity they use, by:

- Offering basic electricity service with higher renewable electricity content, at a rate competitive with PG&E;
- Developing and offering additional low-carbon or local generation options at modest price premiums;
- Establishing an energy planning framework for developing local energy efficiency programs and local energy resources and infrastructure; and
- Accomplishing the goals enumerated above while accumulating reserve funds for future VCEA energy programs and mitigation of future energy costs and risks.

Long -Term Vision

The future vision for VCEA is to continuously improve the electricity choices available to VCEA customers, while expanding local energy-related economic opportunities, by:

- Causing the deployment of new renewable and low carbon energy sources;
- Evaluating and adopting best practices of the electricity service industry for planning and operational management;
- Substantially increasing the renewable electricity content of basic electricity service, with the ultimate goal of achieving zero carbon emissions electricity;
- Developing and managing customized programs for energy efficiency, on-site electricity production and storage;
- Accelerating deployment of local energy resources to increase localized investment, employment, innovation and resilience;
- Working to achieve the climate action goals of participating jurisdictions to shape a sustainable energy future;
- Saving money for ratepayers on their energy bills; and
- Remaining open to the participation of additional jurisdictions.

¹ Launch Phase and First Year

STRATEGIC PLAN

This Strategic Plan focuses VCE on achieving better energy outcomes for its customers and communities by guiding the organization’s actions over the next three years. The Plan maps a route to VCE’s goals and allows for course correction as new information and learning occurs. The energy sector in California is in a transformational period and VCE allows local energy priorities and needs to be heard and ultimately acted upon. This plan helps VCE build a strong foundation from which to identify and guide strategic action over the next three years, being mindful of the longer-term aspirations of the Agency. It is anticipated that this Plan will be ready for implementation in 2021 and reviewed annually to ensure that the Agency remains on track and course corrects if necessary.

METHODOLOGY AND ORGANIZATION

VCE’s strategic plan is based on the experience of the Agency’s first two years in operation as well as current energy market conditions, a strengths/weaknesses/opportunities/threats (SWOT) analysis which was completed in 2019, and detailed feedback from the Board of Directors, Community Advisory Committee (CAC) members and VCE staff. The Plan covers six topical categories which are most relevant to VCE’s operations. Within each category, the Plan specifies a set of aspirational goals and follows with strategies to achieve or make progress toward those goals over the next three years.

VCE’S STRATEGIC GOALS

A) FINANCIAL STRENGTH

A successful CCA program requires disciplined fiscal strategies and financially sound policies. VCE is committed to managing its financial resources responsibly and setting a standard of transparency and accountability, ensuring efficiency and strong stewardship of the agency’s financial resources. At VCE, our commitment to fiscal and operational excellence will ensure that all processes and operations are clearly defined and efficiently designed to align people, systems, and policies to maximize productivity and improve efficiency. Adhering to these policies and actively examining and assessing risk will help earn a high credit rating and a healthy position from which to deliver customer and community value.

Goal 1: Maintain and grow a strong financial foundation and manage costs to achieve long-term organizational health.

- 1.1. Objective: Maintain consistently healthy cash reserves to fund VCE’s mission, vision, and goals.
- 1.2. Objective: Achieve an investment grade credit rating by end of 2024.
- 1.3. Objective: Commit to fiscal efficiencies to build a program foundation from which to deliver customer and community value.
- 1.4. Objective: Manage customer rates to optimize VCE’s financial health while maintaining rate competitiveness with PG&E.

B) PROCUREMENT AND POWER SUPPLY

Navigating the world of wholesale power markets and state-mandated power mix and reliability requirements while fulfilling our commitment to sourcing low/no-carbon electricity requires a constant search for the right resources to meet sustainability and value proposition goals. The threat of losing load to Direct Access presents new challenges and opportunities to enhance product offerings to meet VCE’s decarbonization goals and our customers’ own environmental goals while considering financial and risk impacts. VCE is committed to providing carbon free electricity through a balanced approach that considers cost, risk, long-term value and best fit in meeting community goals while exceeding California’s RPS mandates.

Goal 2: Manage power supply resources to consistently exceed California’s Renewable Portfolio Standard (RPS) while working toward a resource portfolio that is 100% carbon neutral by 2030.

- 2.1 Objective: Continue to identify and pursue cost effective local renewable energy resources.
- 2.2 Objective: Acquire sufficient bundled energy and renewable resources to achieve VCE’s greenhouse gas reduction targets.
- 2.3 Objective: Deploy storage and other strategies to achieve renewable, carbon neutral, resource adequacy, and resiliency objectives.
- 2.4 Objective: Identify and pursue cost effective, local distributed energy (e.g., behind the meter rooftop solar+storage) resources to help meet reliability needs.
- 2.2 Objective: Study and present options for achieving a 100% carbon neutral resource portfolio as well as 100% carbon free resource portfolio (carbon free hour by hour) by 2030.²
- 2.6 Objective: Optimize the hedging strategy to mitigate risk in accordance with the energy risk guidelines and procurement plan.

C) CUSTOMERS AND COMMUNITY

VCE is a customer and community focused organization. We will use all available channels and platforms to cultivate relationships with and bring customer value to all segments of the communities we serve – including those that have been historically underserved/under resourced. These channels include leveraging existing outlets established by our member agencies, partnering with commercial customers to enhance their community presence, and re-engaging with those who have opted out. Partnerships with commercial and agricultural customers are particularly important to building VCE’s brand in a region rooted in food production and innovation. Communicating our competitive rates and product and service benefits in clear and accessible ways will strengthen customer loyalty and enhance our financial standing, enabling us to better serve our communities.

Goal 3: Prioritize VCE’s community benefits and increase customer satisfaction and retention.

² Carbon neutral electricity is net zero carbon electricity that may include the use of carbon credits and/or higher production of carbon free electricity that averages out to provide a carbon free portfolio over a period of time whereas carbon free hour-by-hour means all electricity consumed by VCE customers will be from carbon free and/or renewable resources.

- 3.1 Objective: Develop engagement strategies to increase awareness of, and participation in, local control of VCE's energy supply and programs with a particular focus on engaging disadvantaged and historically marginalized communities.
- 3.2 Objective: Develop programs and initiatives to better support community goals, including supporting member agency achievement of energy-sector emissions reduction targets.
- 3.3 Objective: Design and implement a strategy to more effectively engage local business and agricultural customers.
- 3.4 Objective: Build awareness and trust of the VCE brand through direct engagement with customers, communities and organizations in VCE's service territory.
- 3.5 Objective: Develop customer programs and initiatives that prioritize decarbonization, community resiliency and customer savings.
- 3.6 Objective: Measure and increase customer satisfaction, using tools such as surveys and focus groups, while maintaining an overall participation rate of no less than 90%.
- 3.7 Objective: Integrate and address the concerns and priorities of emerging and historically marginalized communities in the design and implementation of VCE's services and programs.

D) DECARBONIZATION AND GRID INNOVATION

One of the key factors driving the formation of VCE was to address climate change and improve local resiliency. We will play a vital role in this decades-long endeavor, with the ongoing support of our community and our Board. In addition to providing carbon-free electricity, we are reinvesting in our region and expanding our toolset for furthering emissions reductions and energy resiliency by launching decarbonization and grid innovation programs. These programs represent the next stage in VCE's maturity and are the mechanism by which VCE will further engage our communities to achieve our mission. We will leverage partnerships, prioritize innovation and use data science to manage and influence carbon-free energy use. We will embody the entrepreneurial and innovative spirit of the community in which we live and work, the spirit of Yolo County, to bend the carbon curve downwards and improve the lives of our community members.

Goal 4. Promote and deploy local decarbonization and grid innovation programs to improve grid stability, reliability, community energy resilience, and safety.

- 4.1 Objective: Working with a variety of local, regional and state partners, develop a grid innovation roadmap for VCE's service territory that supports community energy resilience and reliability.
- 4.2 Objective: Develop a VCE decarbonization roadmap to guide near and long-term program decisions and offerings.
- 4.3 Objective: Increase participation in VCE's UltraGreen 100% renewable product.
- 4.4. Objective: Identify external funding sources to support decarbonization and grid-related programs and initiatives.

E) STATEWIDE ISSUES: REGULATORY AND LEGISLATIVE AFFAIRS

The regulatory and legislative processes wield critical influence over VCE's ability to serve our customers and fulfill our core goals and mission. Working with CalCCA and other operating CCAs, VCE will actively engage with the regulatory and legislative communities in order to advance a positive narrative on the value of CCA, manage operational risk, protect the interests of our customers, enhance our ability to mitigate greenhouse gas emissions, and help build a regulatory framework that supports innovation and customer choice in an equitable and cost-effective manner while preserving reliability and universal access.

Goal 5. Strongly advocate for public policies that support VCE's Vision/Mission.

- 5.1 Objective: Work with CalCCA and other partners to proactively engage State regulators, legislators, and other State authorities in developing policy that furthers VCE’s mission and facilitates our contributions to decarbonization, grid reliability, energy resiliency, affordability, local programs and social equity.
- 5.2 Objective: Develop relationships with community stakeholder organizations that foster support for VCE’s mission and vision.
- 5.3 Objective: Optimize regulatory compliance activities.

F) ORGANIZATION, WORKPLACE, AND TECHNOLOGY

Human capital is a successful organization’s greatest asset, and at VCE we’ve built a highly talented and dedicated team that will ensure the success and prosperity of our organization. Contracting with Sacramento Municipal Utility District (SMUD) to deliver high quality services and personnel support during launch and early operations has allowed VCE to realize these objectives from the outset. Over the period of this strategic plan, VCE will explore transition from a contract dependent organization to one that balances the values and efficiencies of development and retention of high-quality in-house staff supported by high-quality outside services. Building, valuing, and nurturing this team’s talent will require a start-up culture that supports creativity, open communication, and the free flow of ideas to spur innovation. We will provide an infrastructure within VCE that supports and cultivates our employees through professional and personal development, recognizes and rewards their contributions to achieving our mission, and offers opportunities that position our people, as well as VCE, for success. In attracting and maintaining skilled employees, VCE will continue to provide a rewarding workplace experience.

VCE will develop a decision support system that will enable it to nimbly assess and react to expansion opportunities as they arise. In addition, VCE will assess opportunities for shared services with other CCAs to optimize function and efficiency of service.

We also take customer information, privacy, and security seriously. Our systems and processes follow best practices and industry standards. Performance metrics are in place to ensure resiliency and high system availability on standard and mobile platforms. Periodic upgrades to IT resources will ensure continued adherence to these high standards. This strategic plan provides the approach that VCE is taking to address the challenges of delivering IT services in a dynamic environment with new regulations and continuous advancements in science and technology.

Goal 6: Analyze and implement optimal long-term organizational, management, and information technology structure at VCE.

- 6.1 Objective: Develop a roadmap to evaluate and guide future steps toward formation of a local Publicly Owned Utility (POU).
- 6.2 Objective: Evaluate and pursue opportunities for shared services with other CCAs for certain functions.
- 6.3 Objective: Develop an evaluation framework to guide future expansion opportunities beyond the existing service territory.
- 6.4 Objective: Identify optimal management, staffing and contracting structure of VCE in the near and long term; factors include balance of internal staff vs. consultant support services, transition of leadership positions to permanent internal employees.
- 6.5 Objective: Promote diversity, equity and inclusion in leadership, hiring, promotion, and contracting policies.
- 6.6 Objective: Support health, wellness and a productive workplace.
- 6.7 Objective: Create an innovation-focused culture that rewards proactive participation, problem solving, new ideas, and creative use of partnerships.
- 6.8 Objective: Deploy a modernized IT infrastructure that enables knowledge management, analytics and collaboration through robust use of data and information resources.

TIMING, MEASUREMENT AND UPDATES

VCE's Strategic Plan is a living document that will be revisited and updated regularly. At a minimum, staff will review and update the Plan on an annual basis, including goals, objectives and metrics. In addition, staff will establish an implementation timeline and appropriate reporting format to use in reporting performance against the Plan's goals and objectives to VCE leadership and Board. The reports, commencing in 2021, will show metrics, status and mitigations where appropriate. Consolidated summary reporting on the status of all high-priority enterprise goals and objectives will be reported out as follows:

- **Quarterly Report to VCE Management**

Staff will report quarterly to the Interim General Manager on the status of goals, objectives and metrics for which they are responsible.

- **Annual Report to Board and CAC**

Staff will report annually to the Board and CAC on the status of goals, objectives and metrics, and will recommend any mitigations or amendments as may be necessary for Board approval.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 14

TO: Board of Directors
FROM: Rebecca Boyles, Director of Marketing and Customer Care
SUBJECT: Ratify Environmental Justice Statement
DATE: November 12, 2020

RECOMMENDATION

Ratification of the attached final Environmental Justice Statement, which reflects the changes directed by the Board at the October 8th Board Meeting.

BACKGROUND

At the October 8th, 2020 Board Meeting, the Board reviewed the draft Statement and approved it to be finalized with additional language that is more inclusive of sex, gender identity and sexual orientation. In addition, the Board suggested that the Statement be reviewed in a year (November 2021).

CONCLUSION

Staff requests that the Board ratify the attached final Environmental Justice Statement, which reflects the additional language of inclusivity as directed by the Board at the October 8th Board Meeting.

ATTACHMENT:

1. Adopted VCE Environmental Justice Statement

Valley Clean Energy's Statement on Environmental Justice

Valley Clean Energy (VCE) is a mission-driven community-based not-for-profit public electricity supplier serving nearly 90% of the electricity customers in unincorporated Yolo County and the cities of Woodland, Davis, and Winters. We supply cost-competitive clean electricity to everyone who chooses our service, regardless of race, gender, economic status, sexual orientation, gender identification, nationality, religion or political views. We were established to achieve better outcomes for the customers and communities we serve and are therefore stronger and more effective when the full range of customer voices we serve are reflected in our decisions.

Valley Clean Energy recognizes that Environmental Justice (EJ) issues are deeply ingrained in our society. This includes the energy sector, where VCE can have a role in directly addressing energy-related inequities many people in under-resourced or disadvantaged communities face. This time of broad awakening across our country challenges us to respectfully acknowledge our role in truly effecting better outcomes for all of the communities and customers we serve.

We acknowledge that historically not all customers have had equitable access to the decisions that shape and affect their communities. We will do our part to ensure that the decisions we make about energy supply and community reinvestment help to further Environmental Justice.

VCE has adopted the official definition of Environmental Justice from the Environmental Protection Agency (EPA), which is: *"the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies¹."*

Valley Clean Energy is committed to supplying more electricity that is produced by renewable, non-polluting sources such as solar, wind and hydroelectric. We are also committed to identifying and improving our systems that could perpetuate institutional barriers. To this end, VCE has made these commitments to further encourage diversity, equity and inclusion:

- We will listen, learn and act.
- We will explicitly integrate and address the concerns and priorities of emerging and historically marginalized communities in the design and implementation of VCE's services and programs – to ensure that *all* of our customers are well served, regardless of race, color, national origin, religion, sexual orientation, sex, gender identity, age, disability or socioeconomic status.
- We will work alongside our sister agencies in the Environmental Justice and Equity Committee of the Community Choice Energy trade association (CalCCA) to develop programs and policies that reduce environmental harm in all California communities – especially those with a history of environmental injustice.

¹ <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>

- We will invite a more diverse set of voices to the table to effectively advance environmental justice in low-income and disadvantaged communities (DACs). We will reach out to DACs through targeted outreach campaigns to more thoroughly involve them in VCE workshops, program design and meetings of the Board of Directors and the Community Advisory Committee (CAC).
- We will more deeply integrate diversity, equity, and inclusion in our internal hiring, promotion, leadership (Board and CAC) and contracting policies.

Confronting the current challenges of environmental justice requires authentic and sustained listening. To that end, we would like to extend the invitation to more deeply engage all members of our community – especially those whose voices have not yet have been fully represented. Please share your feedback, concerns and ideas at our [Board](#) and Community Advisory Committee meetings. All meetings are open to the public. And please consider contributing your expertise to VCE as a member of the Community Advisory Committee. Applications are available [here](#) -- and meeting schedules are available [here](#).

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 15

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
Gordon Samuel, Assistant General Manager & Director of Power Services

SUBJECT: Request for Offers (2020 Local RFO) – Approve Power Purchase Agreements for Renewable Energy and Capacity

DATE: November 12, 2020

RECOMMENDATION

1. Adopt resolutions approving the following power purchase agreements (PPA):
 - A. Putah Creek Solar Farms LLC – 3 MW AC solar photovoltaic facility co-located with a 3-MW/12 MWh (4-hour) battery energy storage system;
 - B. Gibson Renewables LLC - 20 MW solar photovoltaic facility combined with a 6.5-MW/26 MWh (4-hour) battery energy storage system.

OVERVIEW

This staff report concludes the Local Renewable Request for Offer (“RFO”) issued on April 20, 2020. Based on Board direction, staff assessed the proposals, arrived at a shortlist, conducted negotiations and selected two projects to bring forward to the Board for approval.

BACKGROUND

Local RFO

Staff received approval from the Board in April to issue the Local Renewable RFO with project screening based on the project requirements and evaluation criteria listed in the April staff report (criteria listed below). The primary objective of the RFO was to identify up to 25 MW of cost effective long-term local renewable production that could be added to VCE’s portfolio within a reasonable timeframe. The Local RFO is consistent with general Board direction and VCE’s Vision statement to pursue procurement of cost effective local renewable energy. The basic parameters of the VCE solicitation specified that proposals needed to be Renewable Portfolio Standard (RPS) eligible generation or generation + storage projects in the 2-25 MWac range with a commercial operation date (COD) no later than December 31, 2023 with contract terms of ten to twenty years.

Though not specifically required to meet VCE’s RPS regulatory requirements set forth by the California Public Utilities Commission (CPUC), this solicitation is also identified in VCE’s 2019 RPS, Procurement Plan submitted to the CPUC. The 2019 RPS Plan states:

“VCE plans to establish an open solicitation for local renewables in the first quarter of 2020 in order to supply up to 25% of its targeted 2030 renewable goal of 80%.”

Completion of the RFO process for the two recommended solar + storage projects would be consistent with VCE’s 2019 RPS Plan.

Summary of Responses

As communicated during progress updates at prior Board meetings, the Local RFO deadline for submitting proposals was May 26, 2020. Prior to that VCE requested bidders submit a Notice of Intent to bid which resulted in fourteen entities expressing interest. At the time of the due date, twelve entities elected to submit proposals.

- Number of bidders: 12
- Number of unique proposals: 31
- Technology types: PV, PV + Storage (BESS), Geothermal, Hybrid (combination of wind, PV and BESS)
- Locations (county): Yolo, Lake, Colusa, Solano

Shortlist/RFO Criteria

In mid-July, staff shortlisted four entities. These entities’ proposals scored the highest of the criteria VCE established in the Local RFO:

- Project price
- Project team experience
- Financing plan and financial stability of project owner/developer
- Local/Regional resources location
- Prior land use
- Located in pre-screened energy development areas (avoid RETI Category 1 or Category 2 designated areas)
- Level of completeness of permits
- Grid Interconnection status
- Site control
- Multi-benefit renewable energy (e.g. pollinator-friendly site, re-purposed ag use, research attributes, etc.)

All four were PV + Storage (BESS) and located in Yolo county. Negotiations commenced with a goal of arriving at one or more PPAs fulfilling the objectives of the Local RFO.

FINAL SELECTION

In line with the PPA Term Sheet that was provided in the Local RFO documents, staff supplied the four entities with a PPA which parties negotiated from. Although final terms are not identical in the two recommended PPAs that staff is asking for Board approval, they are similar. The primary differentiating factors that reduced the four entities to two are the more favorable contract terms to VCE’s customers as well as superior pricing terms.

- Putah Creek Energy Farm – 3 MW AC solar photovoltaic facility co-located with a 3-MW/12 MWh (4-hour) battery energy storage system:
 - Located near Winters, CA
 - 20 year term
 - Significant permitting and interconnection complete
 - Commercial operation date – 2nd half of 2021
 - Pollinator-friendly; bifacial solar and sustainable agriculture practices

- Gibson Solar - 20 MW solar photovoltaic facility combined with a 6.5-MW/26 MWh (4-hour) battery energy storage system
 - Located near Madison, CA
 - 20 year term
 - Earlier stages of development (compared to Putah Creek)
 - Commercial operation date late 2022
 - Pollinator-friendly

Together these two projects provide 23 MW of local renewable energy production with 9.5 MW of storage and will satisfy nearly 10% of VCE’s energy needs

CONCLUSION

Based on results from the solicitation process and PPA negotiations, staff believes the price and terms of the PPAs support VCE’s policy objectives, help meet regulatory requirements, and are competitively priced for local projects of this size in California.

Attachments

1. Attachment A – Putah Creek Solar Farms LLC Power Purchase Agreement
2. Attachment B – Gibson Renewables LLC Power Purchase Agreement
3. Resolution - Putah Creek Solar Farms LLC Power Purchase Agreement
4. Resolution - Gibson Renewables LLC Power Purchase Agreement

EXECUTION VERSION

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Putah Creek Solar Farms LLC

Buyer: Valley Clean Energy Alliance, a California joint powers authority

Description of Facility: 3-MW AC solar photovoltaic facility co-located with 3-MW/12 MWh (4-hour) lithium-ion phosphate battery energy storage system, located in Winters, California and interconnecting adjacent to Putah Creek Substation, as further described in Exhibit A

Milestones:

Milestone	Expected Date for Completion
Execute Interconnection Agreement	March 24, 2020
Procure major equipment	February 26, 2021
Obtain federal and state discretionary permits	May 15, 2020
Expected Construction Start Date	March 1, 2021
Guaranteed Construction Start Date	April 1, 2021
Expected Commercial Operation Date	September 1, 2021
Guaranteed Commercial Operation Date	October 15, 2021

Delivery Term: twenty (20) Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1	████
2	████
3	████
4	████

5	████
6	████
7	████
8	████
9	████
10	████
11	████
12	████
13	████
14	████
15	████
16	████
17	████
18	████
19	████
20	████

Guaranteed Capacity: 6 MW of total Facility capacity

Guaranteed Storage Capacity: 3MW of Installed Storage Capacity at four (4) hours of continuous discharge

Guaranteed PV Capacity: 3 MW AC of Installed PV Capacity

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	████
2	████

3	[REDACTED]
4	[REDACTED]
5	[REDACTED]
6	[REDACTED]
7	[REDACTED]
8	[REDACTED]
9	[REDACTED]
10	[REDACTED]
11	[REDACTED]
12	[REDACTED]
13	[REDACTED]
14	[REDACTED]
15	[REDACTED]
16	[REDACTED]
17	[REDACTED]
18	[REDACTED]
19	[REDACTED]
20	[REDACTED]

RA Guarantee Date: Commercial Operation Date

Contract Price:

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 20	[REDACTED]

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 20	[REDACTED]

Product

- PV Energy
- Discharging Energy
- Green Attributes
- Installed Storage Capacity and Effective Storage Capacity
- Ancillary Services
- Capacity Attributes

Scheduling Coordinator: Buyer

Security:

Development Security: [REDACTED] Guaranteed PV Capacity

Performance Security: [REDACTED] Installed PV Capacity

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS	1
1.1 Contract Definitions.....	1
1.2 Rules of Interpretation	23
ARTICLE 2 TERM; CONDITIONS PRECEDENT.....	24
2.1 Contract Term.	24
2.2 Conditions Precedent	25
2.3 Development; Construction; Progress Reports.....	26
2.4 Remedial Action Plan	26
ARTICLE 3 PURCHASE AND SALE.....	26
3.1 Purchase and Sale of Product.....	26
3.2 Sale of Green Attributes.....	27
3.3 Imbalance Energy.	27
3.4 Ownership of Renewable Energy Incentives.....	27
3.5 Future Environmental Attributes.	27
3.6 Test Energy.	28
3.7 Capacity Attributes.	28
3.8 Resource Adequacy Failure	28
3.9 CEC Certification and Verification.	29
3.10 Eligibility.	29
3.11 California Renewables Portfolio Standard.....	29
3.12 Compliance Expenditure Cap.	30
3.13 Project Configuration.....	30
ARTICLE 4 OBLIGATIONS AND DELIVERIES.....	31
4.1 Delivery.....	31
4.2 Title and Risk of Loss.	31
4.3 Forecasting.....	31
4.4 Dispatch Down/Curtailment.	33
4.5 Energy Management	34
4.6 Reduction in Delivery Obligation.....	36
4.7 Guaranteed Energy Production.	37
4.8 Storage Facility Availability; Ancillary Services	37
4.9 Storage Facility Testing	38
4.10 WREGIS	39
ARTICLE 5 TAXES	41
5.1 Allocation of Taxes and Charges.....	41
5.2 Cooperation.....	41
ARTICLE 6 MAINTENANCE OF THE FACILITY.....	42
6.1 Maintenance of the Facility.	42
6.2 Maintenance of Health and Safety.....	42
6.3 Shared Facilities.....	42

