Regular Meeting of the Valley Clean Energy Alliance
Board of Directors
Thursday, July 14, 2022 at 5 p.m.
Via Video/Teleconference

Pursuant to Assembly Bill 361 (AB 361), legislative bodies may meet remotely without listing the location of each remote attendee, posting agendas at each remote location, or allowing the public to access each location, with the adoption of certain findings. The Board of Directors found that the local health official recommended measures to promote social distancing and authorized the continuation of remote meetings for the foreseeable future. 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 video/teleconferencing call-in number and meeting ID code. Video/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/81055788107
Meeting ID: 810 5578 8107

b. By phone
One tap mobile:
+1-669-900-9128,, 81055788107# US
+1-669-444-9171,, 81055