ARTICLE 7 METERING	42
7.1 Metering.....	42
7.2 Meter Verification.....	43
ARTICLE 8 INVOICING AND PAYMENT; CREDIT	43
8.1 Invoicing.....	43
8.2 Payment.....	44
8.3 Books and Records.....	44
8.4 Payment Adjustments; Billing Errors.....	44
8.5 Billing Disputes.....	45
8.6 Netting of Payments.....	45
8.7 Seller’s Development Security.....	45
8.8 Seller’s Performance Security.....	45
8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral.....	46
ARTICLE 9 NOTICES	46
9.1 Addresses for the Delivery of Notices.....	46
9.2 Acceptable Means of Delivering Notice.....	47
ARTICLE 10 FORCE MAJEURE	47
10.1 Definition.....	47
10.2 No Liability If a Force Majeure Event Occurs.....	48
10.3 Notice.....	48
10.4 Termination Following Force Majeure Event.....	48
.	48
ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION	49
11.1 Events of Default.....	49
11.2 Remedies; Declaration of Early Termination Date.....	51
11.3 Damage Payment; Termination Payment.....	52
11.4 Notice of Payment of Termination Payment or Damage Payment.....	53
11.5 Disputes with Respect to Termination Payment or Damage Payment.....	53
11.6 Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.....	53
11.7 Rights and Remedies Are Cumulative.....	54
11.8 Mitigation.....	54
11.1 Seller Pre-COD Termination.....	54
ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES	54
12.1 No Consequential Damages.....	54
12.2 Waiver and Exclusion of Other Damages.....	55
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY	56
13.1 Seller’s Representations and Warranties.....	56
13.2 Buyer’s Representations and Warranties.....	56
13.3 General Covenants.....	57

13.4	Workforce Development.....	58
13.5	Support for Pollinators.....	58
13.6	Bifacial Solar and Sustainable Agriculture Practices Production Report.....	59
ARTICLE 14 ASSIGNMENT.....		59
14.1	General Prohibition on Assignments.....	59
14.2	Collateral Assignment.....	59
14.3	Permitted Assignment by Seller.....	61
14.4	Shared Facilities; Portfolio Financing.....	62
ARTICLE 15 DISPUTE RESOLUTION.....		62
15.1	Governing Law.....	62
15.2	Dispute Resolution.....	62
15.3	Attorneys' Fees.....	62
ARTICLE 16 INDEMNIFICATION.....		62
16.1	Indemnification.....	62
16.2	Claims.....	63
ARTICLE 17 INSURANCE.....		63
17.1	Insurance.....	63
ARTICLE 18 CONFIDENTIAL INFORMATION.....		65
18.1	Definition of Confidential Information.....	65
18.2	Duty to Maintain Confidentiality.....	65
18.3	Irreparable Injury; Remedies.....	66
18.4	Further Permitted Disclosure.....	66
18.5	Press Releases.....	66
ARTICLE 19 MISCELLANEOUS.....		67
19.1	Entire Agreement; Integration; Exhibits.....	67
19.2	Amendments.....	67
19.3	No Waiver.....	67
19.4	No Agency, Partnership, Joint Venture or Lease.....	67
19.5	Severability.....	67
19.6	Mobile-Sierra.....	67
19.7	Counterparts.....	68
19.8	Electronic Delivery.....	68
19.9	Binding Effect.....	68
19.10	No Recourse to Members of Buyer.....	68
19.11	Forward Contract.....	68
19.12	Change in Electric Market Design.....	69
19.13	Further Assurances.....	69

Exhibits:

Exhibit A Facility Description

Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Compensation
Exhibit D	Scheduling Coordinator Responsibilities
Exhibit E	Progress Reporting Form
Exhibit F	Form of Annual Expected Available Generating Facility Capacity Report
Exhibit G	Guaranteed Energy Production Damages Calculation
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I-1	Form of Installed Capacity Certificate
Exhibit I-2	Form of Effective Storage Capacity Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	[Reserved]
Exhibit M	Form of Replacement RA Notice
Exhibit N	Notices
Exhibit O	Storage Capacity Tests
Exhibit P	Annual Storage Capacity Availability Calculation
Exhibit Q	Operating Restrictions
Exhibit R	Metering Diagram
Exhibit S	Pollinator Scorecard

RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of ___ (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Facility;
and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 DEFINITIONS

1.1 **Contract Definitions.**

The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12(c).

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“**Ancillary Services**” means spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Facility is

Signature Page

capable of providing consistent with the Operating Restrictions, as each is defined in the CAISO Tariff.

“**Annual Forecast**” has the meaning set forth in Section 4.3(a).

“**Annual Storage Capacity Availability**” has the meaning set forth in Exhibit P.

“**Approved Forecast Vendor**” means any of (x) the CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3.

“**Assignment Agreement**” has the meaning set forth in Section 14.5.

“**Automated Dispatch System**” or “**ADS**” has the meaning set forth in the CAISO Tariff.

“**Automatic Generation Control**” or “**AGC**” has the meaning set forth in the CAISO Tariff.

“**Availability Standards**” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“**Bankrupt**” or “**Bankruptcy**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“**Battery Charging Factor**” means the percentage SOC of the Storage Facility after the first five (5) hours of the charging phase of the applicable Storage Capacity Test.

“**Battery Discharging Factor**” means one (1) minus the percentage SOC of the Storage Facility after the first four (4) hours of the discharging phase of the applicable Storage Capacity Test.

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“**Buyer**” has the meaning set forth on the Cover Sheet.

“**Buyer Assignee**” has the meaning set forth in Section 14.5.

“**Buyer Bid Curtailment**” means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Generating Facility, requiring the Party to deliver less PV Energy from the Generating Facility than the full amount of Energy forecasted in accordance with Section 4.3 to be produced from the Generating Facility for a period of time; and

(b) for the same time period as referenced in (a), Buyer or the SC for the Generating Facility did not submit a Self-Schedule for the MWhs subject to the reduction.

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any PV Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce PV Energy from the Generating Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces PV Energy from the Generating Facility pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order or (c) a Buyer Event of Default hereunder which directly causes Seller to be unable to deliver PV Energy to the Delivery Point; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“Buyer Default” means an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.9(c).

“Buyer’s Indemnified Parties” has the meaning set forth in Section 18.2.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

“CAISO Charges Invoice” has the meaning set forth in Exhibit D.

“CAISO Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the

Storage Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

“**CAISO Grid**” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“**CAISO Tariff**” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

“**Calculation Interval**” has the meaning set forth in Exhibit P.

“**California Renewables Portfolio Standard**” or “**RPS**” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“**Capacity Attribute**” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“**Capacity Availability Factor**” has the meaning set forth in Exhibit C.

“**Capacity Damages**” means collectively Storage Capacity Damages and PV Capacity Damages.

“**Capacity Test**” or “**CT**” means the Commercial Operation Storage Capacity Test, Storage Capacity Test, or any other test conducted pursuant to Exhibit O.

“**CEC**” means the California Energy Commission or its successor agency.

“**CEC Certification and Verification**” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all PV Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“**CEC Precertification**” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“**Change of Control**” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than

fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means all PV Energy produced by the Generating Facility and delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, (a) any such operating instruction shall be in accordance with the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer's SC or the CAISO to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Notice”, such “Charging Notice” shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. Any Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“COD Certificate” has the meaning set forth in Exhibit B.

“Collateral Assignment Agreement” has the meaning set forth in Section 14.2.

“Commercial Operation” has the meaning set forth in Exhibit B.

“Commercial Operation Date” means the date Commercial Operation is achieved.

“Commercial Operation Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

“Commercial Operation Storage Capacity Test” means the Storage Capacity Test conducted in connection with Commercial Operation of the Storage Facility, including any additional Storage Capacity Test for additional Storage Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“Communications Protocols” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

“**Compliance Actions**” has the meaning set forth in Section 3.12(a).

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.12.

“**Confidential Information**” has the meaning set forth in Section 18.1.

“**Construction Start**” has the meaning set forth in Exhibit B.

“**Construction Start Date**” has the meaning set forth in Exhibit B.

“**Contract Price**” has the meaning set forth on the Cover Sheet. For clarity, the Contract Price is each of the Renewable Rate and the Storage Rate.

“**Contract Term**” has the meaning set forth in Section 2.1.

“**Contract Year**” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“**Costs**” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“**Cover Sheet**” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“**CPM Price**” has the meaning set forth in Section 3.8(b).

“**CPUC**” means the California Public Utilities Commission, or successor entity.

“**Credit Rating**” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“**Cure Plan**” has the meaning set forth in Section 11.1(b)(iii).

“**Curtailment Cap**” is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Installed PV Capacity.

“**Curtailment Order**” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is

connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs in the VER forecast for the Generating Facility during the relevant time period;

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"Cycles" means, at any point in time during any Contract Year, the number of equivalent charge/discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) four (4) times the weighted average Effective Storage Capacity for such Contract Year to date.

"Daily Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"Damage Payment" means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

"Day-Ahead Forecast" has the meaning set forth in Section 4.3(b).

"Day-Ahead Schedule" has the meaning set forth in the CAISO Tariff.

"Deemed Delivered Energy" means the amount of PV Energy expressed in MWh that the Generating Facility would have produced and delivered to the Generating Facility Meter, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected PV Energy produced by the Generating Facility) provided pursuant to Section 4.3(c) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of PV Energy delivered to the Storage Facility, or to the Delivery Point directly from the Generating Facility, during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility's PNode during any Settlement

Interval was less than zero, Deemed Delivered Energy shall be reduced in such Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

“Defaulting Party” has the meaning set forth in Section 11.1(a).

“Deficient Month” has the meaning set forth in Section 4.10(e).

“Delay Damages” means Daily Delay Damages and Commercial Operation Delay Damages.

“Delivery Point” has the meaning set forth in Exhibit A.

“Delivery Term” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Exhibit B.

“Development Security” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

“Discharging Energy” means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh; *provided*, (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such “Discharging Notice” shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer’s SC or the CAISO issues a further modified Discharging Notice. Any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“Disclosing Party” has the meaning set forth in Section 18.2.

“Early Termination Date” has the meaning set forth in Section 11.2(a).

“Effective Date” has the meaning set forth on the Preamble.

“Effective FCDS Date” means the date identified in Seller’s Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

“Effective Storage Capacity” means the lesser of (a) PMAX, and (b) the maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

“Efficiency Rate” means the rate of converting Energy In into Energy Out, as calculated by dividing Energy Out in the applicable month of the Delivery Term by Energy In in the same month of the Delivery Term, expressed as a percentage.

“Electrical Losses” means all transmission or transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, and (c) between the Delivery Point and/or Generating Facility and the Storage Facility Metering Point, as applicable, associated with delivery of Charging Energy to the Storage Facility.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy, measured in kilowatt-hours or multiple units thereof. Energy shall include without limitation, reactive power and any other electrical energy products that may be developed or evolve from time to time during the Contract Term.

“Energy In” means all Energy delivered into the Storage Facility (not including Energy metered into the Storage Facility when not subject to a Charing Notice) measured at the Storage Facility Metering Point by the Storage Facility Meter, without taking into account or applying any CAISO or other meter adjustments for Electrical Losses.

“Energy Management System” or **“EMS”** means the Facility’s energy management system.

“Energy Out” means all Energy output from the Storage Facility as measured at the Storage Facility Metering Point by the Storage Facility Meter, without taking into account or applying any CAISO or other meter adjustments for Electrical Losses.

“Event of Default” has the meaning set forth in Section 11.1.

“Excess MWh” has the meaning set forth in Exhibit C.

“Expected Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Expected Construction Start Date” has the meaning set forth on the Cover Sheet.

“Expected Energy” means the quantity of PV Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

“Facility” means the combined Generating Facility and the Storage Facility.

“Facility Energy” means PV Energy and/or Discharging Energy, as applicable, during any Settlement Interval or Settlement Period, as measured by the Storage Facility Meter and/or Storage Facility Meter, as applicable, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“Forecasted Product” has the meaning set forth in Section 4.3(b).

“Forecasting Penalty” has the meaning set forth in Section 4.3(e).

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

“Full Capacity Deliverability Status” or **“FCDS”** has the meaning set forth in the CAISO Tariff.

“Full Capacity Deliverability Status Finding” means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

“Future Environmental Attributes” means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used

in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (a) PV Energy to the Delivery Point, and (b) Charging Energy to the Storage Facility; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Generating Facility Meter” means the CAISO approved revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of PV Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Generating Facility Metering Point” means the location(s) of the Generating Facility Meter(s) shown in Exhibit R.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided*, “Governmental Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), 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; and (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

“**Green Tag Reporting Rights**” means the right of a purchaser of renewable energy to report ownership of accumulated Green Tags in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“**Green Tags**” means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of PV Energy.

“**Green-e Certified**” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“**Green-e Energy National Standard**” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

“**Guaranteed Capacity**” means the sum of (x) the Guaranteed PV Capacity and (y) the Guaranteed Storage Capacity.

“**Guaranteed Commercial Operation Date**” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“**Guaranteed Construction Start Date**” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“**Guaranteed Efficiency Rate**” means the minimum guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

“**Guaranteed Energy Production**” has the meaning set forth in Section 4.7.

“**Guaranteed PV Capacity**” means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“**Guaranteed Storage Availability**” has the meaning set forth in Section 4.8.

“Guaranteed Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge Energy, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of PV Energy, Charging Energy or Discharging Energy deviates from the amount of Scheduled Energy.

“Indemnified Party” has the meaning set forth in Section 16.1.

“Indemnifying Party” has the meaning set forth in Section 16.1.

“Initial Synchronization” means the initial delivery of Energy from the Facility to the Delivery Point.

“Installed Capacity” means the sum of (x) the Installed PV Capacity and (y) the Installed Storage Capacity.

“Installed PV Capacity” means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

“Installed Storage Capacity” means the lesser of (a) P_{MAX}, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Storage Facility Meter Point by the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B.

“Inter-SC Trade” or **“IST”** has the meaning set forth in the CAISO Tariff.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement, in the amount of 3 MW.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

“Interim Deliverability Status” has the meaning set forth in the CAISO Tariff.

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“Joint Powers Agreement” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kWh” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Local Capacity Area Resource” has the meaning set forth in the CAISO Tariff.

“Local RAR” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Locational Marginal Price” or **“LMP”** has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“Lost Output” has the meaning set forth in Section 4.7.

“Milestones” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“Monthly Capacity Payment” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the provision of Effective Storage Capacity and Capacity Attributes associated with the Storage Facility, as calculated in accordance with Exhibit C.

“Moody’s” means Moody’s Investors Service, Inc., or its successor.

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

“MWh” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Negative LMP” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars (\$0).

“NERC” means the North American Electric Reliability Corporation.

“Net Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 11.2.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“**NP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region NP-15 as set forth in the CAISO Tariff.

“**Operating Restrictions**” means those rules, requirements, and procedures set forth in Exhibit Q.

“**Party**” has the meaning set forth in the Preamble.

“**Performance Measurement Period**” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; *provided*, a new Performance Measurement Period shall begin following any Performance Measurement Period for which Seller pays any liquidated damages or provides any Replacement Product under Section 4.7. Thus, for example, if Seller pays any liquidated damages or provides any Replacement Product under Section 4.7 for the Performance Measurement Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

“**Performance Security**” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Permitted Transferee**” means (a) any Affiliate of Seller or (b) any entity that satisfies, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of power generation and energy storage facilities similar to the Facility or has retained a third-party with such experience to operate the Facility.

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“**Planned Outage**” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

“**PMAX**” means the applicable CAISO-certified maximum operating level of the Storage Facility.

“**PMIN**” means the applicable CAISO-certified minimum operating level of the Storage Facility.

“**PNode**” has the meaning set forth in the CAISO Tariff.

“**Portfolio**” means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“**Portfolio Content Category 1**” or “**PCC1**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“**Portfolio Financing**” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“**Portfolio Financing Entity**” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“**Product**” has the meaning set forth on the Cover Sheet.

“**Progress Report**” means a progress report including the items set forth in Exhibit E.

“**Prudent Operating Practice**” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“**PTC**” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

“**PV Capacity Damages**” has the meaning set forth in Section 5 of Exhibit B.

“PV Energy” means all Energy delivered from the Generating Facility to the Generating Facility Metering Point and measured by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“RA Compliance Showing” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the date set forth in the deliverability Section of the Cover Sheet which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month, commencing on the RA Guarantee Date, during which the Net Qualifying Capacity of the Facility for such month was less than the Qualifying Capacity of the Facility for such month (including any month during the period between the RA Guarantee Date and the Effective FCDS Date, if applicable).

“Real-Time Forecast” has the meaning set forth in Section 4.3(c).

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“Receiving Party” has the meaning set forth in Section 18.2.

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Remedial Action Plan” has the meaning set forth in Section 2.4.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the

American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Renewable Rate” has the meaning set forth on the Cover Sheet.

“Replacement Energy” has the meaning set forth in Exhibit G.

“Replacement Green Attributes” has the meaning set forth in Exhibit G.

“Replacement Product” has the meaning set forth in Exhibit G.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within NP 15 TAC Area and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

“Requested Confidential Information” has the meaning set forth in Section 18.2.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Resource Adequacy Resource” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“Schedule” has the meaning set forth in the CAISO Tariff, and **“Scheduled”** has a corollary meaning.

“**Scheduled Energy**” means the PV Energy, Charging Energy or Discharging Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“**Scheduling Coordinator**” or “**SC**” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“**Security Interest**” has the meaning set forth in Section 8.9.

“**Self-Schedule**” has the meaning set forth in the CAISO Tariff.

“**Seller**” has the meaning set forth on the Cover Sheet.

“**Seller Initiated Test**” has the meaning set forth in Section 4.9(c).

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.10(a).

“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“**Settlement Interval**” has the meaning set forth in the CAISO Tariff.

“**Settlement Period**” has the meaning set forth in the CAISO Tariff.

“**Shared Facilities**” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“**Showing Month**” shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; provided, that any such update

to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“**Site Control**” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“**SOC**” or “**State of Charge**” means the (a) level of charge of the Storage Facility relative to (b) the Effective Storage Capacity multiplied by four (4) hours, expressed as a percentage.

“**Station Use**” means the Energy produced or discharged by the Facility that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility.

“**Storage Capability**” has the meaning in Exhibit P.

“**Storage Capacity Availability Payment True-Up**” has the meaning set forth in Exhibit C.

“**Storage Capacity Availability Payment True-Up Amount**” has the meaning set forth in Exhibit C.

“**Storage Capacity Damages**” has the meaning set forth in Section 5 of Exhibit B.

“**Storage Capacity Test**” means any test or retest of the Storage Facility to establish the Installed Storage Capacity and/or Effective Storage Capacity, conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“**Storage Cure Plan**” has the meaning set forth in Section 11.1(b)(iv).

“**Storage Facility**” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“**Storage Facility Meter**” means the CAISO approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility may contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“**Storage Facility Metering Point**” means the location(s) of the Storage Facility Meter shown in Exhibit R.

“**Storage Product**” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

“**Storage Rate**” has the meaning set forth on the Cover Sheet.

“**Stored Energy Level**” means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh.

“**Supplementary Capacity Test Protocol**” has the meaning set forth in Exhibit O.

“**System Emergency**” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (a) prevent or limit harm to or loss of life or property, (b) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (c) to preserve Transmission System reliability.

“**Tax**” or “**Taxes**” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“**Tax Credits**” means the PTC, ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities or battery storage facilities.

“**Terminated Transaction**” has the meaning set forth in Section 11.2(a).

“**Termination Payment**” has the meaning set forth in Section 11.3(b).

“**Test Energy**” means PV Energy delivered (a) commencing on the later of (a) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (b) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Commercial Operation Date.

“**Test Energy Rate**” has the meaning set forth in Section 3.6.

“**Total Calculation Intervals**” has the meaning set forth in Exhibit P.

“**Transmission Provider**” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain

transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“**Transmission System Outage**” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“**Ultimate Parent**” means [REDACTED]

“**Unavailability Notice**” means any reduction in the available Effective Storage Capacity or Storage Capability communication to Buyer pursuant to this Agreement, including pursuant to Sections 4.3 and 4.6.

“**Unavailable Calculation Interval**” has the meaning set forth in Exhibit P.

“**Variable Energy Resource**” or “**VER**” has the meaning set forth in the CAISO Tariff.

“**WREGIS**” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“**WREGIS Certificate Deficit**” has the meaning set forth in Section 4.10(e).

“**WREGIS Certificates**” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.**

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the terms "include" and "including" mean "include or including (as applicable) without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression "and/or" when used as a conjunction shall connote "any or all of";

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”); *provided*, subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 **Conditions Precedent.**

Seller shall provide Notice of expected Commercial Operation to Buyer no less than sixty (60) days in advance of such date. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed PV Capacity, the Installed Storage Capacity and the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Facility that are capable of being satisfied on the Commercial Operation Date have been obtained and all conditions thereof have been satisfied and shall be in full force and effect;

(e) Seller has obtained CAISO Certification for the Facility;

(f) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(g) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with

WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(h) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(i) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Daily Delay Damages and Commercial Operation Delay Damages.

2.3 **Development; Construction; Progress Reports.**

Within fifteen (15) days after the close of each calendar month following the Effective Date and continuing through the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.**

If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.**

Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use

shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer shall have exclusive rights to offer, bid, or otherwise submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues.

3.2 **Sale of Green Attributes.**

During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the PV Energy generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy.**

Buyer and Seller recognize that in any given Settlement Period the amount of PV Energy and/or Discharging Energy delivered from the Generating Facility and/or the Storage Facility may deviate from the amounts thereof scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer.

3.4 **Ownership of Renewable Energy Incentives.**

Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.**

No less than thirty (30) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to [REDACTED] of the Renewable Rate (the "**Test Energy Rate**"). The conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes.**

Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility (or, if applicable, during the period between the RA Guarantee Date and the Effective FCDS Date, the amount of Qualifying Capacity the Facility would reasonably be estimated to qualify for, based on the CPUC-adopted qualifying capacity methodologies then in effect), minus (ii) the Net Qualifying Capacity of the Facility, multiplied by the price for CPM Capacity as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) (“**CPM Price**”); *provided* that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable Showing Month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification.**

Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

3.10 **Eligibility.**

Subject to Section 3.12, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law. The term “commercially reasonable efforts” as used in this Section 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard.**

Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the PV Energy produced from the Generating Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by

the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap.**

If a change in Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty Thousand Dollars (\$20,000) per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**").

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 **Project Configuration.**

In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy to provide Charging Energy; provided, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point (except for PV Energy used as Charging Energy), and Buyer shall take delivery of the Product at the Delivery Point (except for PV Energy used as Charging Energy) in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The PV Energy, Charging Energy and Discharging Energy will be scheduled with the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) **Green Attributes.** All Green Attributes associated with Test Energy and the PV Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) **Green Attributes.** Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting.**

Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) **Annual Forecast of Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected PV Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F, or as reasonably requested by Buyer ("**Annual Forecast**").

(b) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer (or arrange for an Approved Forecast Vendor to provide Buyer) with a non-binding forecast of the hourly expected (i) available capacity of the Generating Facility, (ii) PV Energy, (iii) available Effective Storage Capacity, and (iv) available Storage Capability (items (i)-(iv) collectively referred to as the “**Forecasted Product**”), in each case, for each hour of the immediately succeeding day (“**Day-Ahead Forecast**”). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediately following day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s (or the Approved Forecast Vendor’s) best estimate of the hourly expected Forecasted Product. Such Day-Ahead Forecasts shall be sent to Buyer’s on-duty Scheduling Coordinator.

(c) Real-Time Forecast. During the Delivery Term, Seller shall notify (or arrange for an Approved Forecast Vendor to notify) Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in the hourly expected Forecasted Product (“**Real-Time Forecast**”), in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify (or arrange for an Approved Forecast Vendor to notify) Buyer as soon as reasonably possible. Such Real-Time Forecasts of PV Energy (including those provided by an Approved Forecast Vendor) shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify (or arrange for an Approved Forecast Vendor to notify) Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. Such Real-Time Forecasts shall be communicated in a method acceptable to Buyer, provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(c), then Seller (or the Approved Forecast Vendor, as applicable) shall send such communications by telephone and e-mail to Buyer.

(d) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer’s on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(e) Forecasting Penalties. In the event Seller does not in a given hour provide, or Seller has failed to arrange for an Approved Forecast Vendor to provide, the Day-Ahead Forecast required in Section 4.3(b) or the Real-Time Forecast required in Section 4.3(c), and due to such failures Buyer incurs a loss or penalty resulting from its scheduling activities with respect to PV Energy during such hour, Seller shall be responsible for a “**Forecasting Penalty**” for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected PV

Energy for such hour (which, assumes no Charging Energy or Discharging Energy in such hour) set forth in the most recent Day-Ahead Forecast (or Annual Forecast to the extent no Day-Ahead Forecast was Delivered to Buyer), and (ii) the actual PV Energy for such hour (absent any Charging Energy and Discharging Energy), multiplied by (B) the value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(f) CAISO Tariff Requirements. Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of PV Energy and/or Discharging Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Renewable Rate, subject to the limitations of Section (b) of Exhibit C.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of PV Energy that is delivered by the Generating Facility to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with

methodologies applicable to the Facility, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 **Energy Management.**

(a) **Charging Generally.** Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility. Except as otherwise expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(i), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy. The Parties acknowledge and agree that, although Charging Energy will exclusively be PV Energy delivered directly from the Generating Facility to the Storage Facility, for purposes of CAISO financial settlements the Parties understand that CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid as if such Charging Energy were grid energy, and that as a result the CAISO will have separate financial settlements (i) for deliveries of PV Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) **Charging Notices.** Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued, subject to the requirements and limitations set forth in this Agreement. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) **No Unauthorized Charging.** Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. If, during the Delivery Term, Seller charges the Storage Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.5(c), then (x) Seller shall pay Buyer the cost of such Energy associated with such charging of the Storage Facility, and (y) Buyer shall be entitled to discharge such Energy and entitled to all of the CAISO revenues and benefits (including Storage Product) associated with such discharge. Notwithstanding the foregoing, during any Curtailment Period, Buyer shall use commercially reasonable efforts to cause all curtailed PV Energy to be used as Charging Energy.

(d) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Discharging Notices to be issued, subject to the requirements and limitations set forth in this Agreement. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices or Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from Buyer or its SC or a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder or as expressly addressed in Section 4.5(g), it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11.

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Storage Facility is capable of responding to a CAISO Dispatch, but the Storage Facility deviates from a CAISO Dispatch, Seller shall be responsible for all CAISO charges and penalties resulting from such deviation (in addition to any Buyer remedy related to overcharging of the Storage Facility as set forth in Section 4.5(c)). To the extent the Storage Facility is unable to respond to ADS signals during any Calculation Interval, then as an exclusive remedy, such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the YTD Annual Storage Capacity Availability.

(h) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Storage

Facility; *provided*, prior to the Commercial Operation Date Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility.

(i) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy from the grid to serve Station Use), (ii) the supply of such Station Use shall not be deemed a deviation for purposes of Section 4.5(k)(i) or a violation of this Agreement, including Sections 4.5(c), (d), and (f), and (iii) Station Use may not be supplied from PV Energy, Charging Energy or Discharging Energy.

4.6 Reduction in Delivery Obligation.

(a) Facility Maintenance.

(i) Seller shall provide to Buyer written schedules for Planned Outages for each of the Generating Facility and Storage Facility for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments on the proposed Planned Outage schedule no later than ten (10) days after receiving any such schedule, and Seller shall in good faith take into account any such comments. Seller shall deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.6(a)(i). Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff (or such shorter period as may be reasonably acceptable to Buyer based on the likelihood of dispatch by Buyer), and Seller shall limit maintenance repairs performed pursuant to this Section 4.6(a) to periods when Buyer does not reasonably believe the Generating Facility and/or Storage Facility, as applicable, will be dispatched.

(iii) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Generating Facility or Storage Facility shall be scheduled or planned from each June 1 through September 30 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission

System Outage, Buyer Curtailment Period or upon notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse (i) the Storage Facility's unavailability for purposes of calculating the Annual Storage Capacity Availability, or (ii) in the case of Sections 4.6(a), (b) and (e), Seller's obligation to deliver Capacity Attributes.

4.7 **Guaranteed Energy Production**.

During each Performance Measurement Period during the Delivery Term, Seller shall deliver to Buyer an amount of PV Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of PV Energy, as measured in MWh, equal to one hundred seventy percent (170%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Event of Default or other Buyer failure to perform that directly prevents Seller from being able to deliver PV Energy to the Delivery Point. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (a) any Deemed Delivered Energy, plus (b) PV Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods ("**Lost Output**"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at NP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer, and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement.

4.8 **Storage Facility Availability; Ancillary Services**.

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Capacity Availability during each Contract Year of no less than [REDACTED] (the "**Guaranteed Storage Availability**"), which Annual Storage Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer's sole remedy for an Efficiency Rate

that is less than the Guaranteed Efficiency Rate is Seller's payment of liquidated damages pursuant to Section (f) of Exhibit C.

(c) Buyer's exclusive remedies for Seller's failure to achieve the Guaranteed Storage Availability are (i) the adjustment of Seller's payment for the Product by application of the Capacity Availability Factor (as set forth in Exhibit C), and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iv), the applicable remedies set forth in Article 11.

(d) Seller shall operate and maintain the Storage Facility throughout the Delivery Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Storage Facility's initial CAISO Certification associated with the Installed Storage Capacity. To the extent the Storage Facility is unable to provide Ancillary Services for any reason not excused hereunder during any Calculation Interval that is not otherwise deemed an Unavailable Calculation Interval, then as exclusive remedies the Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the YTD Annual Storage Capacity Availability to the extent of such inability or failure multiplied by [REDACTED]

(e) Upon Buyer's reasonable request, Seller shall submit the Storage Facility for additional CAISO Certification so that the Storage Facility may provide additional Ancillary Services that the Facility is at the relevant time actually physically capable of providing consistent with the definition of Ancillary Services herein, provided that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with such additional CAISO Certification.

4.9 **Storage Facility Testing.**

(a) Storage Capacity Tests. Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity, then the actual capacity determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) Additional Testing. Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage Facility is able to respond to Buyer or CAISO Dispatches.

(c) Buyer or Seller Initiated Tests. Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests and all required annual tests pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility

(“**Buyer Dispatched Test**”). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below [REDACTED] of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a “**Seller Initiated Test**”.

(i) For any Seller Initiated Test, other than Storage Capacity Tests required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability. The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility and Buyer shall be entitled to all CAISO revenues associated with a Storage Facility dispatch during a Buyer Dispatched Test. For all Seller Initiated Tests, (1) Seller shall reimburse Buyer for all CAISO costs and charges associated with Charging Energy used for such Seller Initiated Test, and (2) Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy, but all Green Attributes associated therewith shall be for Buyer’s account at no additional cost to Buyer. Buyer shall pay to Seller, in the month following Buyer’s receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(iii) Except as set forth in Sections 4.9(d)(i) and (ii), all other costs of any testing of the Storage Facility shall be borne by Seller.

4.10 WREGIS.

Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy are issued and tracked for purposes of

satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of PV Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the PV Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the PV Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction of, Seller, then the amount of PV Energy in the Deficient Month shall be reduced by three (3) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose

additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the PV Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first Energy delivery under this Agreement.

ARTICLE 5 TAXES

5.1 Allocation of Taxes and Charges.

Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

**ARTICLE 6
MAINTENANCE OF THE FACILITY**

6.1 Maintenance of the Facility.

Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the generation and sale of Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 Maintenance of Health and Safety.

Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility or suspending the supply of Facility Energy to the Delivery Point.

6.3 Shared Facilities.

The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided*, such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

**ARTICLE 7
METERING**

7.1 Metering.

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of PV Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. Seller shall separately meter or account for all Station Use. All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Storage Facility Meter and Generating Facility Meter shall be programmed to adjust for all Electrical Losses from such meters to the Delivery Point (or from the Generating Facility to the Storage Facility in the case of Charging Energy) in a manner compliance with the CAISO Tariff and subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter and Generating Facility Meter shall be kept under seal,

such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface (MRI-S) and/or directly from the CAISO meter(s) at the Facility.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include, as the sole meters for the Facility, the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under, the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.

7.2 Meter Verification.

Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; provided, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 Invoicing.

Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy, Charging Energy, Discharging Energy, Energy in, Energy Out, Replacement RA and Replacement Product delivered to Buyer (if

any), the calculation of Deemed Delivered Energy that exceeds the Curtailment Cap and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.**

Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after Buyer's receipt of each invoice; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.**

To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.**

Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.**

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.**

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.**

To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within ten (10) days after the Effective Date. Seller shall maintain the Development Security in full force and effect, and Seller shall have no obligation to replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security.**

To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer

collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral.

To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“**Security Interest**”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

**ARTICLE 9
NOTICES**

9.1 Addresses for the Delivery of Notices.

Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 Acceptable Means of Delivering Notice.

Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 Definition.

(a) “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order, except

to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure, except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.**

Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.**

In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.**

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal or exceed [REDACTED] days, and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's commercially unreasonable actions (or failure to take commercially reasonable actions), then Seller may terminate this Agreement upon Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this

Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 Events of Default.

An “**Event of Default**” shall mean:

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) -day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (B) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7; and (C) failures related to the Annual Storage Capacity Availability that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party;

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date as may be extended by Seller's payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any Contract Year beginning with the second Contract Year, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least [REDACTED] of the Expected Energy for such period, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the fifty percent (50%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed [REDACTED] days ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) if, in any two (2) consecutive Contract Years during the Delivery Term, the Annual Storage Capacity Availability multiplied by the Effective Storage Capacity of the applicable period is not at least [REDACTED] multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such [REDACTED] multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed [REDACTED] days ("Storage Cure Plan") and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein; *provided*, in the event of a Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10, any unavailability of the Storage Facility caused by a Force Majeure Event for which Seller is the claiming party shall be excluded from the calculation of Annual Storage Capacity Availability and weighted average Effective Storage Capacity for purposes of

determining whether a Seller Event of Default has occurred under this Section 11.1(b)(iv). If a Force Majeure Event prevents Seller from completing a Storage Cure Plan within [REDACTED] days, the time period for Seller to complete such Storage Cure Plan shall be extended by the period of such Force Majeure Event, up to an additional [REDACTED] days;

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date.**

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Damage Payment; Termination Payment.**

If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be equal to the entire Development Security amount and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer will be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer’s harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal the Settlement Amount plus any or all other amounts due to or from Buyer (as of the Early Termination Date), less the fair market value (determined in a commercially reasonable manner) of the Facility, regardless of whether or not Facility is actually sold or disposed of; provided that such Damage Payment shall not exceed the amount that Seller has posted as Development Security. There will be no amount owed to Buyer. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused

by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Termination Payment or Damage Payment.

As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes with Respect to Termination Payment or Damage Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.

If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product which provides Buyer the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 Rights and Remedies Are Cumulative.

Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 Mitigation.

Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

11.1 Seller Pre-COD Termination.

At any time prior to the Commercial Operation Date, Seller may for any reason, by Notice to Buyer pursuant to this Section 11.9, terminate this Agreement. As Buyer's sole right and remedy (and Seller's sole liability and obligation) arising out of any such termination under this Section 11.9, Buyer shall be entitled (A) to liquidate and retain all Development Security and (B) to collect from Seller (and Seller shall be obligated to pay to Buyer) the total amount of all Delay Damages accrued and unpaid as of the Agreement termination date; *provided*, in no event shall the sum of (A) and (B) exceed an amount equal to one and one half (1.5) times the Development Security amount.

**ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 No Consequential Damages.

EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 16 INDEMNITY CLAIM, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S

GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.**

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR

PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 Seller's Representations and Warranties.

As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

13.2 Buyer's Representations and Warranties.

As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants.**

Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Workforce Development.**

The Parties acknowledge that in connection with Buyer's renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof. Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. Seller shall complete the "Supplier Diversity and Labor Practices" questionnaire provided by Buyer, and Seller agrees to comply with similar regular reporting requirements related to diversity and labor practices.

13.5 **Support for Pollinators.**

Seller agrees to maintain the Site and to design, construct and operate the Facility in a manner that provides healthy habitats for bees, bats, butterflies, hummingbirds and other pollinators by undertaking the following pollinator habitat creation, restoration, and protection efforts:

(a) Seller shall provide to Buyer before the Construction Start Date a written narrative that describes the vegetation design and management plan for the Site, including landscape drawings and seed/plant listing.

(b) Within thirty (30) days of the Commercial Operation Date, Seller shall provide to Buyer a pollinator-friendly solar scorecard in the form attached as Exhibit S ("**Pollinator Scorecard**"). Seller shall use commercially reasonable efforts to achieve and maintain a score of at least seventy (70) on the Pollinator Scorecard during the Delivery Term.

(c) Within sixty (60) days after the end of each third (3rd) Contract Year during the Delivery Term, Seller shall provide to Buyer an updated Pollinator Scorecard.

(d) Seller is strongly encouraged to consider, but is not required to implement, the following solar array design elements to encourage and support pollinator-friendly habitats: (i)

36-inch minimum height above ground of the lowest edge of the solar panels; (ii) burying conduits and wiring with homeruns tight to bottom of panels; (iii) designing inter-row access/spacing to enable vegetation management; and (iv) utilizing BeeWhere registration (<https://beewherecalifornia.com/register-here/>) if bee hives are placed at the Site.

13.6 **Bifacial Solar and Sustainable Agriculture Practices Production Report.**

Bifacial solar arrays are the first solar PV technology with the potential to integrate well with various types of agricultural crops because bifacial modules allow light to pass through the module and lighten the shadows typically found below ground mounted PV systems. Seller will use the Site and PV performance data for two purposes:

(e) Identify ideal ground cover planting that can increase reflected light back to the PV modules and thus increase PV production for the Generating Facility; and

(f) Identify feasible and sustainable agriculture options under bifacial arrays.

Seller will make performance data for the bifacial Generating Facility available for review and plans to issue white papers to the energy and agricultural communities with the results of onsite performance data gathering and agricultural crop trials.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.**

Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, a Change of Control of Seller shall not require Buyer's consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment.**

Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided, such Notice shall be provided to Lender at the time such Notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received Notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

(c) Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(d) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of Notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a Bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(e) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(f) Lender will receive prior written Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(g) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing

as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
- (ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(g), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

14.3 **Permitted Assignment by Seller.**

Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

14.4 **Shared Facilities; Portfolio Financing.**

Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; provided, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

**ARTICLE 15
DISPUTE RESOLUTION**

15.1 **Governing Law.**

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2 **Dispute Resolution.**

In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys' Fees.**

In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

**ARTICLE 16
INDEMNIFICATION**

16.1 **Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents

(collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party’s breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.**

Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 **Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than One Million Dollars (\$1,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this

Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of One Million Dollars (\$1,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer

and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information.

The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality.

The Party receiving Confidential Information (the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”) shall not disclose Confidential Information to a third party (other than the Party’s employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into

in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word "Confidential." The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as "Confidential" that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("**Requested Confidential Information**"), Buyer will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents ("**Buyer's Indemnified Parties**"), from any claims, liability, award of attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer's Indemnified Parties for Buyer's refusal to disclose any Requested Confidential Information.

18.3 **Irreparable Injury; Remedies.**

Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.**

Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.**

Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

**ARTICLE 19
MISCELLANEOUS**

19.1 Entire Agreement; Integration; Exhibits.

This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 Amendments.

This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.

19.3 No Waiver.

Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 No Agency, Partnership, Joint Venture or Lease.

Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 Severability.

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 Mobile-Sierra.

Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 Counterparts.

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 Electronic Delivery.

This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.9 Binding Effect.

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 No Recourse to Members of Buyer.

Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In

any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 Change in Electric Market Design.

If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 Further Assurances.

Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

PUTAH CREEK SOLAR FARMS LLC

VALLEY CLEAN ENERGY ALLIANCE

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name: Putah Creek Energy Farm

Site includes all or some of the following APNs: 030-200-016

City: Winters

County: Yolo

Zip Code: 95694

Latitude and Longitude: 38 deg 31'27.17" N , 121 deg 59'43.58 W

Facility Description: See attached Site Plan

Delivery Point: Putah Creek Circuit #1105

Generating Facility Metering Points: At onsite meter adjacent to PV generation facility (See Exhibit R)

Storage Facility Metering Points: At onsite meter adjacent to storage facility (See Exhibit R)

P-node: N/A

Transmission Provider: PG&E

Additional Information: N/A



EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

a. “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a final notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

b. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of [REDACTED] days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, or as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”).

a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED]

█ days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, 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 to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:
 - a. Seller has not acquired by the Expected Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - b. a Force Majeure Event occurs; or
 - c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - d. Buyer has not made all necessary arrangements to receive the Facility 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(d) above) shall not exceed █ days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s)

(other than the extensions granted pursuant to clause 4(d) above) shall not exceed [REDACTED] days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. Failure to Reach Guaranteed PV Capacity or Guaranteed Storage Capacity.

- a. *Guaranteed PV Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay "**PV Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed PV Capacity exceeds the Installed PV Capacity.
- b. *Guaranteed Storage Capacity.* If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay "**Storage Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW at four hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

EXHIBIT C
COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of PV Energy, plus Deemed Delivered Energy that exceeds the Curtailment Cap, if any, up to [REDACTED] of the Expected Energy for such Contract Year.

(b) Excess Contract Year Deliveries Over [REDACTED]. Notwithstanding the foregoing, if at any point in any Contract Year, the amount of PV Energy plus Deemed Delivered Energy that exceeds the Curtailment Cap exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for additional PV Energy and/or Deemed Delivered Energy that exceeds the Curtailment Cap shall be \$0.00/MWh.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers PV Energy in excess of the product of the Guaranteed PV Capacity and the duration of the Settlement Interval, expressed in hours (“Excess MWh”), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Monthly Capacity Payment.

(i) Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate x Effective Storage Capacity. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity is adjusted pursuant to a Storage Capacity Test other than the first day of calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity is applicable.

(ii) Storage Capacity Availability Payment True-Up. Within sixty (60) days after each Contract Year of the Delivery Term, Buyer shall calculate the Annual Storage Capacity Availability for the applicable Contract Year in accordance with Exhibit P. If such Annual Storage Capacity Availability is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the “Storage Capacity Availability Payment True-Up”), and (2) provide Seller with a written statement of the calculation of the Annual Storage Capacity Availability and the Storage Capacity Availability Payment True-Up Amount.

“Storage Capacity Availability Payment True-Up Amount” means an amount equal to A x B, where:

A = The sum of the Monthly Capacity Payments for the Contract Year

B = The Capacity Availability Factor

“Capacity Availability Factor” means:

- (A) If the Annual Storage Capacity Availability times the Effective Storage Capacity is equal to or greater than the Guaranteed Storage Availability times the Effective Storage Capacity, then:

$$\text{Capacity Availability Factor} = 0$$

- (B) If the Annual Storage Capacity Availability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to [REDACTED] of the Installed Storage Capacity, then:

$$\text{Capacity Availability Factor} = \frac{\text{Guaranteed Storage Availability} - \text{Annual Storage Capacity Availability}}{\text{Installed Storage Capacity}}$$

- (C) If the Annual Storage Capacity Availability times the Effective Storage Capacity is less than [REDACTED] of the Installed Storage Capacity, then:

$$\text{Capacity Availability Factor} = (\text{Guaranteed Storage Availability} - \text{Annual Storage Capacity Availability}) * 1.5$$

- (e) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(f) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate for such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by multiplying (i) the total Charging Energy for such month by (ii) the percentage amount by which the Efficiency Rate is less than the Guaranteed Efficiency Rate, by (iii) the Renewable Rate.

(g) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(i) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real-time or other market basis that may develop after the Effective Date, as determined by Buyer.

(ii) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO by (in order of preference) telephone or electronic mail to the personnel designated to receive such information.

(iii) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy and Charging Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy and Charging Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the

responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(iv) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(v) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(vi) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(vii) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(viii) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.

EXHIBIT F

FORM OF ANNUAL EXPECTED AVAILABLE GENERATING FACILITY CAPACITY REPORT

[MW Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Exhibit F- 1

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes

D = the Renewable Rate, in \$/MWh

“**Adjusted Energy Production**” shall mean the sum of the following: PV Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

“**Replacement Energy**” means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“**Replacement Green Attributes**” means PCC1 Renewable Energy Credits with the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

“**Replacement Product**” means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period,

provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by _____ [*licensed professional engineer*] (“**Engineer**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _____ [DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.
3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.
4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on ___ [DATE]____.
5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____ [DATE]_____.
6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____ [DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-1

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is __ MW AC (“**Installed PV Capacity**”);

(b) The Commercial Operation Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Storage Capacity**”);

(c) The sum of (a) and (b) is __ MW AC and shall be the “**Installed Capacity**”;
and

(d) The Commercial Operation Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, and (ii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

This certification (“**Certification**”) of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit Q of the Agreement (the “**Effective Storage Capacity**”); and

(b) The Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, and (ii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section **Error! Reference source not found.** and Exhibit Q.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on _____ (the “**Construction Start Date**”); and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

(such description shall amend the description of the Site in Exhibit A of the Agreement).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of _____.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

Valley Clean Energy Alliance, a California joint powers authority

[Address]

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Valley Clean Energy Alliance, a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Agreement dated as of _____ and as amended (the “Agreement”) between [Applicant] and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXXXX] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]] (if presented by fax it must be followed up by a phone call to us at [XXXXXXXX] or [XXXXXXXX] to confirm receipt) with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*insert bank address information*], referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Valley Clean Energy Alliance, Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Valley Clean Energy Alliance, a California joint powers authority, [Buyer address], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of _____ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of _____, (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of Valley Clean Energy Alliance, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Valley Clean Energy Alliance, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Valley Clean Energy Alliance

Name and Title of Authorized Representative

Date _____

EXHIBIT L

[Reserved]

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT N
NOTICES

<p>[SELLER'S NAME] ("Seller")</p>	<p>VALLEY CLEAN ENERGY ALLIANCE ("Buyer")</p>
<p>All Notices: Street: [REDACTED] City: [REDACTED] Attn: [REDACTED] Phone: [REDACTED] [REDACTED]</p>	<p>All Notices: Street: 604 2nd Street City: Davis, CA 95616 Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]</p>
<p>Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>	<p>Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>
<p>Invoices: Attn: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED]</p>	<p>Invoices: Attn: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED]</p>
<p>Scheduling: Attn: TBD Phone: TBD Email: TBD</p>	<p>Scheduling: Attn: Day Ahead Trading, Real Time Trading Phone: [REDACTED] Email: [REDACTED] [REDACTED]</p>
<p>Confirmations: Attn: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED]</p>	<p>Confirmations: Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]</p>
<p>Payments: Attn: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED]</p>	<p>Payments: Attn: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED]</p>
<p>Wire Transfer: BNK: TBD ABA: TBD ACCT: TBD</p>	<p>Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]</p>

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity has varied materially from the results of the most recent prior Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

B. Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Seller's RTU and the Facility SCADA system should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Seller's RTU and Seller's EMS interface and the ability to record SCADA data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.
- (4) Generating Facility Conditions. Any CTs requiring the availability of Charging Energy shall be conducted when the Generating Facility is producing at a rate equal to or above the Effective Storage Capacity continuously for a five (5)-hour period, *provided* that Seller may waive such conditions at its sole discretion. Any CTs that are required or allowed to occur under this Exhibit O that take place in the absence of the above condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such CT and/or the Battery Charging Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

- A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the CT will still be deemed "complete," and any adjustments necessary to the Effective Storage Capacity resulting from such Test, if applicable, will be made in accordance with this Exhibit O.
 - (1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
 - (2) Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (5) hours of total charging time.

- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at two (2) second intervals:
- (1) Time;
 - (2) The amount of Discharging Energy delivered to the Storage Facility Meter (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
 - (3) Net electrical energy input from the Storage Facility Meter (kWh) (i.e., from each measurement device making up the Storage Facility Meter);
 - (4) Stored Energy Level (MWh).
- C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
 - (3) Ambient air temperature (°F).
- D. Test Showing. Each CT shall record and report the following datapoints:
- (1) That the CT successfully started;
 - (2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above;
 - (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging level registered during the Test (for purposes of calculating the Ramp Rate);
 - (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging level registered during the Test (for purposes of calculating the Ramp Rate);
 - (6) Amount of Charging Energy, registered at the Storage Facility Meter, to go from 0% SOC to 100% SOC;
 - (7) Amount of Discharging Energy, registered at the Storage Facility Meter, to go from 100% SOC to 0% SOC.
- E. Test Conditions.

- (1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.
 - (2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
 - (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.
- F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.
- G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
 - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
 - (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its

review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design of the Storage Facility (“**Supplementary Capacity Test Protocol**”). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Storage Capacity. The Effective Storage Capacity shall be updated as follows:

- (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Storage Capacity Test**

- Procedure:

- (1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the Storage Facility SOC.
- (3) Command a real power charge that results in an AC power of Storage Facility’s maximum charging level and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have lapsed since the Storage Facility commenced charging.
- (4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter.

- (6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
 - (7) Record and store the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor.
 - (8) Record and store the Discharging Energy as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
 - (9) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.
 - (10) Record and store the Discharging Energy (in MWh) as measured at the Storage Facility Meter, if applicable.
- Test Results
 - (1) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility's maximum discharging level within 1 second.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of 100 MW for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's full charging level within 1 second.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of -100 MW for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each Contract Year during the Delivery Term, Buyer shall calculate the “**Annual Storage Capacity Availability**” for such Contract Year using the formula set forth below:

$$\text{Annual Storage Capacity Availability (\%)} = 1 - \frac{\text{Unavailable Calculation Intervals}}{\text{Total Calculation Intervals}}$$

“**Calculation Interval**” or “**C.I.**” means each successive five-minute interval during the Contract Year but excluding all such intervals which by the express terms of the Agreement are disregarded or excluded.

“**Unavailable Calculation Intervals**” means the sum of year-to-date unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \text{the lesser of: } \frac{A}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity} \times 4 \text{ hrs}} \right)$$

“**A**” is the “Available Effective Storage Capacity,” which shall be the sum of the capacity, in MW AC, expected from each system inverter in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines), but “A” shall never exceed the Effective Storage Capacity.

“**Storage Capability**” means the sum of the following (taking into account the SOC at the time of calculation): (i) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) at the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs at the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability (in MWh) at the applicable Calculation Interval x the Battery Discharging Factor). In calculating Storage Capability, the “available battery charging capability” and “available battery discharging capability” are calculated as the product of (1) the count of available system cells in such Calculation Interval multiplied by (2) the capability, in MWh, expected from each such system cell (based on actual normal operating conditions pursuant to the manufacturer’s guidelines).

“**Total Calculation Intervals**” means, for each applicable Contract Year, the total number

of Calculation Intervals during such Contract Year for which the Annual Storage Capacity Availability is being calculated.

(b) The “available Effective Storage Capacity” and “Storage Capability” in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Storage Facility for such Calculation Interval, and (ii) (A) for “available Effective Storage Capacity,” such amount equal to the Effective Storage Capacity minus the amount of unavailable capacity (in MWs) identified by Seller in an applicable Unavailability Notice for such Calculation Interval, and (B) for “Storage Capability,” such amount equal to (1) the Effective Storage Capacity multiplied by four (4) hours minus (2) the unavailable MWhs of battery charging and discharging capability identified by Seller in an applicable Unavailability Notice for such Calculation Interval. Except as otherwise expressly provided in this Agreement, the calculations of “available Effective Storage Capacity” and “Storage Capability” in the foregoing shall be based solely on the availability of the Storage Facility to charge or discharge Energy between the Storage Facility and the Generating Facility or Delivery Point, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond).

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller’s operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

I. STORAGE FACILITY OPERATING RESTRICTIONS

File Update Date:	[XX/XX/20XX]	
Technology:	Lithium-ion phosphate	
Storage Unit Name:	Putah Creek Energy Farm	
A. Contract Capacity		
Guaranteed Storage Capacity (MW):	3	
Effective Storage Capacity (MW):	3	
B. Total Unit Dispatchable Range Information		
Interconnect Voltage (kV)	12	
Maximum Storage Level (MWh):	12	
Minimum Storage Level (MWh):	0	
Stored energy capability (MWh):	12	
Maximum Discharge (MW):	3	
Maximum Charge (MW):	3	
Guaranteed Efficiency Rate:	See Cover Sheet	
Maximum energy throughput (BET) (MWh/year):	4,380	
C. Charge and Discharge Rates		
Mode	Maximum (MW)	Ramp Rate (MW/s) Description
Energy (Charge)	3	3
Energy (Discharge)	3	3
D. Ancillary Services		
Frequency regulation is included:	Yes	
Spin is included:	Yes	

II. GENERATING FACILITY OPERATING RESTRICTIONS

1. XXXX
2. XXXX

EXHIBIT S

POLLINATOR SCORECARD



Pollinator-friendly solar scorecard

The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed landscape of a PV solar facility.



1. PERCENT OF PROPOSED SITE VEGETATION COVER TO BE DOMINATED BY WILDFLOWERS

- 31-45 % +5 points
- 46-60 % +10 points
- 61+ % +15 points

Total points

Note: Projects may have "array" mixes and diverse open area/ border mixes; forb dominance should be averaged across the entire site. The dominance should be calculated from total numbers of forb seeds vs. grass seeds (from all seed mixes) to be planted.

2. PLANNED % OF SITE DOMINATED BY NATIVE SPECIES COVER

- 26-50% +5 points
- 51-75%. +10 points
- 76-100% +15 points

Total points

3. PLANNED COVER DIVERSITY (# of species in seed mixes; numbers from upland and wetland mixes can be combined)

- 10-19 species +5 points
- 20-25 species +10 points
- 26 or more species +15 points

Total points

Note: exclude invasives from species totals.

4. PLANNED SEASONS WITH AT LEAST 3 BLOOMING SPECIES PRESENT (check/add all that apply)

- Spring (April-May) +5 points
- Summer (June-August) +5 points
- Fall (September-October) +5 points

Total points

Note: Check local resources for data on bloom seasons

5. AVAILABLE HABITAT COMPONENTS WITHIN .25 MILES (check/add all that apply)

- Native bunch grasses for nesting +2 points
 - Native trees/shrubs for nesting +2 points
 - Clean, perennial water sources +2 points
 - Created nesting feature/s (bee blocks, etc.) +2 points
- Total points

6. SITE PLANNING AND MANAGEMENT

- Detailed establishment and management plan developed with funding/contract to implement +15 points
- Signage legible at 40 or more feet stating "pollinator friendly solar habitat" (at least 1 every 20ac.) +5 points

Total points

7. SEED MIXES

- Mixes are composed of at least 40 seeds per square foot +5 points
- All seed genetic origin within 175 miles of site +5 points
- At least 2% milkweed cover to be established from seed/plants +10 points

Total points

8. INSECTICIDE RISK

- Planned on-site insecticide use or pre-planting seed/plant treatment (excluding buildings/ electrical boxes, etc.) -40 points
- Perpetual bare ground under the panels as a result of pre and post emergent herbicide. -40 points
- Communication/registration with local chemical applicators about need to prevent drift from adjacent areas. +10 points

Total points

9. OUTREACH/EDUCATION

- Site is part of a study with a college, university, or research lab. +5 points

Grand total

Provides Exceptional Habitat >85
Meets Pollinator Standards 70-84

Project Name:
Vegetation Consultant:
Project Location:
Total acres (array and open area):
Projected Seeding Date:

Note: Percent "cover" should be based on "absolute cover" (the percent of the ground surface that is covered by a vertical projection of foliage as viewed from above). To measure cover diversity use plots, and/or transects in addition to meander searches. Wildflowers in question 1 refer to "forbs" (flowering plants that are not woody or graminoids) and can include introduced clovers and other non-native, non-invasive species beneficial to pollinators.



EXECUTION VERSION

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Gibson Renewables LLC, a California limited company

Buyer: Valley Clean Energy Alliance, a California joint powers authority

Description of Facility: A 20 MW solar photovoltaic Generating Facility combined with a 26 MWh (6.5 MW x 4 hours) battery energy Storage Facility, as more fully described herein

Milestones:

Milestone	Expected Date for Completion
Execute Interconnection Agreement	10/31/2021
Procure major equipment	12/31/2021
Obtain federal and state discretionary permits	12/31/2021
Expected Construction Start Date	12/31/2021
Guaranteed Construction Start Date	5/31/2022
Expected Commercial Operation Date	9/30/2022
Guaranteed Commercial Operation Date	3/31/2023

Delivery Term: twenty (20) Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1	██████████
2	██████████
3	███████████
4	███████████
5	██████████

6	██████████
7	██████████
8	██████████
9	██████████
10	██████████
11	██████████
12	██████████
13	██████████
14	██████████
15	██████████
16	██████████
17	██████████
18	██████████
19	██████████
20	██████████

Guaranteed Capacity: 26.5 MW of total Facility capacity

Guaranteed Storage Capacity: 6.5 MW of Installed Storage Capacity at four (4) hours of continuous discharge

Guaranteed PV Capacity: 20 MW of Installed PV Capacity

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	██████████
2	██████████
3	██████████

4	██████████
5	██████████
6	██████████
7	██████████
8	██████████
9	██████████
10	██████████
11	██████████
12	██████████
13	██████████
14	██████████
15	██████████
16	██████████
17	██████████
18	██████████
19	██████████
20	██████████

RA Guarantee Date: Commercial Operation Date

Contract Price:

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 20	\$██████████/MWh (flat) with no escalation

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 20	\$█/kW-mo. (flat) with no escalation

Product

- PV Energy
- Discharging Energy
- Green Attributes
- Installed Storage Capacity and Effective Storage Capacity
- Ancillary Services, if applicable
- Capacity Attributes

Scheduling Coordinator: Buyer

Security:

Development Security: \$█/kW of Guaranteed Capacity

Performance Security: \$█/kW of Guaranteed Capacity

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS	1
1.1 Contract Definitions.....	1
1.2 Rules of Interpretation	24
ARTICLE 2 TERM; CONDITIONS PRECEDENT.....	25
2.1 Contract Term.	25
2.2 Conditions Precedent	26
2.3 Development; Construction; Progress Reports.....	27
2.4 Remedial Action Plan	27
ARTICLE 3 PURCHASE AND SALE.....	27
3.1 Purchase and Sale of Product.....	27
3.2 Sale of Green Attributes.....	28
3.3 Imbalance Energy.	28
3.4 Ownership of Renewable Energy Incentives.....	28
3.5 Future Environmental Attributes.	28
3.6 Test Energy.	29
3.7 Capacity Attributes.	29
3.8 Resource Adequacy Failure	30
3.9 CEC Certification and Verification.	30
3.10 Eligibility.	30
3.11 California Renewables Portfolio Standard.....	31
3.12 Compliance Expenditure Cap.	31
3.13 Project Configuration.....	32
ARTICLE 4 OBLIGATIONS AND DELIVERIES.....	32
4.1 Delivery.....	32
4.2 Title and Risk of Loss.	33
4.3 Forecasting.....	33
4.4 Dispatch Down/Curtailment.	35
4.5 Energy Management	36
4.6 Reduction in Delivery Obligation.....	38
4.7 Guaranteed Energy Production.	39
4.8 Storage Facility Availability; Ancillary Services	39
4.9 Storage Facility Testing	40
4.10 WREGIS	42
ARTICLE 5 TAXES	43
5.1 Allocation of Taxes and Charges.....	43
5.2 Cooperation.....	44
ARTICLE 6 MAINTENANCE OF THE FACILITY.....	44
6.1 Maintenance of the Facility.	44
6.2 Maintenance of Health and Safety.....	44
6.3 Shared Facilities.....	44

ARTICLE 7 METERING	45
7.1 Metering.....	45
7.2 Meter Verification.....	45
ARTICLE 8 INVOICING AND PAYMENT; CREDIT	45
8.1 Invoicing.....	45
8.2 Payment.....	46
8.3 Books and Records.....	46
8.4 Payment Adjustments; Billing Errors.....	46
8.5 Billing Disputes.....	47
8.6 Netting of Payments.....	47
8.7 Seller’s Development Security.....	47
8.8 Seller’s Performance Security.....	47
8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral.....	48
8.10 Buyer’s Covenants.....	49
8.11 Escrow Account.....	49
ARTICLE 9 NOTICES	49
9.1 Addresses for the Delivery of Notices.....	49
9.2 Acceptable Means of Delivering Notice.....	50
ARTICLE 10 FORCE MAJEURE	50
10.1 Definition.....	50
10.2 No Liability If a Force Majeure Event Occurs.....	51
10.3 Notice.....	51
10.4 Termination Following Force Majeure Event.....	51
.	51
ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION	52
11.1 Events of Default.....	52
11.2 Remedies; Declaration of Early Termination Date.....	55
11.3 Damage Payment; Termination Payment.....	56
11.4 Notice of Payment of Termination Payment or Damage Payment.....	57
11.5 Disputes with Respect to Termination Payment or Damage Payment.....	57
11.6 Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.....	58
11.7 Rights and Remedies are Cumulative.....	58
11.8 Mitigation.....	58
11.9 Seller Pre-COD Termination.....	58
ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES	59
12.1 No Consequential Damages.....	59
12.2 Waiver and Exclusion of Other Damages.....	59
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY	60
13.1 Seller’s Representations and Warranties.....	60

13.2	Buyer’s Representations and Warranties.....	61
13.3	General Covenants.....	62
13.4	Workforce Development.....	62
13.5	Support for Pollinators.....	62
ARTICLE 14 ASSIGNMENT.....		63
14.1	General Prohibition on Assignments.....	63
14.2	Collateral Assignment.....	63
14.3	Permitted Assignment by Seller.....	65
14.4	Shared Facilities; Portfolio Financing.....	65
ARTICLE 15 DISPUTE RESOLUTION.....		66
15.1	Governing Law.....	66
15.2	Dispute Resolution.....	66
15.3	Attorneys’ Fees.....	66
ARTICLE 16 INDEMNIFICATION.....		66
16.1	Indemnification.....	66
16.2	Claims.....	67
ARTICLE 17 INSURANCE.....		67
17.1	Insurance.....	67
ARTICLE 18 CONFIDENTIAL INFORMATION.....		69
18.1	Definition of Confidential Information.....	69
18.2	Duty to Maintain Confidentiality.....	69
18.3	Irreparable Injury; Remedies.....	70
18.4	Further Permitted Disclosure.....	70
18.5	Press Releases.....	70
ARTICLE 19 MISCELLANEOUS.....		71
19.1	Entire Agreement; Integration; Exhibits.....	71
19.2	Amendments.....	71
19.3	No Waiver.....	71
19.4	No Agency, Partnership, Joint Venture or Lease.....	71
19.5	Severability.....	71
19.6	Mobile-Sierra.....	71
19.7	Counterparts.....	72
19.8	Electronic Delivery.....	72
19.9	Binding Effect.....	72
19.10	No Recourse to Members of Buyer.....	72
19.11	Forward Contract.....	72
19.12	Change in Electric Market Design.....	73
19.13	Further Assurances.....	73

Exhibits:

Exhibit A	Facility Description
Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Compensation
Exhibit D	Scheduling Coordinator Responsibilities
Exhibit E	Progress Reporting Form
Exhibit F	Form of Annual Expected Available Generating Facility Capacity Report
Exhibit G	Guaranteed Energy Production Damages Calculation
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I-1	Form of Installed Capacity and Efficiency Rate Certificate
Exhibit I-2	Form of Effective Storage Capacity and Efficiency Rate Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Form of Guaranty
Exhibit M	Form of Replacement RA Notice
Exhibit N	Notices
Exhibit O	Storage Capacity Tests
Exhibit P	Annual Storage Capacity Availability Calculation
Exhibit Q	Operating Restrictions
Exhibit R	Metering Diagram
Exhibit S	Form of Pollinator Scorecard

RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of _____ (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Facility;
and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 DEFINITIONS

1.1 **Contract Definitions.**

The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12(c).

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Adjusted Facility Energy**” means, for the applicable period, the sum of (a) the total Facility Energy for such period, plus (b) the result of subtracting (i) the total Discharging Energy for such period from (ii) the total Discharging Energy for such period divided by the Efficiency Rate for such period.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“**Alternative Dispatches**” has the meaning set forth in Section 4.4(d).

“**Ancillary Services**” means spinning reserve, non-spinning reserve, regulation up, regulation down, and any other ancillary services that the Facility is capable of providing consistent with the Operating Restrictions, as each is defined in the CAISO Tariff.

“**Annual Forecast**” has the meaning set forth in Section 4.3(a).

“**Annual Storage Capacity Availability**” has the meaning set forth in Exhibit P.

“**Approved Forecast Vendor**” means any of (x) the CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3.

“**Assignment Agreement**” has the meaning set forth in Section 14.5.

“**Automated Dispatch System**” or “**ADS**” has the meaning set forth in the CAISO Tariff.

“**Automated Dispatches**” has the meaning set forth in Section 4.4(d).

“**Automatic Generation Control**” or “**AGC**” has the meaning set forth in the CAISO Tariff.

“**Availability Standards**” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“**Bankrupt**” or “**Bankruptcy**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“**Battery Charging Factor**” means the percentage SOC of the Storage Facility after the first five (5) hours of the charging phase of the applicable Storage Capacity Test.

“**Battery Discharging Factor**” means one (1) minus the percentage SOC of the Storage Facility after the first four (4) hours of the discharging phase of the applicable Storage Capacity Test.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Assignee” has the meaning set forth in Section 14.5.

“Buyer Bid Curtailment” means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Generating Facility, requiring the Party to deliver less PV Energy from the Generating Facility than the full amount of Energy forecasted in accordance with Section 4.3 to be produced from the Generating Facility for a period of time; and

(b) for the same time period as referenced in (a), Buyer or the SC for the Generating Facility did not submit a Self-Schedule for the MWhs subject to the reduction.

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any PV Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce PV Energy from the Generating Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces PV Energy from the Generating Facility pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order or (c) a Buyer breach or default hereunder which directly causes Seller to be unable to deliver PV Energy to the Delivery Point; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“Buyer Default” means an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.9(c).

“Buyer’s Indemnified Parties” has the meaning set forth in Section 18.2.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO-Approved Meter” means a CAISO-approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

“CAISO Charges Invoice” has the meaning set forth in Exhibit D.

“CAISO Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC, Alternative Dispatches or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

“Calculation Interval” has the meaning set forth in Exhibit P.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“Capacity Availability Factor” has the meaning set forth in Exhibit C.

“Capacity Damages” means collectively Storage Capacity Damages and PV Capacity Damages.

“Capacity Test” or **“CT”** means the Commercial Operation Storage Capacity Test, Storage Capacity Test, or any other test conducted pursuant to Exhibit O.

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility or Generating Facility (as applicable) is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“CEC Precertification” means that the CEC has issued a precertification for the Facility or Generating Facility (as applicable) indicating that the planned operations of the Facility or Generating Facility (as applicable) would comply with applicable CEC requirements for CEC Certification and Verification.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means all PV Energy produced by the Generating Facility and delivered to the Storage Facility net of Electrical Losses, as measured at the Storage Facility Metering Point by the Storage Facility Meter. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, (a) any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Notice”, such “Charging Notice” shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. Any Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“COD Certificate” has the meaning set forth in Exhibit B.

“Collateral Assignment Agreement” has the meaning set forth in Section 14.2.

“Commercial Operation” has the meaning set forth in Exhibit B.

“Commercial Operation Date” means the date Commercial Operation is achieved.

“Commercial Operation Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

“Commercial Operation Storage Capacity Test” means the Storage Capacity Test conducted in connection with Commercial Operation of the Storage Facility, including any additional Storage Capacity Test for additional Storage Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“Communications Protocols” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

“Compliance Actions” has the meaning set forth in Section 3.12(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.12.

“Confidential Information” has the meaning set forth in Section 18.1.

“Construction Start” has the meaning set forth in Exhibit B.

“Construction Start Date” has the meaning set forth in Exhibit B.

“Contract Price” has the meaning set forth on the Cover Sheet. For clarity, the Contract Price is each of the Renewable Rate and the Storage Rate.

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“CPM Price” has the meaning set forth in Section 3.8(b).

“CPUC” means the California Public Utilities Commission, or successor entity.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Cap” is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Installed PV Capacity.

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs in the VER forecast for the Generating Facility during the relevant time period;

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Cycles” means, at any point in time during any Contract Year, the number of equivalent charge/discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) four (4) times the weighted average Effective Storage Capacity for such Contract Year to date.

“Daily Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

“**Damage Payment**” means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

“**Day-Ahead Forecast**” has the meaning set forth in Section 4.3(b).

“**Day-Ahead Schedule**” has the meaning set forth in the CAISO Tariff.

“**Deemed Delivered Energy**” means the amount of PV Energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected PV Energy produced by the Generating Facility) provided pursuant to Section 4.3(c) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of PV Energy delivered to the Storage Facility, or to the Delivery Point directly from the Generating Facility, during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility’s PNode during any Settlement Interval was less than zero (0), Deemed Delivered Energy shall be reduced in such Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

“**Defaulting Party**” has the meaning set forth in Section 11.1(a).

“**Deficient Month**” has the meaning set forth in Section 4.10(e).

“**Delay Damages**” means Daily Delay Damages and Commercial Operation Delay Damages.

“**Delivery Point**” has the meaning set forth in Exhibit A.

“**Delivery Term**” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“**Development Cure Period**” has the meaning set forth in Exhibit B.

“**Development Security**” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Discharging Energy**” means all Energy delivered from the Storage Facility to the Storage Facility Metering Point, net of Station Use, pursuant to a Discharging Notice, and measured by the Storage Facility Meter. All Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

“**Discharging Notice**” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh; *provided*,

(a) any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) if, during a period when the Storage Facility is instructed by Buyer's SC or the CAISO to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such "Discharging Notice" shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the total Facility Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer's SC or the CAISO issues a further modified Discharging Notice. Any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order; *provided*, if any such automatic adjustment is prohibited by, or would result in Seller incurring any penalties or charges under, the CAISO Tariff, then Seller shall instead reduce deliveries of PV Energy as necessary to avoid exceeding the Interconnection Capacity Limit and all such reduced PV Energy deliveries shall constitute (and be treated as) Deemed Delivered Energy.

"Disclosing Party" has the meaning set forth in Section 18.2.

"Dispatch Operating Target" has the meaning set forth in the CAISO Tariff.

"Early Termination Date" has the meaning set forth in Section 11.2(a).

"Effective Date" has the meaning set forth on the Preamble.

"Effective FCDS Date" means the date identified in Seller's Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Storage Facility has attained Full Capacity Deliverability Status.

"Effective Storage Capacity" means the lesser of (a) P_{MAX}, and (b) the maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

"Efficiency Rate" means the rate calculated pursuant to a Storage Capacity Test, as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, by dividing Energy Out by Energy In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

"Efficiency Rate Factor" has the meaning set forth in Exhibit C.

"Electrical Losses" means, as applicable, all transmission and transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, (c) between the Generating Facility Metering Point and the Storage Facility Metering Point associated with delivery of Charging Energy to the Storage Facility.

“**Eligible Renewable Energy Resource**” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“**Energy**” means electrical energy, measured in kilowatt-hours or multiple units thereof.

“**Energy In**” has the meaning set forth in Section III.A(5) of Exhibit O.

“**Energy Management System**” or “**EMS**” means the Facility’s energy management system.

“**Energy Out**” has the meaning set forth in Section III.A(10) of Exhibit O.

“**Event of Default**” has the meaning set forth in Section 11.1.

“**Excess MWh**” has the meaning set forth in Exhibit C.

“**Expected Commercial Operation Date**” has the meaning set forth on the Cover Sheet.

“**Expected Construction Start Date**” has the meaning set forth on the Cover Sheet.

“**Expected Energy**” means the quantity of Adjusted Facility Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

“**Facility**” means the combined Generating Facility and the Storage Facility.

“**Facility Energy**” means the sum of PV Energy and Discharging Energy, as applicable, that is delivered to the Delivery Point, net of Electrical Losses and Station Use, during any Settlement Interval or Settlement Period, as measured by the Facility Meter.

“**Facility Meter**” means the CAISO-Approved Meter that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the high voltage side of the main step up transformer and will be subject to adjustment to measure Facility Energy at the Delivery Point in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses between the Facility Meter and the Delivery Point.

“**FERC**” means the Federal Energy Regulatory Commission or any successor government agency.

“**Force Majeure Event**” has the meaning set forth in Section 10.1.

“**Force Majeure Unavailability**” has the meaning set forth in Exhibit C.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“Forecasting Penalty” has the meaning set forth in Section 4.3(e).

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

“Full Capacity Deliverability Status” or **“FCDS”** has the meaning set forth in the CAISO Tariff.

“Full Capacity Deliverability Status Finding” means a written confirmation from the CAISO that the Storage Facility is eligible for Full Capacity Deliverability Status.

“Future Environmental Attributes” means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (a) PV Energy to the Delivery Point, and (b) Charging Energy to the Storage Facility; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Generating Facility Meter” means the meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of PV Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Generating Facility Metering Point” means the location(s) of the Generating Facility Meter(s) shown in Exhibit R.

“Generating Facility Testing Condition” has the meaning set forth in Part I.B.4 of Exhibit O.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and the CPUC; *provided*, “Governmental Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), 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; and (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated Green Tags in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“Green Tags” means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of Facility Energy or PV Energy, as applicable.

“Green-e Certified” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“Green-e Energy National Standard” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

“Guaranteed Capacity” means the sum of (x) the Guaranteed PV Capacity and (y) the Guaranteed Storage Capacity.

“Guaranteed Commercial Operation Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Construction Start Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Guaranteed PV Capacity” means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Guaranteed Storage Availability” has the meaning set forth in Section 4.8.

“Guaranteed Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge Energy, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Guarantor” means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L, or as reasonably acceptable to Buyer.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

“Indemnified Party” has the meaning set forth in Section 16.1.

“Indemnifying Party” has the meaning set forth in Section 16.1.

“Initial Synchronization” means the initial delivery of Facility Energy to the Delivery Point.

“Installed Capacity” means the sum of (x) the Installed PV Capacity and (y) the Installed Storage Capacity.

“Installed PV Capacity” means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto. Seller shall have the right and option in its sole discretion to install Storage Facility capacity in excess of the Guaranteed Storage Capacity in an amount not to exceed one (1) MW AC.

“Installed Storage Capacity” means the lesser of (a) P_{MAX}, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Storage Facility Meter Point by the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B. Seller shall have the right and option in its sole discretion to install Storage Facility capacity in excess of the Guaranteed Storage Capacity; *provided*, for all purposes of this Agreement the amount of Installed Storage Capacity shall never be deemed to exceed the Guaranteed Storage Capacity, and Buyer shall have no rights to instruct Seller to (i) charge or discharge the Storage Facility at an instantaneous rate (in MW) in excess of the Effective Storage Capacity or (ii) charge the Storage Facility to a level (in MWh) in excess of the Effective Storage Capacity times four (4) hours.

“Inter-SC Trade” or **“IST”** has the meaning set forth in the CAISO Tariff.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement, in the amount of 20 MW.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

“Interim Deliverability Status” has the meaning set forth in the CAISO Tariff.

“Investment Grade” means a Credit Rating of at least “Baa3” with respect to Moody’s and at least “BBB-” with respect to S&P.

“**ITC**” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“**Joint Powers Act**” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“**Joint Powers Agreement**” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“**kWh**” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Law**” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“**Lender**” means, collectively, any Person (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“**Licensed Professional Engineer**” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“**Local Capacity Area Resource**” has the meaning set forth in the CAISO Tariff.

“**Local RAR**” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“**Locational Marginal Price**” or “**LMP**” has the meaning set forth in the CAISO Tariff.

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“**Lost Output**” has the meaning set forth in Section 4.7.

“**Milestones**” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“**Monthly Capacity Payment**” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the provision of the Effective Storage Capacity and Capacity Attributes associated with the Storage Facility, as calculated in accordance with Exhibit C.

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars (\$0).

“**NERC**” means the North American Electric Reliability Corporation.

“**Net Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“**NP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region NP-15 as set forth in the CAISO Tariff.

“Operating Restrictions” means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

“Party” has the meaning set forth in the Preamble.

“Performance Measurement Period” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; *provided*, a new Performance Measurement Period shall begin following any Performance Measurement Period for which Seller pays any liquidated damages or provides any Replacement Product under Section 4.7. Thus, for example, if Seller pays any liquidated damages or provides any Replacement Product under Section 4.7 for the Performance Measurement Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

“Performance Security” means (a) cash, (b) a Letter of Credit, or (c) a Guaranty (if permitted by Buyer, in its reasonable discretion) in the amount set forth on the Cover Sheet.

“Permitted Transferee” means (a) any Affiliate of Seller or (b) any entity that satisfies, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of power generation and energy storage facilities similar to the Facility or has retained a third-party with such experience to operate the Facility.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“Planned Outage” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

“PMAX” means the applicable CAISO-certified maximum operating level of the Storage Facility.

“PMIN” means the applicable CAISO-certified minimum operating level of the Storage Facility.

“PNode” has the meaning set forth in the CAISO Tariff.

“Portfolio” means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“Portfolio Content Category 1” or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“Product” has the meaning set forth on the Cover Sheet.

“Progress Report” means a progress report including the items set forth in Exhibit E.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

“PV Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“PV Energy” means all Energy delivered from the Generating Facility to the Generating Facility Metering Point, net of Station Use, and measured by the Generating Facility Meter.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“RA Compliance Showing” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the date set forth in the deliverability Section of the Cover Sheet which is the date the Storage Facility is expected to achieve Full Capacity Deliverability Status.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month, commencing on the RA Guarantee Date, during which the Net Qualifying Capacity of the Storage Facility for such month was less than the Qualifying Capacity of the Storage Facility for such month (including any month during the period between the RA Guarantee Date and the Effective FCDS Date, if applicable).

“Real-Time Forecast” has the meaning set forth in Section 4.3(c).

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“Receiving Party” has the meaning set forth in Section 18.2.

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Remedial Action Plan” has the meaning set forth in Section 2.4.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“**Renewable Rate**” has the meaning set forth on the Cover Sheet.

“**Replacement Energy**” has the meaning set forth in Exhibit G.

“**Replacement Green Attributes**” has the meaning set forth in Exhibit G.

“**Replacement Product**” has the meaning set forth in Exhibit G.

“**Replacement RA**” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within NP 15 TAC Area and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

“**Requested Confidential Information**” has the meaning set forth in Section 18.2.

“**Resource Adequacy Benefits**” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“**Resource Adequacy Requirements**” or “**RAR**” means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“**Resource Adequacy Resource**” shall have the meaning used in Resource Adequacy Rulings.

“**Resource Adequacy Rulings**” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“**S&P**” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“**SCADA Systems**” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

“**Schedule**” has the meaning set forth in the CAISO Tariff, and “**Scheduled**” has a corollary meaning.

“**Scheduled Energy**” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“**Scheduling Coordinator**” or “**SC**” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“**Security Interest**” has the meaning set forth in Section 8.9.

“**Self-Schedule**” has the meaning set forth in the CAISO Tariff.

“**Seller**” has the meaning set forth on the Cover Sheet.

“**Seller Initiated Test**” has the meaning set forth in Section 4.9(c).

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.10(a).

“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“**Settlement Interval**” has the meaning set forth in the CAISO Tariff.

“**Settlement Period**” has the meaning set forth in the CAISO Tariff.

“**Shared Facilities**” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“**Showing Month**” shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; provided, that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“Site Control” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“SOC” or **“State of Charge”** means the (a) level of charge of the Storage Facility relative to (b) the Effective Storage Capacity multiplied by four (4) hours, expressed as a percentage.

“Station Use” means the Energy (including Energy produced or discharged by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility.

“Storage Capability” has the meaning in Exhibit P.

“Storage Capacity Availability Payment True-Up” has the meaning set forth in Exhibit C.

“Storage Capacity Availability Payment True-Up Amount” has the meaning set forth in Exhibit C.

“Storage Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“Storage Capacity Test” means any test or retest of the Storage Facility to establish the Installed Storage Capacity, Effective Storage Capacity, and/or Efficiency Rate conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“Storage Cure Plan” has the meaning set forth in Section 11.1(b)(iv).

“Storage Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Storage Facility Meter” means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Point. For clarity, the Facility may contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Point” means the location(s) of the Storage Facility Meter shown in Exhibit R.

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

“Storage Rate” has the meaning set forth on the Cover Sheet.

“Stored Energy Level” means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh. The Parties acknowledge that, taking into account Electrical Losses, the actual amount of Energy (expressed in MWh) physically stored in the Storage Facility at any moment in time will be greater than the Stored Energy Level as defined in the preceding sentence.

“Supplementary Capacity Test Protocol” has the meaning set forth in Exhibit O.

“System Emergency” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (a) prevent or limit harm to or loss of life or property, (b) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (c) to preserve Transmission System reliability.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Tax Credits” means the PTC, ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities or battery storage facilities.

“Terminated Transaction” has the meaning set forth in Section 11.2(a).

“Termination Payment” has the meaning set forth in Section 11.3(b).

“Test Energy” means Facility Energy delivered (a) commencing on the later of (a) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (b) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Commercial Operation Date.

“Test Energy Rate” has the meaning set forth in Section 3.6.

“Total YTD Calculation Intervals” has the meaning set forth in Exhibit P.

“Transmission Provider” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain

transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“**Transmission System Outage**” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“**Ultimate Parent**” means ET Cap CA Holdings, a Delaware limited liability company.

“**Unavailability Notice**” means any reduction in the available Effective Storage Capacity or Storage Capability communicated to Buyer pursuant to this Agreement, including pursuant to Sections 4.3 and 4.6, other than through Seller’s EMS or SCADA System.

“**Unavailable Calculation Interval**” has the meaning set forth in Exhibit P.

“**Variable Energy Resource**” or “**VER**” has the meaning set forth in the CAISO Tariff.

“**WREGIS**” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“**WREGIS Certificate Deficit**” has the meaning set forth in Section 4.10(e).

“**WREGIS Certificates**” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.**

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the terms "include" and "including" mean "include or including (as applicable) without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression "and/or" when used as a conjunction shall connote "any or all of";

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”); *provided*, subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 **Conditions Precedent.**

Seller shall provide Notice of expected Commercial Operation to Buyer no less than sixty (60) days in advance of such date. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed PV Capacity, the Installed Storage Capacity and the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the commencement of operation of the Facility that are capable of being satisfied on the Commercial Operation Date have been obtained and all conditions thereof required for commencement of operations have been satisfied and shall (as applicable) be in full force and effect;

(e) Seller has obtained CAISO Certification for the Facility;

(f) Seller has received CEC Precertification of the Facility or the Generating Facility (as applicable) (and reasonably expects to receive final CEC Certification and Verification for the Facility or the Generating Facility (as applicable) in no more than one hundred eighty (180) days from the Commercial Operation Date);

(g) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to the Commercial Operation Date, including (as applicable) the completion and submittal of

all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(h) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(i) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Daily Delay Damages and Commercial Operation Delay Damages.

2.3 **Development; Construction; Progress Reports.**

Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.**

If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default or other Buyer breach hereunder which directly prevents Seller from achieving such Milestone, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.**

Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer shall have exclusive rights to offer, bid, or otherwise submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues.

3.2 **Sale of Green Attributes.**

During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the PV Energy or Facility Energy (as applicable). Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy.**

Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of Energy scheduled with the CAISO. Following the Commercial Operation Date and subject to Section 4.5, to the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely for the account of Buyer.

3.4 **Ownership of Renewable Energy Incentives.**

Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties

have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.**

No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to [REDACTED] of the Renewable Rate (the "**Test Energy Rate**"). The conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes.**

Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process for the Storage Facility. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Storage Facility from the CAISO and shall perform all commercially reasonable actions necessary to ensure that the Storage Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) Seller shall use commercially reasonable efforts to obtain and deliver Capacity Attributes or Resource Adequacy Benefits for the Generating Facility for Buyer's benefit, including applying for a deliverability allocation for the Generating Facility one (1) time after the

Effective Date, at no cost to Buyer. Seller shall (i) submit additional applications for a deliverability allocation for the Generating Facility if reasonably requested by Buyer, and (ii) take such additional steps as Buyer may reasonably request to obtain Capacity Attributes or Resource Adequacy Benefits for the Generating Facility for Buyer's benefit, so long as Buyer agrees to reimburse Seller for Seller's associated costs.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Storage Facility (or, if applicable, during the period between the RA Guarantee Date and the Effective FCDS Date, the amount of Qualifying Capacity the Storage Facility would reasonably be estimated to qualify for, based on the CPUC-adopted qualifying capacity methodologies then in effect), minus (ii) the Net Qualifying Capacity of the Facility, multiplied by the price for CPM Capacity as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) ("**CPM Price**"); *provided* that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable Showing Month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification.**

Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and (subject to Section 3.12) maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any material changes to the information included in Seller's application for CEC Certification and Verification.

3.10 **Eligibility.**

Subject to Section 3.12, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility or the Generating Facility

(as applicable) qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's or the Generating Facility's (as applicable) output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default (and Buyer's payment obligations hereunder for Product shall not be reduced) if Seller has used commercially reasonable efforts to comply with such change in Law. The term "commercially reasonable efforts" as used in this Section 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard.**

Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the PV Energy or Facility Energy (as applicable) is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap.**

If a change in Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at [REDACTED] per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**").

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**"; *provided*, Compliance Actions shall not require Seller to install any additional MW or MWh of energy storage or generation capacity, or otherwise alter the physical design or configuration of the Facility in any material manner as a result of any change in Law occurring after the Effective Date. Notwithstanding anything to the contrary hereunder, to the extent any Compliance Actions, despite Seller's use of commercially reasonable efforts to avoid any reduction in capacity and/or availability of the Storage Facility, cause the Storage Facility to have reduced capacity and/or availability during the time period within which such Compliance Actions are being completed, such reduced capacity and/or availability shall be excluded for purposes of calculating the Annual Storage Capacity Availability and/or Effective Storage Capacity.

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed

the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 **Project Configuration.**

In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy to provide Charging Energy; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties in their sole discretion as set forth in a written agreement.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point (except for PV Energy used as Charging Energy), and Buyer shall take delivery of the Product at the Delivery Point (except for PV Energy used as Charging Energy) in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

(b) **Green Attributes.** All Green Attributes associated with Test Energy and the PV Energy or Facility Energy (as applicable) during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

(c) Energy and Ancillary Services Products. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy related products or Ancillary Services that may become recognized from time to time in the CAISO market and that are not expressly listed in Exhibit Q (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 Forecasting.

Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of PV Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and as updated by Seller from time to time thereafter in its discretion or as may be required below, and (ii) the beginning of each calendar year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected PV Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F, or as reasonably requested by Buyer (the "Annual Forecast").

(b) Day-Ahead Forecast. Seller shall take commercially reasonable actions to enable Buyer's SC to receive a CAISO VER day-ahead forecast. So long as the CAISO is providing such VER day-ahead forecast, Seller shall have no other day-ahead forecasting obligations. If Seller fails to take such commercially reasonable actions and thereby causes the CAISO to not provide such VER day-ahead forecast, then by 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer (or arrange for an Approved Forecast Vendor to provide Buyer) with a non-binding forecast of the hourly expected PV Energy for each hour of the immediately succeeding day ("Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts

for the immediately following day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's (or the Approved Forecast Vendor's) best estimate of the hourly expected PV Energy. Such Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller (or the Approved Forecast Vendor) fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast or the Annual Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(c) Real-Time Forecasts. Seller shall take commercially reasonable actions to enable Buyer's SC to receive a CAISO VER intra-day forecast. So long as the CAISO is providing such VER intra-day forecast, Seller shall have no other intra-day or real-time forecasting obligations. If Seller fails to take such commercially reasonable actions and thereby causes the CAISO to not provide such VER day-ahead forecast, then during the Delivery Term, Seller shall notify (or arrange for an alternate Approved Forecast Vendor to notify) Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in the hourly expected PV Energy ("**Real-Time Forecast**"), in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the PV Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify (or arrange for an Approved Forecast Vendor to notify) Buyer as soon as reasonably possible. Such Real-Time Forecasts of PV Energy (including those provided by an Approved Forecast Vendor) shall contain information regarding the beginning date and time of the event resulting in the change in any PV Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. Such Real-Time Forecasts shall be communicated in a method acceptable to Buyer, provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(c), then Seller (or the Approved Forecast Vendor, as applicable) shall send such communications by telephone and e-mail to Buyer.

(d) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall use commercially reasonable efforts to notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages within ten (10) minutes of the commencement of the Forced Facility Outage, and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(e) Forecasting Penalties. So long as the CAISO is providing VER day-ahead and intra-day forecasts, Seller shall have no liability under this Section 4.3(e). If the CAISO is not providing VER day-ahead and intra-day forecasts as a result of any failure by Seller of its obligations under this Agreement, then in the event Seller does not in a given hour provide, or Seller has failed to arrange for an Approved Forecast Vendor to provide, the Day-Ahead Forecast required in Section 4.3(b) or the Real-Time Forecast required in Section 4.3(c), and due to such failures Buyer incurs a loss or penalty resulting from its scheduling activities with respect to PV Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected PV Energy for such hour (which, assumes no Charging Energy or Discharging Energy in such hour)

set forth in the most recent Day-Ahead Forecast (or Annual Forecast to the extent no Day-Ahead Forecast was Delivered to Buyer), and (ii) the actual PV Energy for such hour (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(f) CAISO Tariff Requirements. Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Facility Energy by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions; *provided further*, delivery of excess Facility Energy during a Settlement Interval in which the Generating Facility and/or Storage Facility is ramping down to the Dispatch Operating Target or Operating Instruction shall not be considered a failure by Seller to comply with a Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that the Generating Facility and/or Storage Facility meets the Dispatch Operating Target or Operating Instruction as required by the CAISO Tariff.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Renewable Rate, subject to the limitations of Section (b) of Exhibit C.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such SCADA Systems, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow instructions, including an automated electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the CAISO or Buyer's SC in accordance with

this Agreement (“**Automated Dispatches**”) and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term, Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with the methodologies applicable to the Facility, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. During any period during which the Storage Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Charging Notices or Discharging Notices (“**Alternative Dispatches**”). Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 **Energy Management.**

(a) **Charging Generally.** Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility.

(b) **Charging Notices.** Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued, subject to the requirements and limitations set forth in this Agreement. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer’s SC or the CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) **No Unauthorized Charging.** Seller shall not charge the Storage Facility during the Delivery Term other than (i) pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), (ii) in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), (iii) pursuant to a notice from the Transmission Provider or Governmental Authority, or (iv) any excess PV Energy that Seller cannot deliver to the Delivery Point due to a Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order or the Interconnection Capacity Limit, unless expressly instructed not to charge the Storage Facility by Buyer or the CAISO, and subject to there being sufficient available charging capacity in the Storage Facility to receive such excess PV Energy. If, during the Delivery Term, Seller charges the Storage Facility (x) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice (unless the Stored Energy Level was already in excess of the instructed Stored Energy Level in the Charging Notice prior to Seller’s receipt of the Charging Notice), or (y) in violation of the first sentence of this Section 4.5(c), then (1) the Adjusted Facility Energy associated with such Charging Energy shall be calculated in a manner such that there is no “gross

up” benefit to Seller for Storage Facility efficiency losses associated with such Charging Energy, and (2) Buyer shall be entitled to discharge such Energy and entitled to all of the CAISO revenues and benefits (including Storage Product) associated with such discharge.

(d) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Discharging Notices to be issued, subject to the requirements and limitations set forth in this Agreement. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer’s SC or the CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices or Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller’s compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from Buyer or its SC or a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder or as expressly addressed in Section 4.5(g), it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11.

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer’s SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller’s compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Storage Facility is capable of responding to a CAISO Dispatch, but the Storage Facility deviates from a CAISO Dispatch other than as permitted pursuant to Sections 4.5(c) or 4.5(d), Seller shall be responsible for all CAISO charges and penalties resulting from such deviation (in addition to any Buyer remedy related to overcharging of the Storage Facility as set forth in Section 4.5(c)). To the extent the Storage Facility is unable to respond to ADS signals during any Calculation Interval, then as an exclusive remedy, such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the YTD Annual Storage Capacity Availability.

(h) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Storage Facility; *provided*, prior to the Commercial Operation Date Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility.

(i) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy from the grid to serve Station Use), (ii) the supply of such Station Use shall not be deemed a violation of this Agreement, including Sections 4.5(c), (d), and (f), and (iii) Station Use may not be supplied from PV Energy, Charging Energy or Discharging Energy.

4.6 Reduction in Delivery Obligation.

(a) Facility Maintenance. Without limiting Sections 3.1 or Exhibit G, or any rights expressly provided hereunder of Seller in relation to the operation of the Facility:

(i) Seller shall provide to Buyer written schedules for Planned Outages for each of the Generating Facility and Storage Facility for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments on the proposed Planned Outage schedule no later than ten (10) days after receiving any such schedule, and Seller shall in good faith take into account any such comments. Seller shall deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.6(a)(i). Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff (or such shorter period as may be reasonably acceptable to Buyer based on the likelihood of dispatch by Buyer), and Seller shall limit maintenance repairs performed pursuant to this Section 4.6(a) to periods when Buyer does not reasonably believe the Generating Facility and/or Storage Facility, as applicable, will be dispatched.

(iii) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Generating Facility or Storage Facility shall be scheduled or planned during the hours of 6 a.m. to 10 p.m. from each June 1 through September 30 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all commercially reasonable efforts to reschedule such Planned Outage if requested to do so by Buyer.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and the expected duration (if known) of any Forced Facility Outage; *provided*, Seller may provide such Notice (i) pursuant to Seller's forecasts provided to Buyer pursuant to Section 4.3, or (ii) through compliance with CAISO's outage reporting protocols.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System Outage, Buyer Curtailment Period or upon notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse (i) the Storage Facility's unavailability for purposes of calculating the Annual Storage Capacity Availability to the extent the Storage Facility otherwise has an Unavailable Calculation Interval under Exhibit P, or (ii) in the case of Sections 4.6(a), (b) and (e), Seller's obligation to deliver Capacity Attributes.

4.7 Guaranteed Energy Production.

During each Performance Measurement Period during the Delivery Term, Seller shall deliver to Buyer an amount of PV Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of PV Energy, as measured in MWh, equal to [REDACTED] of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Event of Default or other Buyer failure to perform that directly prevents Seller from being able to deliver PV Energy to the Delivery Point. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (a) any Deemed Delivered Energy, plus (b) PV Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods ("**Lost Output**"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at NP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer, and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement.

4.8 Storage Facility Availability; Ancillary Services.

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Capacity Availability during each Contract Year of no less than [REDACTED] (the “**Guaranteed Storage Availability**”), which Annual Storage Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer’s sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate is Monthly Capacity Payment adjustment by the Efficiency Rate Factor pursuant to Exhibit C.

(c) Buyer’s exclusive remedies for Seller’s failure to achieve the Guaranteed Storage Availability are (i) the adjustment of Seller’s payment for the Product by application of the Capacity Availability Factor (as set forth in Exhibit C), and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iv), the applicable remedies set forth in Article 11.

(d) As of the Effective Date, the Parties acknowledge and agree that a DC-coupled solar plus energy storage generating facility does not qualify under the CAISO Tariff to provide Ancillary Service to the CAISO market. Subject to the terms of this Agreement, including Section 4.1(c), if after the Effective Date there is a change of Law that permits the Storage Facility to provide Ancillary Services, thereafter Seller shall operate and maintain the Storage Facility throughout the Delivery Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Storage Facility’s revised CAISO Certification associated with the Effective Storage Capacity.

(e) Upon Buyer’s reasonable request, Seller shall submit the Storage Facility for additional CAISO Certification so that the Storage Facility may provide additional Ancillary Services that the Facility is at the relevant time actually physically capable of providing consistent with the definition of Ancillary Services herein, provided that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with such additional CAISO Certification.

4.9 **Storage Facility Testing**.

(a) **Storage Capacity Tests**. Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests, subject to applicable NERC requirements and other applicable Laws.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and/or Efficiency Rate at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) Additional Testing. Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage Facility is able to respond to Automated Dispatches.

(c) Buyer or Seller Initiated Tests. Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests and all required annual tests pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility (“**Buyer Dispatched Test**”). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a “**Seller Initiated Test**”.

(i) For any Seller Initiated Test, other than Storage Capacity Tests required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability. The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility, Buyer shall be entitled to all CAISO revenues associated with a Storage Facility discharge during a Buyer Dispatched Test, and Buyer shall pay Seller the Renewable Rate for all Adjusted Facility Energy associated with such discharge. For all Seller Initiated Tests, the Adjusted Facility Energy associated with such Charging Energy shall be calculated in a manner such that there is no “gross up” benefit to Seller for Storage Facility efficiency losses associated with such Charging Energy, and Seller shall be entitled to all CAISO revenues (but not the Renewable Rate) associated with a Storage Facility discharge, but all Green Attributes associated therewith shall be for Buyer’s account at no additional cost to Buyer.. Buyer shall pay to Seller, in the month following Buyer’s receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(iii) Except as set forth in Sections 4.9(d)(i) and (ii), all other costs of any testing of the Storage Facility shall be borne by Seller.

4.10 **WREGIS.**

Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy or Facility Energy (as applicable) are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit, it being acknowledged that Seller may not be able under WREGIS rules to complete all WREGIS registration requirements prior to the Commercial Operation Date. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of PV Energy or Facility Energy (as applicable) generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the PV Energy or Facility Energy (as applicable) for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this

Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the PV Energy or Facility Energy (as applicable) for the same calendar month (taking into account the timing of WREGIS’ issuance of WREGIS Certificates in the normal course) (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or is the result of any action or inaction of, Seller, then the amount of PV Energy or Facility Energy (as applicable) in the Deficient Month shall be reduced by three (3) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller next coming due under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the PV Energy or Facility Energy (as applicable) in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first Energy delivery under this Agreement (to the extent such steps are reasonably capable of being taken prior to the first delivery under this Agreement).

ARTICLE 5 TAXES

5.1 Allocation of Taxes and Charges.

Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt

from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 **Cooperation.**

Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.**

Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.**

Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Shared Facilities.**

The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided*, such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

ARTICLE 7 METERING

7.1 Metering.

Unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have one CAISO Resource ID for the Facility. Seller shall measure the amount of PV Energy using the Generating Facility Meter, Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter, and Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall separately meter or account for all Station Use. All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter (but not the Generating Facility Meter or the Storage Facility Meter) shall be programmed to adjust for all Electrical Losses to the Delivery Point in a manner that complies with the CAISO Tariff and subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter, Generating Facility Meter and Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface (MRI-S) and/or directly from the CAISO meter(s) at the Facility.

7.2 Meter Verification.

Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall make commercially reasonable efforts to cause the meter to be tested. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; provided, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 Invoicing.

Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient

to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy, Charging Energy, Discharging Energy, Facility Energy, Replacement RA and Replacement Product delivered to Buyer (if any); the calculation of Deemed Delivered Energy that exceeds the Curtailment Cap, Adjusted Facility Energy and Adjusted Energy Production; the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.**

Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after Buyer's receipt of each invoice; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.**

To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.**

Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add

the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.**

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.**

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.**

To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within ten (10) Business Days after the Effective Date. Seller shall maintain the Development Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security.**

(a) To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance

Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

(b) In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.**

To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“**Security Interest**”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus

proceeds remaining after such obligations are satisfied in full.

8.10 **Buyer's Covenants.**

(a) **Buyer's Reporting of Financial and Credit Information.** Beginning on the first full calendar quarter of the Contract Term and continuing until the expiration of the Contract Term, Buyer shall provide to Seller the following reports and information:

(i) within sixty (60) days after the end of each fiscal quarter: (1) the number of customers of Buyer by customer category (including retail, commercial and industrial) as of the end of such fiscal quarter, (2) Buyer's Historical Load Served for the prior quarter and (3) unaudited quarterly financial statements of Buyer; and

(ii) within one hundred twenty (120) days after the end of each fiscal year, annual audited financial statements of Buyer (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

(b) **Cooperation with Financing Parties.** Buyer shall cooperate with Seller and any of Seller's financing counterparties to execute and arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and any other documents and information reasonably requested in connection with the debt or equity (including tax equity) financing of the Facility.

8.11 **Escrow Account.**

(a) If requested by Seller, the Parties shall negotiate in good faith and enter into a three-party escrow arrangement (an "**Escrow Agreement**") with a mutually agreeable financial institution or other creditworthy escrow agent pursuant to a written agreement under which Seller shall deposit any cash to be paid to or provided to Buyer as Development Security, Performance Security, Commercial Operation Delay Damages and Daily Delay Damages, if applicable, (an "**Escrow Account**").

(b) Buyer shall have the unconditional right to draw on the Development Security, Performance Security, Commercial Operation Delay Damages and Daily Delay Damages as expressly set forth in this Agreement and the terms of the Escrow Agreement.

(c) Seller shall have the unconditional right to withdraw funds from the Escrow Account upon the occurrence of a failure by Buyer to make any payment to Seller when due under this Agreement, and Buyer agrees to release its Security Interest with respect to such funds (and to take all action required to effectuate such release). Within ten (10) days following any such draw by Seller, Buyer shall replenish the Escrow Account to its prior amount.

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.**

Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.**

Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition.**

(a) **“Force Majeure Event”** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic (including the COVID-19 pandemic and related disruptions and events, notwithstanding the existence or foreseeability of the occurrence thereof or delays attributable thereto as of the Effective Date); landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; changes in Law that render this Agreement or any provisions hereof incapable of (or delayed in) being performed or administered civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term **“Force Majeure Event”** does not include (i) economic conditions or changes in Law that render a Party’s performance of this

Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure, except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.**

Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with commercially reasonable speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use commercially reasonable speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.**

In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.**

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal or exceed one hundred eighty (180) days or two hundred seventy (270), as applicable pursuant to the cause of the Development Cure Period, and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's commercially unreasonable actions (or failure to take commercially reasonable actions), then Seller may terminate this Agreement upon Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 Events of Default.

An "**Event of Default**" shall mean:

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) -day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for) any provision hereof that provides for a liquidated or other exclusive remedy, the exclusive remedy for which shall be that set forth in such provision 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party;

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date as may be extended by Seller's payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any Contract Year beginning with the second Contract Year, the Adjusted Energy Production (calculated in accordance with Exhibit G) for such period is not at least [REDACTED] of the Expected Energy for such Contract Year, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the [REDACTED] threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed [REDACTED] days ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) if, in any two (2) consecutive Contract Years during the Delivery Term, the Annual Storage Capacity Availability multiplied by the weighted average Effective Storage Capacity of the applicable period is not at least [REDACTED] multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such [REDACTED] multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed [REDACTED] days ("Storage Cure Plan") and (y) complete

such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein; *provided*, in the event of a Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10, any unavailability of the Storage Facility caused by a Force Majeure Event for which Seller is the claiming party shall be excluded from the calculation of Annual Storage Capacity Availability and weighted average Effective Storage Capacity for purposes of determining whether a Seller Event of Default has occurred under this Section 11.1(b)(iv). If a Force Majeure Event prevents Seller from completing a Storage Cure Plan within one hundred eighty (180) days, the time period for Seller to complete such Storage Cure Plan shall be extended by the period of such Force Majeure Event, up to an additional one hundred eighty (180) days;

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit;

(vii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty.

11.2 **Remedies; Declaration of Early Termination Date.**

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited

under this Agreement; provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Damage Payment; Termination Payment.**

If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be equal to the entire Development Security amount and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer will be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal (A) the sum of (i) all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) incurred or paid by Seller or its Affiliates, from the Effective Date through the Early Termination Date, directly in connection with the Facility (including in connection with acquisition, development, financing and construction thereof) plus (ii) without duplication of any costs or expenses covered by preceding clause (i), all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) which have been actually incurred, or become payable, by Seller or its Affiliates between the Early Termination Date and the date that Notice of the Damage Payment is provided by Seller to Buyer pursuant to Section 11.4, directly in connection with the Facility and arising out of the termination of this Agreement, including all Facility-related debt and other financing repayment obligations (and including all pre-payment penalties, accelerated payments, make-whole payments and breakage costs), and all other termination payments and other similar or related payments, costs or expenses in connection with the Facility, including in connection with financing, construction and equipment supply contracts, land rights contracts, and other Facility contracts and matters, in each case pursuant to and provided for in agreements that are in effect as of the Early Termination Date or entered into thereafter in order to mitigate or minimize the aggregate costs and expenses hereunder, less (B) the fair market value (determined in a commercially reasonable manner by third-party independent evaluator mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator mutually agreed by two independent evaluators, one selected by each of the Parties), but at Buyer's sole cost), net of all

Facility-related liabilities and obligations (without duplication of any of the liabilities and obligations set forth in Section 11.3(a)(ii)(A)), of (a) all Seller's assets if sold individually, or (b) the entire Facility, whichever is greater, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Termination Payment or Damage Payment.

As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60) days period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes with Respect to Termination Payment or Damage Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within

five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.

If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price), and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement reasonably approved by Buyer. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 Rights and Remedies are Cumulative.

Except as set forth in Section 4.8 and except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 Mitigation.

Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

11.9 Seller Pre-COD Termination.

At any time prior to the Commercial Operation Date, Seller may for any reason, by Notice to Buyer pursuant to this Section 11.9, terminate this Agreement. As Buyer's sole right and remedy (and Seller's sole liability and obligation) arising out of any such termination under this Section 11.9, Buyer shall be entitled (A) to liquidate and retain all Development Security and (B) to collect from Seller (and Seller shall be obligated to pay to Buyer) the total amount of all Delay Damages accrued and unpaid as of the Agreement termination date [REDACTED]

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

12.1 No Consequential Damages.

EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 16 INDEMNITY CLAIM, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE.

12.2 Waiver and Exclusion of Other Damages.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO

DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 Seller's Representations and Warranties.

As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its

terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

- (e) The Facility is located in the State of California.

13.2 **Buyer's Representations and Warranties.**

As of the Effective Date, Buyer represents and warrants as follows:

- (a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

- (b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

- (d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

- (e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants.**

Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Workforce Development.**

The Parties acknowledge that in connection with Buyer’s renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof. Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. Seller shall complete the “Supplier Diversity and Labor Practices” questionnaire provided by Buyer, and Seller agrees to comply with similar regular reporting requirements related to diversity and labor practices.

13.5 **Support for Pollinators.**

Seller agrees to maintain the Site and to design, construct and operate the Facility in a manner that provides healthy habitats for bees, bats, butterflies, hummingbirds and other pollinators by undertaking the following pollinator habitat creation, restoration, and protection efforts:

(a) Seller shall provide to Buyer before the Construction Start Date a written narrative that describes the vegetation design and management plan for the Site, including landscape drawings and seed/plant listing.

(b) Within thirty (30) days of the Commercial Operation Date, Seller shall provide to Buyer a pollinator-friendly solar scorecard in the form attached as Exhibit S (“**Pollinator Scorecard**”). Seller shall use commercially reasonable efforts to achieve and maintain a score of at least seventy (70) on the Pollinator Scorecard during the Delivery Term.

(c) Within sixty (60) days after the end of each third (3rd) Contract Year during the Delivery Term, Seller shall provide to Buyer an updated Pollinator Scorecard.

(d) Seller shall use commercially reasonable efforts to consider, but is not required to implement, the following solar array design elements to encourage and support pollinator-friendly habitats: (i) 36-inch minimum height above ground of the lowest edge of the solar panels; (ii) burying conduits and wiring with homeruns tight to bottom of panels; (iii) designing inter-row access/spacing to enable vegetation management; and (iv) utilizing BeeWhere registration (<https://beewherecalifornia.com/register-here/>) if bee hives are placed at the Site.

ARTICLE 14 ASSIGNMENT

14.1 General Prohibition on Assignments.

Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, a Change of Control of Seller shall not require Buyer’s consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

14.2 Collateral Assignment.

Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“**Collateral Assignment Agreement**”). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions (with such changes as may be reasonably requested by Lenders):

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided, such Notice shall be provided to Lender at the time such Notice is provided to Seller and any additional cure period of

Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

(c) Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(d) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a Bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(e) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(f) Lender will receive prior written notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(g) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's remaining obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date (other than any Event of Default personal to Seller and not reasonably capable of cure) in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
- (ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's remaining obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement required to be cured in accordance with Section 14.2(g), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or its designee must promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee (if it is not a Permitted Transferee) shall be approved by Buyer, not to be unreasonably withheld.

14.3 **Permitted Assignment by Seller.**

Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Except as provided in the preceding sentence, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

14.4 **Shared Facilities; Portfolio Financing.**

Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; provided, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

ARTICLE 15 DISPUTE RESOLUTION

15.1 Governing Law.

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2 Dispute Resolution.

In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 Attorneys' Fees.

In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16 INDEMNIFICATION

16.1 Indemnification.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to

Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.**

Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 **Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars (\$5,000,000). Defense costs shall be provided

as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller

shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information.

The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality.

The Party receiving Confidential Information (the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”) shall not disclose Confidential Information to a third party (other than the Party’s employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the

Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“**Buyer’s Indemnified Parties**”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

18.3 **Irreparable Injury; Remedies.**

Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.**

Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its or its Affiliates’ agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.**

Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.**

This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.**

This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.**

Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.**

Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 **Severability.**

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.**

Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts.**

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery.**

This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

19.9 **Binding Effect.**

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.**

Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.**

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 Change in Electric Market Design.

If, after the Effective Date, (i) a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, or (ii) a change in the CAISO Tariff, CPUC rules or other Law (or any new Law) results in the Net Qualifying Capacity of the Storage Facility on a consistent or ongoing basis falling below the Qualifying Capacity of the Storage Facility through no fault of Seller and such change in Law is not reasonably addressable by Seller under the requirements imposed on Seller under Section 3.12, then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered (or, in the case of preceding clause (ii), to maintain Seller's level of burdens or obligations under Section 3.8), in each case while attempting to preserve to the maximum extent possible the overall benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 Further Assurances.

Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

GIBSON RENEWABLES LLC

VALLEY CLEAN ENERGY ALLIANCE

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name: Gibson Solar

Site includes all or some of the following APNs: [REDACTED]

City: [REDACTED]

County: Yolo

Zip Code: [REDACTED]

Latitude and Longitude: [REDACTED]

Facility Description: Gibson Solar facility will be constructed [REDACTED] in an unincorporated area of Yolo County. It will consist of a 20 MW solar photovoltaic Generating Facility combined with a 26 MWh (6.5 MW x 4 hours) battery energy Storage Facility.

Delivery Point: Pnode for the Facility, and as reflected on the Metering Diagram in Exhibit R

Generating Facility Metering Points: See Metering Diagram in Exhibit R

Storage Facility Metering Points: See Metering Diagram in Exhibit R

P-node: [REDACTED]

Transmission Provider: Pacific Gas & Electric

Additional Information: [REDACTED]

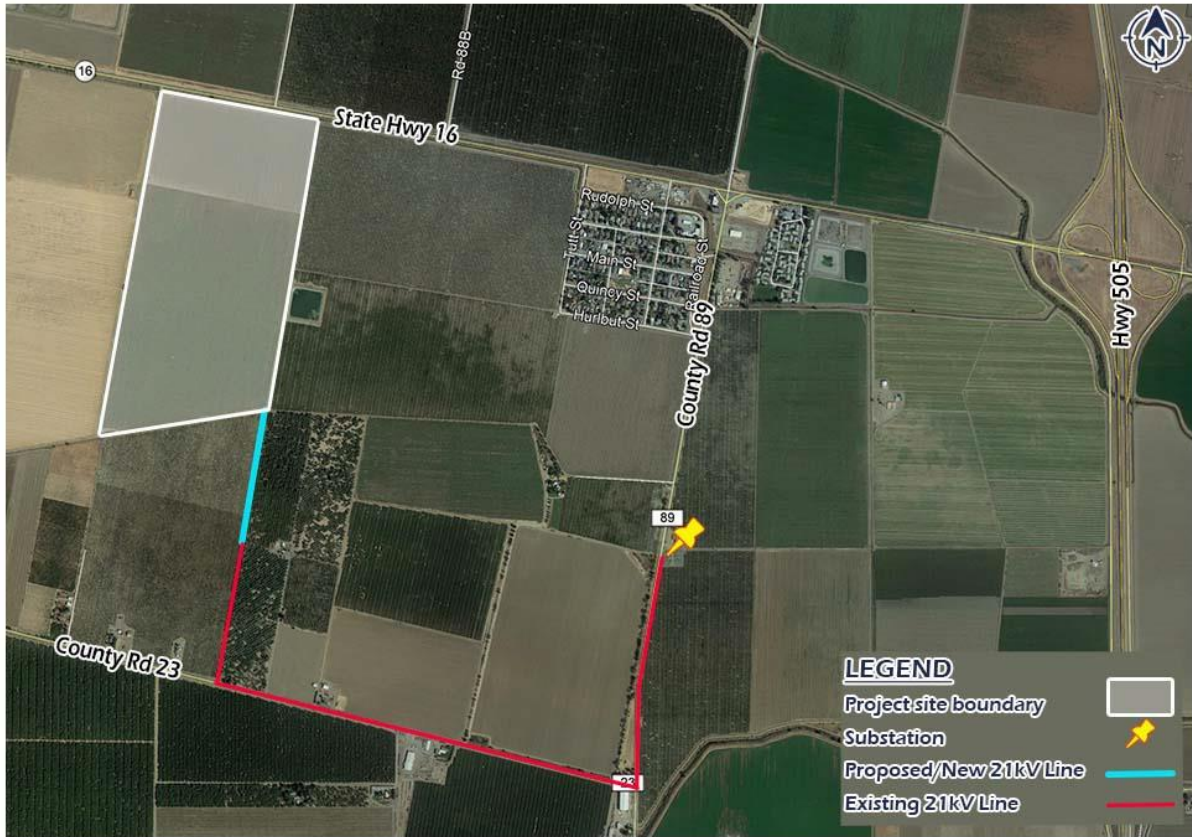


EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

a. “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a final notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

b. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of [REDACTED] days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, or as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”).

a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least ninety (90) days before the anticipated Commercial Operation Date.

b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED]

■■■■ days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. In no event shall Seller be obligated to pay aggregate Commercial Operation Delay Damages in excess of the Development Security amount required hereunder. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for up to ■■■■ days of 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 receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, 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 to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:
 - a. Seller has not acquired by the Expected Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - b. a Force Majeure Event occurs; or
 - c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to receive approval for initial synchronization and to connect and sell Product at the Delivery Point by the date that is sixty (60) days prior to the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or

- d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date (it being acknowledged that an extension under this paragraph (d) shall not limit other rights and remedies Seller may have for any Buyer default).

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(d) above) shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event; *provided*, [REDACTED]

[REDACTED] the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed [REDACTED]. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. Failure to Reach Guaranteed PV Capacity or Guaranteed Storage Capacity.

- a. *Guaranteed PV Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay "**PV Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed PV Capacity exceeds the Installed PV Capacity.
- b. *Guaranteed Storage Capacity.* If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay "**Storage Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW at four (4) hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

EXHIBIT C
COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of Adjusted Facility Energy, plus Deemed Delivered Energy that exceeds the Curtailment Cap, if any, up to [REDACTED] of the Expected Energy for such Contract Year.

(b) Excess Contract Year Deliveries [REDACTED] Notwithstanding the foregoing, if at any point in any Contract Year, the amount of Adjusted Facility Energy plus Deemed Delivered Energy that exceeds the Curtailment Cap exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for additional Adjusted Facility Energy and/or Deemed Delivered Energy that exceeds the Curtailment Cap shall be \$0.00/MWh.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Adjusted Facility Energy in excess of the product of the Guaranteed PV Capacity and the duration of the Settlement Interval, expressed in hours ("Excess MWh"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Monthly Capacity Payment.

(i) Each calendar month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate x Effective Storage Capacity x Efficiency Rate Factor. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity and/or Efficiency Rate are adjusted pursuant to a Storage Capacity Test other than on the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity and/or Efficiency Rate are applicable.

"Efficiency Rate Factor" means:

(A) If the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, then:

Efficiency Rate Factor = 100%

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



(ii) Storage Capacity Availability Payment True-Up. Each month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) Annual Storage Capacity Availability for the applicable Contract Year in accordance with Exhibit P. If (A) such YTD Annual Storage Capacity Availability is less than ninety percent (90%), or (B) the final Annual Storage Capacity Availability is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the **“Storage Capacity Availability Payment True-Up”**), and (2) provide Seller with a written statement of the calculation of the YTD Annual Storage Capacity Availability and the Storage Capacity Availability Payment True-Up Amount; *provided*, if the Storage Capacity Availability Payment True-Up Amount is a negative number for any month prior to the final year-end Storage Capacity Availability Payment True-Up calculation, Buyer shall not be obligated to reimburse Seller any previously withheld Storage Capacity Availability Payment True-Up Amount, except as set forth in the following sentence. If Buyer withholds any Storage Capacity Availability Payment True-Up Amount pursuant to this subsection (d)(ii), and if the final year-end Storage Capacity Availability Payment True-Up Amount is a negative number, Buyer shall pay to Seller the positive value of such amount together with the next Monthly Capacity Payment due to Seller.

“Storage Capacity Availability Payment True-Up Amount” means an amount equal to $A \times B - C$, where:

A = The sum of the year-to-date Monthly Capacity Payments

B = The Capacity Availability Factor

C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously subject to withholding by Buyer in the applicable Contract Year.

“Capacity Availability Factor” means:

(A) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is equal to or greater than the Guaranteed Storage Availability times the Effective Storage Capacity, then:

$$\text{Capacity Availability Factor} = 0$$

(B) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity, then:

$$\text{Capacity Availability Factor} = \text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}$$

- (C) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than seventy percent (70%) of the Installed Storage Capacity, then:

$$\text{Capacity Availability Factor} = \frac{\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}}{\text{Installed Storage Capacity}}$$

[REDACTED]

- (e) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(f) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(i) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real-time or other market basis that may develop after the Effective Date, as determined by Buyer consistent with the CAISO Tariff.

(ii) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO by (in order of preference) telephone or electronic mail to the personnel designated to receive such information.

(iii) CAISO Costs and Revenues. Except as otherwise set forth in this paragraph, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for

Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(iv) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(v) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(vi) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer or Buyer's designated SC as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(vii) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(viii) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller, or cause its designated SC to cooperate reasonably with Seller, to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) or its designated SC, as applicable, has provided to the CAISO related to the Facility or actions taken by Buyer (as

Scheduling Coordinator) or its designated SC, as applicable, related to Seller's compliance with NERC reliability standards.

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.

EXHIBIT F

FORM OF ANNUAL EXPECTED AVAILABLE GENERATING FACILITY CAPACITY REPORT

[MW Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Exhibit F-1

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes

D = the Renewable Rate, in \$/MWh

“**Adjusted Energy Production**” shall mean the sum of the following: Adjusted Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

“**Replacement Energy**” means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“**Replacement Green Attributes**” means PCC1 Renewable Energy Credits with the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

“**Replacement Product**” means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by _____ [*licensed professional engineer*] (“**Engineer**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Gibson Renewables LLC, a California limited company and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _____[DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.
3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.
4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on ___[DATE]____.
5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____[DATE]_____.
6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____[DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-1

FORM OF INSTALLED CAPACITY AND EFFICIENCY RATE CERTIFICATE

This certification (“**Certification**”) of Installed Capacity and Efficiency Rate and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Gibson Renewables LLC, a California limited company and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is __ MW AC (“**Installed PV Capacity**”);

(b) The Commercial Operation Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Storage Capacity**”);

(c) The sum of (a) and (b) is __ MW AC and shall be the “**Installed Capacity**”;
and

(d) The Commercial Operation Storage Capacity Test demonstrated (i) an Efficiency Rate of __%, (ii) a Battery Charging Factor of __%, and (iii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

**FORM OF EFFECTIVE STORAGE CAPACITY AND EFFICIENCY RATE
CERTIFICATE**

This certification (“**Certification**”) of Effective Storage Capacity and Efficiency Rate and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Gibson Renewables LLC, a California limited company and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the “**Effective Storage Capacity**”); and

(b) The Commercial Operation Storage Capacity Test demonstrated (i) an Efficiency Rate of __%, (ii) a Battery Charging Factor of __%, and (iii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by Gibson Renewables LLC, a California limited company (“**Seller**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on _____ (the “**Construction Start Date**”);
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

(such description shall amend the description of the Site in Exhibit A of the Agreement).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of _____.

GIBSON RENEWABLES LLC

By: _____

Its: _____

Date: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

Valley Clean Energy Alliance, a California joint powers authority

[Address]

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Valley Clean Energy Alliance, a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Agreement dated as of _____ and as amended (the “Agreement”) between [Applicant] and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXXXX] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]] (if presented by fax it must be followed up by a phone call to us at [XXXXXXXX] or [XXXXXXXX] to confirm receipt) with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*insert bank address information*], referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Valley Clean Energy Alliance, Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Valley Clean Energy Alliance, a California joint powers authority, [Buyer address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of _____, (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of Valley Clean Energy Alliance, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Valley Clean Energy Alliance, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Valley Clean Energy Alliance

Name and Title of Authorized Representative

Date _____

**EXHIBIT L
FORM OF GUARANTY**

This Guaranty (this “*Guaranty*”), is entered into as of _____, ____ (the “*Effective Date*”), by and between [____], a [____] (“*Guarantor*”), in favor of VALLEY CLEAN ENERGY ALLIANCE, a California joint powers authority (“*Counterparty*”).

RECITALS

WHEREAS, Counterparty and [____], a [____] (“*Obligor*”) have entered into that certain Renewable Power Purchase Agreement dated as of _____, ____ (as amended, restated or otherwise modified from time to time, the “*Agreement*”); and

WHEREAS, Guarantor will directly or indirectly benefit from the transaction to be entered into between Obligor and Counterparty pursuant to the Agreement.

WHEREAS, Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the Agreement, as required by Section 8.8 of the PPA.

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

1. *Guaranty.* Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement (and giving effect to any applicable grace or cure period) on or after the Effective Date (the “*Guaranteed Obligations*”). This Guaranty shall constitute a guarantee of payment and not merely of collection. The liability of Guarantor under this Guaranty shall be primary to the Guarantor and unconditional subject to the following limitations:

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ Dollars (\$_____), exclusive of Counterparty’s costs of collection and enforcement under Section 1(b) (the “*Maximum Recovery Amount*”). This Guaranty is a continuing guaranty of payment and shall apply to all Guaranteed Obligations whenever arising.

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including reasonable attorney’s fees) to the extent reasonably and actually incurred by the Counterparty. In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages, except to the extent such damages are allowed under the Agreement.

2. Demands and Payment.

(a) If Obligor fails to pay any Guaranteed Obligation to Counterparty when such Obligation is due and owing under the Agreement, Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Guaranteed Obligation pursuant to this Guaranty (a "**Payment Demand**").

(b) Guarantor's obligation hereunder to pay any particular Guaranteed Obligation(s) to Counterparty is conditioned upon Guarantor's receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Guaranteed Obligation(s) covered by such demand, the specific date(s) upon which such Guaranteed Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Guaranteed Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Guaranteed Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

(c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Guaranteed Obligation(s) specified in that Payment Demand, and Guarantor shall be required to promptly make payment with respect to the Guaranteed Obligation(s) specified in that Payment Demand, but in no event later than ten (10) Business Days after Guarantor receives such demand. As used herein, the term "Business Day" shall mean all weekdays (i.e., Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of California or the State of New York.

3. Representations and Warranties. Guarantor represents and warrants that:

(a) it is a [_____] duly organized and validly existing under the laws of the State of [_____] and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. No Counterclaims or Setoffs; Deferral of Defenses. The obligations of the Guarantor to the Counterparty hereunder shall not be subject to any counter-claim, set-off, withholding, or deduction unless required by applicable law, and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor other than the

satisfaction of the Guaranteed Obligations. A separate action or actions may be brought against the Guarantor whether or not any action is brought against the Obligor under the Agreement and whether or not the Obligor is joined in any such action or actions. Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor, any lack of power or authority of Obligor to enter into and/or perform the Agreement, and other defenses expressly waived by in this Guaranty.

5. Amendments. Guarantor agrees that the Counterparty and the Obligor may modify, amend and supplement the Agreement and that the Counterparty may delay or extend the date on which any payment must be made pursuant to the Agreement or delay or extend the date on which any act must be performed by the Obligor thereunder, waive, exercise or refrain from exercising any rights against the Obligor, or subordinate any obligation or liability of the Obligor to the Counterparty, including any security therefor, all without notice to or further assent by the Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by the Counterparty. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty; *provided*, however, that an amendment to this Guaranty extending the termination date of this Guaranty shall not be effective unless and until it is executed solely by Guarantor.

6. Waivers and Consents. Subject to and in accordance with the terms and provisions of this Guaranty:

(a) Guarantor hereby expressly waives diligence, presentment, protest, notice, acceleration, dishonor and acceptance of this Guaranty and demand concerning the liabilities of Guarantor, and any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof or to subrogate to any claims the Counterparty may have against the Obligor or the Obligor may have against the Counterparty.

(b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

(c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. Reinstatement. Guarantor agrees that this Guaranty shall continue to be effective

or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

8. Termination. This Guaranty shall remain in full force and effect until the earlier of (i) such time as all of the Guaranteed Obligations have been fully discharged; (ii) the satisfaction of all obligations of the Obligor under the Agreement; (iii) the Guarantor or Obligor causes this Guaranty to be replaced with one or a combination of cash, a fully effective letter of credit and/or another fully effective guaranty similar in form and substance to this Guaranty and by a party otherwise meeting the criteria set forth in the definition of Guarantor in the Agreement, or (iv) the twentieth (20th) anniversary of the first day of the first month following the Commercial Operation Date under the Agreement; provided that no such termination shall affect Guarantor's liability with respect to any Obligations arising under this Agreement prior to the time such termination is effective, which Obligations shall remain subject to this Guaranty.

9. Notices. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

To Guarantor:

To Counterparty:

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. Miscellaneous.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the laws of the State of California.

(b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor; provided that the Counterparty may, without prior notice to Guarantor or Obligor, make such an assignment, in conjunction with the grant or enforcement of a security interest or if otherwise required to do so under the terms of a mortgage or indenture to which Counterparty is or becomes a party.

(c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

(d) The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

(e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(f) EACH OF COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date

[Guarantor]

By: _____

Name: _____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by Gibson Renewables LLC, a California limited company (“**Seller**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

¹ To be repeated for each unit if more than one.

GIBSON RENEWABLES LLC

By: _____

Its: _____

Date: _____

EXHIBIT N
NOTICES

GIBSON RENEWABLES ("Seller")	VALLEY CLEAN ENERGY ALLIANCE ("Buyer")
All Notices: Street: [REDACTED] City: [REDACTED] Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	All Notices: Street: 604 2 nd Street City: Davis, CA 95616 Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]
Reference Numbers: Duns: TBD Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED]	Invoices: Attn: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED]
Scheduling: Attn: TBD Phone: TBD Email: TBD	Scheduling: Attn: Day Ahead Trading, Real Time Trading Phone: [REDACTED] Email: [REDACTED]
Confirmations: Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	Confirmations: Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]
Payments: Attn: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED]	Payments: Attn: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED]
Wire Transfer: BNK: TBD ABA: TBD ACCT: TBD	Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity or Efficiency Rate have varied materially from the results of the most recent prior Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) and Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

- A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- B. Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Seller's RTU and the SCADA Systems should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Seller's RTU and Seller's EMS interface and the ability to record SCADA Systems data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.
- (4) Generating Facility Conditions. Any CTs requiring the availability of Charging Energy may be conducted when the Generating Facility is producing at a rate equal to or above the Effective Storage Capacity continuously for a five (5)-hour period (the "**Generating Facility Testing Condition**"); *provided*, Seller may waive such Generating Facility Testing Condition at its sole discretion. Any CTs that are required or allowed to occur under this Exhibit O that take place in the absence of the Generating Facility Testing Condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such CT and/or the Battery Charging Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom (including pursuant to part I.B.4). The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the CT will still be deemed "complete," and any adjustments necessary to the Effective Storage Capacity resulting from such Test, if applicable, will be made in accordance with this Exhibit O (including pursuant to Part I.B.4.).

- (1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
- (2) Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage

Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (5) hours of total charging time, as may be adjusted per Part I.B.4 above, if applicable.

- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at two (2) second intervals:
- (1) Time;
 - (2) Net electrical energy output to the Storage Facility Meters (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
 - (3) Net electrical energy input from the Storage Facility Meters (kWh) (i.e., from each measurement device making up the Storage Facility Meter);
 - (4) SOC (MWh).
- C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
 - (3) Ambient air temperature (°F).
- D. Test Showing. Each CT shall record and report the following datapoints:
- (1) That the CT successfully started;
 - (2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above, including, if applicable, as adjusted pursuant to Part I.B.4 above;
 - (3) The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above, including, if applicable, as adjusted pursuant to Part I.B.4 above;
 - (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging level registered during the Test (for purposes of calculating the Ramp Rate);
 - (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging level registered during the Test (for purposes of calculating the Ramp Rate);
 - (6) Amount of Charging Energy registered at the Storage Facility Meter, to go from 0% SOC to 100% SOC;

- (7) Amount of Discharging Energy registered at the Storage Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

- (1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.
- (2) Abnormal Conditions. Except with respect to CTs impacted by the non-occurrence of a Generating Facility Testing Condition and addressed pursuant to Part I.B.4, if abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT (including ambient air temperature above 40° Celsius or below 0° Celsius), Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. Incomplete Test. Except with respect to CTs impacted by the non-occurrence of a Generating Facility Testing Condition and addressed pursuant to Part I.B.4, if any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
- (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
- (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with modifications and additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design, equipment and vendor selection for the Storage Facility ("**Supplementary Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended modifications and updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Effective Storage Capacity and Efficiency Rate. The Effective Storage Capacity and Efficiency Rate shall be updated as follows:
- (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.
 - (2) The total amount of Discharging Energy (as reported under Section II.D(7) above) divided by the total amount of Charging Energy (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Factor under part (d)(i) of Exhibit C until updated pursuant to a subsequent Capacity Test; *provided*, for the purpose of determining the Efficiency Rate pursuant to this paragraph, the amount of Discharging Energy and Charging Energy shall not be adjusted for Electrical Losses occurring between the Storage Facility Meters and the Delivery Point.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Storage Capacity and Efficiency Rate Test**

- Procedure:
 - (1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.
 - (2) Record the initial value of the Storage Facility SOC.
 - (3) Command a real power charge that results in an AC power of Storage Facility's maximum charging level and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have lapsed since the Storage Facility commenced charging.
 - (4) Record and log the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
 - (5) Record and log the AC energy charged to the Storage Facility as measured at the Storage Facility Meter (without adjusting for Electrical Losses) ("**Energy In**").
 - (6) Following an agreed-upon rest period (taking into account operating conditions of the Facility and the Interconnection Capacity Limit), command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
 - (7) Record the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Storage Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Storage Capacity (or at or above the Installed Storage Capacity after a Commercial Operation Storage Capacity Test) for four (4) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for purposes of calculating the Battery Discharging Factor.
 - (8) Record the AC Energy discharged (in MWh) as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
 - (9) If the Storage Facility has not reached 0% SOC pursuant to Part III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.
 - (10) Record the AC Energy discharged (in MWh) as measured at the Storage Facility Meter for determining the Effective Storage Capacity. "**Energy**

Out” means that total AC Energy discharged (in MWh) as measured at the Storage Facility Meter (without adjusting for Electrical Losses) from the commencement of discharging pursuant to Part III.A.5 until the Storage Facility has reached a 0% SOC pursuant to either Part III.A.6 or Part III.A.9, as applicable.

- **Test Results**

- (1) The resulting Efficiency Rate is calculated as Energy Out/Energy In, with Energy Out/Energy In measured at the Storage Facility Meter (without adjusting for Electrical Losses).
- (2) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility’s ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Up (as defined in the CAISO Tariff).
- System starting state: The Storage Facility will be in the on-line state at 40% to 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal for ten (10) minutes.
 - (3) Record the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility’s ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Down (as defined in the CAISO Tariff.)
- This AGC Charge Test may only be performed while there is anticipated to be sufficient Charging Energy for the duration of the test.

- System starting state: The Storage Facility will be in the on-line state at 40% to 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal for ten (10) minutes.
 - (3) Record the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) “**Annual Storage Capacity Availability**” for the current Contract Year using the formula set forth below:

$$\text{Annual Storage Capacity Availability (\%)} = 1 - \frac{\text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}$$

“**Calculation Interval**” or “**C.I.**” means each successive five-minute interval but excluding all such intervals which by the express terms of the Agreement are disregarded or excluded.

“**Unavailable Calculation Intervals**” means the sum of year-to-date unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \text{the lesser of: } \frac{A}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity} \times 4 \text{ hrs}} \right)$$

“**A**” is the “Available Effective Storage Capacity,” which shall be calculated as the sum of the available capacity, in MW AC, expected from each Storage Facility inverter in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines), but “A” shall never exceed the Effective Storage Capacity.

“**Storage Capability**” means the sum of the following (taking into account the SOC at the time of calculation): (i) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) at the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs at the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability (in MWh) at the applicable Calculation Interval x the Battery Discharging Factor). In calculating Storage Capability, the “available battery charging capability” and “available battery discharging capability” are calculated as the product of (1) the count of available system cells in such Calculation Interval multiplied by (2) the capability, in MWh, expected from each such system cell (based on actual normal operating conditions pursuant to the manufacturer’s guidelines.)

“**Total YTD Calculation Intervals**” means, for each applicable Contract Year, the total

number of Calculation Intervals year-to-date up through and including the month for which the Annual Storage Capacity Availability is being calculated.

(b) The “available Effective Storage Capacity” and “Storage Capability” in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Storage Facility for such Calculation Interval, and (ii) (A) for “available Effective Storage Capacity,” such amount equal to the Effective Storage Capacity minus the amount of unavailable capacity (in MWs) identified by Seller in an applicable Unavailability Notice for such Calculation Interval, and (B) for “Storage Capability,” such amount equal to (1) the Effective Storage Capacity multiplied by four (4) hours minus (2) the unavailable MWhs of battery charging and discharging capability identified by Seller in an applicable Unavailability Notice for such Calculation Interval. Except as otherwise expressly provided in this Agreement, the calculations of “available Effective Storage Capacity” and “Storage Capability” in the foregoing shall be based solely on the availability of the Storage Facility to charge or discharge Energy between the Storage Facility and the Generating Facility or Delivery Point, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond).

(c) After three hundred sixty-five (365) Cycles have occurred in a given Contract Year, any additional Calculation Intervals during such Contract Year shall be deemed to be fully available and Seller shall use commercially reasonable efforts to move any upcoming Planned Outages to such period of time.

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller’s operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

I. STORAGE FACILITY OPERATING RESTRICTIONS

File Update Date:	[XX/XX/20XX]	
Technology:	Lithium Battery Storage	
Storage Unit Name:	[TBD]	
A. Contract Capacity		
Guaranteed Storage Capacity (MW):	6.5	
Effective Storage Capacity (MW):	[TBD]	
B. Total Unit Dispatchable Range Information		
Interconnect Voltage (kV)	■	
Maximum Storage Level (MWh):	26	
Minimum Storage Level (MWh):	0.0	
Stored energy capability (MWh):	[TBD]	
Maximum Discharge (MW):	6.5	
Maximum Charge (MW):	6.5	
Guaranteed Efficiency Rate:	See Cover Sheet	
Maximum energy throughput (BET) (MWh/year):	<div style="background-color: black; height: 40px; width: 100%;"></div>	
C. Charge and Discharge Rates		
Mode	Maximum (MW)	Ramp Rate (MW/s) Description
Energy (Charge)	6.5	6.5MW/s
Energy (Discharge)	6.5	6.5MW/s
D. Ancillary Services		
Frequency regulation is included:	No	
Spin is included:	No	
E. Additional Restrictions		
1. The Storage Facility shall be charged exclusively with PV Energy.		
2. 365 Cycles per Contract Year maximum. One (1) Cycle per day maximum.		

3. Seller shall not be required to operate the Facility in a manner that would cause Facility Energy to exceed the Interconnection Capacity Limit.

[REDACTED]

5. [REDACTED]

6. [REDACTED]

II. GENERATING FACILITY OPERATING RESTRICTIONS

1. XXXX
2. XXXX

EXHIBIT R

METERING DIAGRAM

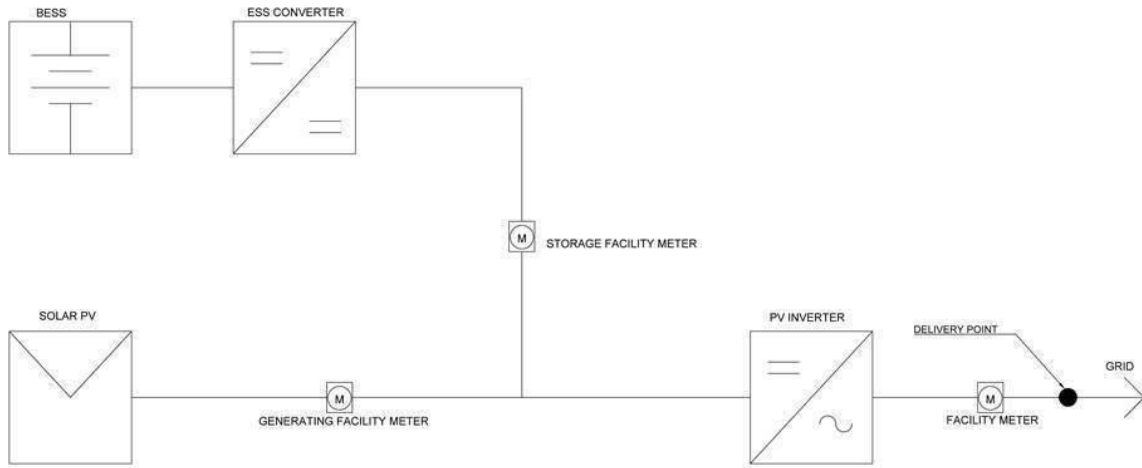


EXHIBIT S

FORM OF POLLINATOR SCORECARD



Pollinator-friendly solar scorecard

The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed landscape of a PV solar facility.



1. PERCENT OF PROPOSED SITE VEGETATION COVER TO BE DOMINATED BY WILDFLOWERS

- 31-45 % +5 points
- 46-60 % +10 points
- 61+ % +15 points

Total points

Note: Projects may have "array" mixes and diverse open area/ border mixes; forb dominance should be averaged across the entire site. The dominance should be calculated from total numbers of forb seeds vs. grass seeds (from all seed mixes) to be planted.

2. PLANNED % OF SITE DOMINATED BY NATIVE SPECIES COVER

- 26-50% +5 points
- 51-75% +10 points
- 76-100% +15 points

Total points

3. PLANNED COVER DIVERSITY (# of species in seed mixes; numbers from upland and wetland mixes can be combined)

- 10-19 species +5 points
- 20-25 species +10 points
- 26 or more species +15 points

Total points

Note: exclude invasives from species totals.

4. PLANNED SEASONS WITH AT LEAST 3 BLOOMING SPECIES PRESENT (check/add all that apply)

- Spring (April-May) +5 points
- Summer (June-August) +5 points
- Fall (September-October) +5 points

Total points

Note: Check local resources for data on bloom seasons

5. AVAILABLE HABITAT COMPONENTS WITHIN .25 MILES (check/add all that apply)

- Native bunch grasses for nesting +2 points
- Native trees/shrubs for nesting +2 points
- Clean, perennial water sources +2 points
- Created nesting feature/s (bee blocks, etc.) +2 points

Total points

6. SITE PLANNING AND MANAGEMENT

- Detailed establishment and management plan developed with funding/contract to implement +15 points
- Signage legible at 40 or more feet stating "pollinator friendly solar habitat" (at least 1 every 20ac.) +5 points

Total points

7. SEED MIXES

- Mixes are composed of at least 40 seeds per square foot +5 points
- All seed genetic origin within 175 miles of site +5 points
- At least 2% milkweed cover to be established from seed/plants +10 points

Total points

8. INSECTICIDE RISK

- Planned on-site insecticide use or pre-planting seed/plant treatment (excluding buildings/ electrical boxes, etc.) -40 points
- Perpetual bare ground under the panels as a result of pre and post emergent herbicide. -40 points
- Communication/registration with local chemical applicators about need to prevent drift from adjacent areas. +10 points

Total points

9. OUTREACH/EDUCATION

- Site is part of a study with a college, university, or research lab. +5 points

Grand total

Provides Exceptional Habitat >85
Meets Pollinator Standards 70-84

Project Name:
Vegetation Consultant:
Project Location:
Total acres (array and open area):
Projected Seeding Date:

Note: Percent "cover" should be based on "absolute cover" (the percent of the ground surface that is covered by a vertical projection of foliage as viewed from above). To measure cover diversity use plots, and/or transects in addition to meander searches. Wildflowers in question 1 refer to "forbs" (flowering plants that are not woody or graminoids) and can include introduced clovers and other non-native, non-invasive species beneficial to pollinators.



VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020-___

RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE (VCE) APPROVING A POWER PURCHASE AGREEMENT WITH PUTAH CREEK SOLAR FARMS, LLC AND AUTHORIZING THE INTERIM GENERAL MANAGER IN CONSULTATION WITH LEGAL COUNSEL TO FINALIZE AND EXECUTE THE POWER PURCHASE AGREEMENT

WHEREAS, on April 20, 2020 VCE issued a solicitation for Long Term Local Renewable power supply; and

WHEREAS, after compiling and consolidating the technical details from each response received and evaluating for consideration, VCE Staff executed exclusivity negotiating agreements, collected short list deposits, and began negotiating power purchase agreements (“PPA”) for several projects; and

WHEREAS, Putah Creek Solar Farms, LLC (“Putah Creek”) proposed to construct a 3-MW AC solar photovoltaic facility co-located with 3-MW/12 MWh (4-hour) lithium-ion phosphate battery energy storage system (Putah Creek Energy Farm), in Winters, Yolo County, California; and

WHEREAS, the Putah Creek Energy Farm project meets the requirements of VCE under the solicitation; and

WHEREAS, a PPA has been negotiated with Putah Creek for VCE to procure output from the Putah Creek Energy Farm for 20 years.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. The Power Purchase Agreement (PPA) between VCE and Putah Creek for 100% of the output for 20 years of the Putah Creek Energy Farm under development by Putah Creek Solar Farms, LLC is hereby approved.
2. The Interim General Manager is authorized to execute the PPA substantially in the form attached hereto as Exhibit A on behalf of VCE, and, in consultation with legal counsel, is authorized to approve minor changes to the PPA so long as the term and price are not changed.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____ 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Don Saylor, VCE Chair

Alisa M. Lembke, VCE Board Secretary

Attachment A: Power Purchase Agreement with Putah Creek Solar Farms LLC

Attachment A

Power Purchase Agreement with Putah Creek Solar Farms LLC

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020 - ____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE (VCE)
APPROVING A POWER PURCHASE AGREEMENT WITH GIBSON RENEWABLES, LLC AND
AUTHORIZING THE INTERIM GENERAL MANAGER IN CONSULTATION WITH LEGAL COUNSEL
TO FINALIZE AND EXECUTE THE POWER PURCHASE AGREEMENT**

WHEREAS, on April 20, 2020 VCE issued a solicitation for Long Term Local Renewable power supply; and

WHEREAS, after compiling and consolidating the technical details from each response received and evaluating for consideration, VCE Staff executed exclusivity negotiating agreements, collected short list deposits, and began negotiating power purchase agreements (“PPA”) for several projects; and

WHEREAS, Gibson Renewables, LLC (“Gibson”) proposed to construct a 20-MW solar photovoltaic facility combined with 6.5-MW/26 MWh (4-hour) battery energy storage system (Gibson Solar), in Madison, Yolo County, California; and

WHEREAS, the Gibson Solar project meets the requirements of VCE under the solicitation; and

WHEREAS, a PPA has been negotiated with Gibson for VCE to procure output from the Gibson Solar project for 20 years.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. The Power Purchase Agreement (PPA) between VCE and Gibson for 100% of the output for 20 years of the Gibson Solar project under development by Gibson Renewables, LLC is hereby approved.
2. The Interim General Manager is authorized to execute the PPA substantially in the form attached hereto as Exhibit A on behalf of VCE, and, in consultation with legal counsel, is authorized to approve minor changes to the PPA so long as the term and price are not changed.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____ 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Don Saylor, VCE Chair

Alisa M. Lembke, VCE Board Secretary

Attachment A: Power Purchase Agreement with Gibson Renewables LLC

Attachment A

Power Purchase Agreement with Gibson Renewables LLC

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 16

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
George Vaughn, Director of Finance & Internal Operations

SUBJECT: Update on Load and Financial Forecast

DATE: November 12, 2020

PURPOSE

Provide an updated outlook to the Board on load, revenue and cash flow. This item is informational - No decision is requested.

OVERVIEW

In May staff presented a modified forecast for the next several years due to COVID and the anticipated recessionary period associated with the pandemic. As communicated in May, staff is returning to the Board with an updated set of forecasts based on actuals. This report presents those updated forecasts and specifically addresses two topics related to the fiscal outlook for VCE: (1) updated electricity demand forecast for COVID/recessionary period and beyond (calendar year 2020 to 2022); and (2) updated high-level look at the profitability and cash outlooks for fiscal years ending June 30, 2021 and June 30, 2022.

This report also provides information to assist the Board in a related agenda item of considering how to allocate net margin between cash reserves, dividends, and local program reserves (Agenda Item 17).

BACKGROUND AND ANALYSIS

Section 1A. Load Forecast Presented in May 2020

At the May 14 Board Meeting staff, assisted by SMUD, presented various scenarios showing forecast impacts resulting from the COVID-19 global pandemic, shelter-in-place orders to protect public health, and the predicted economic recession.

Given the degree of uncertainty in May, VCE developed three load scenarios to analyze potential budgetary impacts: (1) best case, (2) most likely case, and (3) worst-case. The FY 2020-21 Operating Budget was based on the most likely load scenario.

Brief descriptions of the best-case, most likely, and worst-case load scenarios presented in May are described below and summarized in Table 1 for reference.

May 2020 Scenario 1 Forecast - Best Case

This scenario assumed a consistent load recovery rate between June 2020 and the end of 2021. The recovery timeline acknowledged that reopening would be phased, and we will not reach a complete “back to normal” until a vaccine or therapeutics are widely available. This scenario assumed that once all restrictions are lifted, there is no recessionary impact to VCE’s load.

May 2020 Scenario 2 Forecast - Most Likely

This scenario assumed a phased reopening, with phases moving more slowly and/or a lesser degree of shelter-in-place being implemented as hotspots emerge. It showed commercial loads stagnating 2-6% below normal between 2021-2022 due to an economic recession, with the recession impact continuing to a lesser degree through 2024. This scenario also included a decline in residential load due to extended periods of unoccupied housing stock during the recession.

Note: Scenario 2 was adopted by the Board and used to prepare the FY 2020/21 Budget.

May 2020 Scenario 3 Forecast - Worst Case

This scenario assumed an extended recession impact to all commercial classes with no load recovery in 2020 due to a second complete shutdown in fall and/or extended public concern driving businesses not to reopen regardless of policy. This scenario incorporated recessionary impacts to both ag and industrial load as well as earlier/deeper drops in residential load.

Table 1 – Scenario Comparison, Impact on Power Costs & Revenue v. Base Case

		Best Case*	Most Likely*	Worst Case
2020	Retail Load	-3.8%	-3.8%	-8.0%
	Power Costs	-1.9%	-1.9%	-4.0%
	Revenue	-4.2%	-4.2%	-8.3%
2021	Retail Load	-2.3%	-3.6%	-8.7%
	Power Costs	-1.6%	-2.7%	-6.0%
	Revenue	-2.3%	-3.7%	-8.5%

*Forecast retail load, power cost, and revenue match for 2020 in the Best and Most likely scenarios due to assumed drop related to the COVID stay at home orders being gradually lifted over 2020.

At the time of the May Board Meeting there was widespread recognition of the remaining uncertainty. Information was changing daily, which resulted in some assumptions being outdated quickly. As communicated to the Board at the May meeting and during the FY budget adoption in June, VCE and SMUD have continued to closely monitor and adjust the load forecast as warranted by additional data.

Section 1B. October 2020 Load Forecast Update

In late October, SMUD updated the 2020-2022 load forecast for VCE. This update considered a number of factors, many of which were not available in May, including:

- Original, weather normalized, pre-COVID load forecast produced by the SMUD load forecasting department in 1st quarter of 2020

- January through mid-August actual load data
- SMUD estimation of weather versus COVID shutdown load impact
- Reforecast of COVID shutdown/recessionary impact to future load
- Consideration of National Oceanic and Atmospheric Administration (NOAA) forecast of a warm California winter

In assessing load to date in 2020, the estimated impact for April to September 2020 is shown below:

	Total Impact	COVID Shutdown	Weather
Residential	12%	4%	8%
Small Commercial	-13%	-16%	3%
Medium Commercial	-11%	-13%	2%
Large Commercial	-7%	-9%	2%

To summarize the findings since May:

- Weather has had significant impacts on the forecast, offsetting the COVID reductions due to the unusually hot summer.
- The updated 2020 load forecast is 2.5% higher than the original pre-COVID baseline for 2020; in May this was a 3.8% estimated load reduction. The difference is a 6.3% improvement from May to October estimates.
- The updated 2021 load forecast is 0.8% lower than the original pre-COVID baseline for 2021; in May this was a 3.6% estimated load reduction. The difference is a 2.8% improvement from May to October estimates.
- The forecast residential load increase offsets almost all of the commercial load reductions.

The overall financial impact of the increased load estimate has been relatively minor. As revenue has increased, so has power cost. For the two years of FY2021 and FY2022, revenue has increased \$5.3 million while power cost is increasing \$5.9 million, for a two-year reduction in net income of \$0.6 million.

Section 2. P&L and Cash Outlook

Overall, the FY2021 and FY2022 P&L and cash outlook has not changed significantly since the Board approved the budget in June 2020. VCE still anticipates the following dynamics, which were also present when the budget was approved:

- Significant operating losses in both FY2021 and FY2022
- Power costs close to, or exceeding, revenue – making it impossible to cover operating costs without experiencing negative net income
- Significant revenue erosion from PCIA both years
- Significant power cost increase due largely to increased Resource Adequacy (RA) costs
- Cash reserves being utilized to stabilize customer rates until it nears a zero balance by the end of FY2022 (these numbers do not reflect any borrowing from the line of credit)

The expectation is that various regulatory, legislative or market factors will lead to a normalization of PCIA and power costs in 2023 and beyond, but margins will be very low or negative until that occurs. Some of these potentially helpful interventions may include:

- PCIA costs normalizing due to regulatory/legislative decisions
- Reduced power costs as VCE long-term power purchase agreements (PPA's) start coming on-line
- Change in market factors, such as Diablo Canyon units coming off the books for PG&E
- Favorable regulatory decisions

For purposes of strategic cash flow decisions, staff believes that VCE should not rely on positive outcomes from these interventions for the next several years and that the organization should make financial decisions through a lens of prudence.

The table below summarizes the May forecast and October forecast:

	FY2020	FY2021	FY2022
May 2020 Forecast			
Revenue	\$ 55,249	\$ 49,467	\$ 49,400
Power Cost	\$ 41,538	\$ 47,695	\$ 50,335
Other Expenses	\$ 4,346	\$ 4,611	\$ 4,992
Net Income	\$ 9,365	\$ (2,839)	\$ (5,927)
Oct 2020 Forecast			
Revenue	\$ 55,249	\$ 53,038	\$ 51,159
Power Cost	\$ 41,538	\$ 50,630	\$ 53,288
Other Expenses	\$ 4,346	\$ 4,671	\$ 4,990
Net Income	\$ 9,365	\$ (2,263)	\$ (7,119)
Difference			
Revenue	\$ -	\$ 3,571	\$ 1,759
Power Cost	\$ -	\$ 2,935	\$ 2,953
Other Expenses	\$ -	\$ 60	\$ (2)
Net Income	\$ -	\$ 576	\$ (1,192)
Unrestricted Cash	\$ 13,334	\$ 9,397	\$ 363
Load (Kwh)	690,231	689,988	721,345

CONCLUSION

Although no decision is requested based on this information, staff strongly suggests that the Board continue to take VCE's financial position into account when making key decisions, including allocation of net margin and dividends.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 17

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
George Vaughn, Director of Finance & Internal Operations

SUBJECT: Allocation of Fiscal Year 2020 Net Margin

DATE: November 12, 2020

RECOMMENDATION

Adopt a resolution approving the allocation of fiscal year 2020/21 (FY2020) net margin between cash reserves, dividends, and local program reserve (LPR).

OVERVIEW

This staff report presents the various options the Board has in determining how to allocate audited net margin for FY2020. Taking into account the Dividend Program parameters, as well as available and forecast cash reserves, staff recommends the following allocation of VCE's \$6.318 million net margin for FY2020:

- \$138,000 to the Local Programs Reserve (LPR)
- \$0 to dividends, given the current cash reserve forecast
- The balance (\$6,180,000) to cash reserves to help stabilize customer rates over the next two fiscal years.

BACKGROUND AND ANALYSIS

The Board adopted the VCE Rate Structure & Dividend Program Guidelines (Dividend Program, attached) on June 17, 2019, to be effective starting at the beginning of the following fiscal year on July 1, 2019. Key aspects of the Dividend Program are:

- Every fiscal year, the audited Net Margin (Less Principal Debt Payments) is to be allocated amongst Cash Reserves, LPR, and Cash Dividends, at the Board's discretion
- VCE is to match PG&E's generation rates, less PCIA
- Require a minimum 5% net margin before any dividends are paid
- Require the enrollment process for legacy Net Energy Metering (NEM) accounts to have begun before any dividends are paid

For audited FY 2019/20, the conditions above have all been met. Therefore, consideration of the allocation of net margin is before the Board. Note: as noted when the Board adopted the Dividend Program Policy in June 2019, a 5% minimum net margin is in the lower range of typical net margin goals for the electricity and most other industries.

Dividend Program Formula

The adopted Dividend Program formula recommends allocating the net margin as follows:

- Net Margin up to 5% is to be allocated as follows:
 - At least 5% (of the 5%) goes to LPR
 - The balance goes to cash reserves

- Net Margin above 5% is to be allocated as follows:
 - At least 50% to cash reserves
 - Remainder allocated amongst dividends and LPR

FY2020 produced an audited net margin of \$6.318 million, or 11.4%. Based on the formula above, the calculation for FY2020 results in the following ranges for Board consideration:

- LPR at least \$138,000
- Dividends \$0 to \$1,778,000
- The balance goes to cash reserves

Considerations

Actual and forecast cash reserves is an important consideration. Although VCE has strong cash reserves at June 30, 2020, it is expected to experience significant cash challenges in the next two fiscal years due to continuing regulatory pressures related to the Power Charge Indifference Adjustment (PCIA/Exit Fee) and changing Resource Adequacy requirements. The forecast of these primary drivers of increasing costs and uncertainty are expected to result in VCE dipping below the adopted Board goal of 90 days of cash on hand. As the Board is aware, the cash reserves are utilized primarily to enhance rate stability for customers to help meet VCE rate objectives (i.e. match PG&E rates). The following are the expected days cash on hand under current fiscal projections and VCE's recently adopted budget:

- June 30, 2020: 103 days cash on hand (current)
- June 30, 2021: 70 days cash on hand
- June 30, 2022: 3 days cash on hand

Based on the cash reserve forecast in the coming years, staff recommends that the Board allocates \$138,000 to LPR, \$0 to dividends, and the balance to cash reserves for audited FY2020. Though a fiscally cautious approach, staff believes the dividend can be implemented in future years when market and regulatory factors improve enough to improve cash forecasts.

For reference, if the Board decided to institute a small dividend this year, rather than the \$0 recommended by staff, the effects would be:

- A 1% dividend in FY2020 would be a \$800,000 reduction in cash reserves and reduce days cash on hand going forward by approximately 6 days
- A 2% dividend in FY2020 would be a \$1,600,000 reduction in cash reserves and reduce days cash on hand going forward by approximately 12 days

Notes: (1) a 1% dividend would be approximately \$1.50/month reduction in the average residential customer bill and an approximately \$3.75/month reduction in the average small commercial customer bill; (2) anecdotal information from other CCA's indicate that these levels of customer dividends/discounts while helpful in communicating a CCA's value do not have significant effects on customer retention or new customer recruitment; (3) a stronger cash reserve helps demonstrate VCE's fiscal standing with outside entities (e.g. financial institutions).

Local Program Reserve Prior to FY2020

Prior to the introduction of the Dividend Program, VCE simply set aside 1% of net income as funds for local program development. This was based on the Board's Financial Reserve Policy (attached) adopted on December 14, 2017.

Based on the Financial Reserve Policy's 1% calculation, VCE has approximately \$86,500 set aside as of June 30, 2019 for programs. Any LPR approved for FY2020 would add to this existing total.

Below is a summary of VCE's current financial standing:

	Audited 2020 Results	
Electricity Sales	\$ 55,248,868	
Operating Expense	\$ 45,887,956	
Principal Debt Payments	\$ 3,042,674	
Net Margin Less Principal Debt Payments	\$ 6,318,238	
Net Margin %	11.4%	
5% Net Margin	\$ 2,762,443	
Amount > 5% NM	\$ 3,555,794	
Disposition of First 5% Net Margin		
At least 5%: Local Programs Reserve (LPR)	\$ 138,122	Minimum
Up to 95% to Cash Reserves	\$ 2,624,321	Maximum
Disposition of Net Margin >5%		
At least 50% to Cash Reserves	\$ 1,777,897	Minimum
Remaining (after Cash Reserves) - Split between LPR and Dividends	\$ 1,777,897	Maximum
FY 2020 Summary		
Minimum Amount to LPR	\$ 138,122	
Minimum Amount to Dividends	\$ -	
Maximum Amount to Dividends	\$ 1,777,897	
FY 2019 Summary		
Minimum Amount to LPR	\$ 86,463	
Total 2019-20 (2 Years)	\$ 224,585	
Days Cash on Hand at 6/30/2020	103	
Projected Days Cash on Hand at 6/30/2021	70	
Projected Days Cash on Hand at 6/30/2022	3	

CONCLUSION

Staff recommends that the Board adopt a resolution approving the staff's recommended allocation of fiscal year ending 2020 (FY2020) net margin between cash reserves, dividends, and local program reserve (LPR) as follows:

- \$138,000 to the Local Programs Reserve (LPR)
- \$0 to dividends, given the current cash reserve forecast
- The balance (\$6,180,000) to cash reserves to help stabilize customer rates over the next two fiscal years.

ATTACHMENTS:

1. Rate Structure & Dividend Program Guidelines
2. Financial Reserve Policy
3. Resolution

RESOLUTION NO. 2019-007

**A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE ADOPTING A
NEW RATE STRUCTURE AND DIVIDEND PROGRAM GUIDELINES AND APPROVING
AMENDMENT 11 TO TASK ORDER 2 (DATA MANAGEMENT AND CALL CENTER SERVICES) TO
THE SACRAMENTO MUNICIPAL UTILITIES DISTRICT PROFESSIONAL SERVICES AGREEMENT**

WHEREAS, the Valley Clean Energy Alliance (“VCEA”) is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo (“County”), the City of Davis (“Davis”), and the City of Woodland (“City”) (the “JPA Agreement”), to collectively study, promote, develop, conduct, operate, and manage energy programs; and

WHEREAS, initially VCEA’s rate structure provided customers with a pre-determined, up front rate discount relative to PG&E service; and

WHEREAS, an alternative would be to generally match PG&E rates and move from a monthly fixed rate discount structure to an annual dividend rate structure; and

WHEREAS, the New Rate Structure and Dividend Program Guidelines will help VCEA improve financial stability and maintain focus on its primary goals: a cleaner environment, meeting the members’ climate action goals, building agency reserves, offering custom tailored programs and awarding customers for their loyalty and trust.

WHEREAS, on August 31, 2017, the VCEA Board considered a proposal by the Sacramento Municipal Utilities District (“SMUD”) to provide program launch and operational services and subsequently directed VCEA staff to negotiate a services agreement between VCEA and SMUD for consideration and action by the VCEA Board;

WHEREAS, on September 21, 2017, the SMUD Board of Directors authorized its CEO to enter into a contract with VCEA to provide CCA support services;

WHEREAS, on October 12, 2017 the VCEA Board approved the Master Professional Services Agreement and Task Order 1 and Task Order 2 to provide program launch and operational services consistent with the SMUD proposal and VCEA Board direction;

WHEREAS, on April 11, 2019 the VCEA Board approved Amendment 10 to Task Order 2 (data management and call center services) adding detail to SMUD’s invoicing methodologies in the Compensation for Services section; and,

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. Adoption of the New Rate Structure and Dividend Program Guidelines, effective July 1, 2019 (Exhibit A).
2. Authorizes VCEA Interim General Manager to approve and execute Amendment 11 to Task Order 2 (Data Management and Call Center Services) for the development of the technology enhancement to support VCE's annual dividend program.

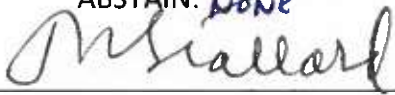
PASSED, APPROVED AND ADOPTED at a regular meeting of the Valley Clean Energy Alliance, held on the 17th day of June, 2019, by the following vote:

AYES: STALLARD, SANDY, FRERICKS, SAYLOR, CARSON

NOES: NONE

ABSENT: BARAJAS

ABSTAIN: NONE



Tom Stallard, VCEA Chair

ATTEST:



Alisa M. Lembke, VCEA Secretary

EXHIBIT A – New Rate Structure and Dividend Program Guidelines

EXHIBIT B - Amendment 11 to SMUD Master Professional Services Agreement Task Order 2

EXHIBIT A

New Rate Structure and Dividend Program Guidelines

Valley Clean Energy Alliance

New Rate Structure and Dividend Program Guidelines

Purpose: VCE is setting a new rate structure and dividend program to help VCE improve financial stability and maintain focus on its primary goals: a cleaner environment, meeting the members' climate action goals, building agency reserves, offering custom tailored programs, and awarding customers for their loyalty and trust.

Program Guidelines:

- Match PG&E electric generation rates less PCIA exit fee
- Require a minimum 5% annual net margin (less principal debt payments) before any dividends are paid to VCE customers
- Require the enrollment process for the legacy NEM accounts (accounts with solar installation prior to June 2018) in the VCE service area has begun before any dividends are paid to VCE customers
- Annually based on the audited financial statements:
 - Calculate the Annual Net margin less principal debt payments
 - If Annual Net margin < 5% - no customer dividends and Board determine allocation of net margin to Cash reserves and Local Program reserves
 - If Annual Net margin > 5% - Board determine allocation of any surplus (over 5%) to Cash reserves, Local Program reserves and Customer Dividends
- Guidelines of Allocation of Annual Net Margin
 - Annual Net Margin <= 5%
 - Up to 95% to Cash Reserves (Until 90-days of cash reserves met)
 - At least 5% to Local Program Reserves
 - Annual Net Margin > 5%
 - Follow guidelines for Annual Net Margin up to 5%
 - Annual Net margin in excess of 5%:
 - At least 50% to Cash Reserves (Until 90-days cash reserves met)
 - Remaining excess allocated between Cash Dividends and Local Programs Reserve at the discretion of the Board annually

Adopted: June 17, 2019

- Board approves allocation of Annual Net Margin on or around the September Board meeting
- Any surplus allocation to customer dividends will appear as bill credits or the customer may have the option to apply their dividend to the Local Program Reserve. Any customer dividends will appear as bill credits as follows:
 - Residential customers – annually in October bill
 - Non-residential customers – bi-annually in October and April bills

Adopted: June 17, 2019

EXHIBIT B

Amendment 11 to SMUD Master Professional Services Agreement Task Order 2

AMENDMENT 11 TO EXHIBIT A: Scope of Services

A.4 Task Order 2 – Data Management and Customer Call Center Services

SMUD and VCEA agree to the following services, terms, and conditions described in this Amendment 11 to Exhibit A, Task Order No. 2 (Amendment 11), the provisions of which are subject to the terms and conditions of the Master Professional Services Agreement (Agreement) between the Parties. If any specific provisions of this Amendment 11 conflict with any general provisions in the Agreement or Task Order 2, the provisions of this Amendment 11, shall take precedence. Capitalized terms used in this Amendment which are not defined in this Amendment will have the respective meanings ascribed to them in the Agreement or a previous Amendment thereof.

The Effective Date of this Amendment 11 is the date of last signature below.

1. Section 1, SCOPE OF WORK, is amended to include Sections 1.9 below:

“ 1.9 ANNUAL DIVIDEND PROGRAM IMPLEMENTATION

SMUD will implement a technology solution to support VCE's dividend policy.

- 1.9.1 If a dividend is earned, a bill credit will be applied annually on the October bill for residential customers and applied in two payments of 50% each on the October and April bills for non-residential customers.
- 1.9.2 The bill line item will state "Your VCE dividend is \$#.##".
- 1.9.3 The dividend value will be provided by VCE to SMUD as percentage multiplier to apply to payments received during VCE's fiscal year, defined as July 1 through June 30, regardless of the associated bill periods. VCE will provide the dividend percentage no later than September 20. The bill credit amounts will be calculated and staged in the billing system for application to the appropriate bills:
 - o 100% in October for residential customers
 - o 50% in October and 50% in April for non-residential customers.
- 1.9.4 Credits are only applied for DA_XREFs that are still active as of defined dividend month(s). Customers who move out or opt out prior to the dividend months will not receive that portion of their dividend payment.
- 1.9.5 The dividend floor will be configurable but set by default to \$0.00. If VCE chooses to set a floor greater than \$0.00, the floor value must be provided to SMUD no later than September 20. There will be no negative dividend for NEM customers.
- 1.9.6 The dividend amount will only be applied to the dividend payment month bills. A running balance will not be maintained for application to future bills if the dividend amount exceeds the bill amount.
- 1.9.7 Dividends will show in accounting reports when applied to the bill (when usage data is received from PG&E), not when they are staged in the billing system. Therefore, dividend amounts that are calculated but never applied, due to a move out or opt out, will not show on accounting reports.
- 1.9.8 Customers with no payment remitted to VCE will receive no dividend.
- 1.9.9 NEM customers receive no special treatment. Customers with an annual net payment

remitted to VCE will receive a dividend. Customers with no payment remitted will not receive a dividend. Their benefit will be from the retail and wholesale \$0.01 adders.

Deliverables and Due Dates

The schedule for the implementation of the Annual Dividend Program is estimated to be twelve (12) months, and includes the following milestones and due dates:

Milestone	Responsible Party	Due Date
Development complete	SMUD	June 12, 2020
User testing complete	SMUD	June 26, 2020
Enhancement release date	SMUD	June 30, 2020
Provide dividend amount and floor to SMUD	VCE	September 20, 2020
Dividends begin appearing on customer bills	SMUD	October 1, 2020

Section 4, COMPENSATION FOR SERVICES is amended to add Section 4.5, *Annual Dividend Program Implementation*, as follows:

“The fixed fee for the Annual Dividend Program Implementation is \$75,000. Ongoing support of the Annual Dividend Program is included in the fixed fee for Data Management and Call Center Services as described in Section 4.1 of this Task Order 2.”

Section 5, PAYMENT TERMS, is amended to add the following.

“SMUD will invoice the fixed fee for the Annual Dividend Program Implementation upon completion, and payment will be due net thirty (30) days from date of the invoice.”

[Signature Page follows]

SIGNATURES

The Parties have executed this Amendment 11, and it is effective as of the date of last signature below.

Valley Clean Energy Alliance

By:  _____

Name: Mitch Sears

Title: Interim General Manager

Date: June 18, 2019

Sacramento Municipal Utility District

By:  _____

Name: Arlen Orchard

Title: CEO

Date: June 23, 2019

Approved as to Form:  _____

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2017- 012

**A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE ADOPTING
A FINANCIAL RESERVE POLICY**

WHEREAS, the Valley Clean Energy Alliance (“VCEA”) is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo (“County”), the City of Davis (“Davis”), and the City of Woodland (“City”) (the “JPA Agreement”), to collectively study, promote, develop, conduct, operate, and manage energy programs; and


WHEREAS, in order to achieve its strategic goals, VCEA must maintain liquidity for day-to-day operations and develop access to capital markets to fund long-term investments in local clean energy development and customer programs; and

WHEREAS, setting a target Financial Reserve level also provides a reference point to use when evaluating the financial impacts of various policy decisions, such as portfolio mix and rate setting.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance hereby adopts a Financial Reserve Policy (Exhibit A).

ADOPTED, this 14th day of December 2017, by the following vote:

AYES: Barajas, Chamberlain, Davis, Frerichs, Saylor, Stallard
NOES: None
ABSENT: None
ABSTAIN: None



VCEA Board Secretary



Don Saylor, Board Chair

Approved as to form:



Interim VCEA Counsel

EXHIBIT A - VCEA Financial Reserve Policy

EXHIBIT A

VCEA Financial Reserve Policy

VCEA Financial Reserve Policy

Adopted: December 14, 2017

Amended:

The VCEA Board recognizes the importance of developing reserves to:

- Ensure financial stability
- Ensure access to credit at competitive rates
- Ensure rate stability
- Set aside monies for local programs

To achieve these objectives, VCEA targets an operating reserve account minimum balance of 30 days operating expenses, with a goal of building to a reserve of 90 days operating expenses.

Additionally, VCEA will set aside a reserve fund for local programs, equal to 1% of net income.

VCEA will initially build a reserve fund of 30 days operating expenses. Once this is funded, VCEA will begin paying off debt and building cash reserves to meet a 90-day operating reserve level.

Rates, Power Portfolio Resource mix, and Operating Budget will be adjusted as needed to meet VCEA's target reserves schedule.

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020 - ____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING THE RECOMMENDED ALLOCATION OF NET MARGIN FOR THE AUDITED FISCAL YEAR ENDED JUNE 30, 2020

WHEREAS, the Board adopted a Rate Structure & Dividend Program Guidelines (Dividend Program) on June 17, 2019, to be effective starting at the beginning of the following fiscal year on July 1, 2019; and

WHEREAS, the Dividend Program specifies how audited positive Net Margin for each fiscal year can be allocated amongst cash reserves, customer dividends, and local program reserve (LPR), at the Board's discretion; and

WHEREAS, VCE staff calculated the allocation options for the Board based on the final, audited Net Margin for the fiscal year ended June 30, 2020.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. For the audited fiscal year ended June 30, 2020, allocate the Net Margin of \$6.318 million as follows: \$138,000 to local program reserve, \$0 to cash dividends, and the \$6.18 million balance to cash reserves.

PASSED, APPROVED AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Don Saylor, VCE Chair

Alisa M. Lembke, VCE Board Secretary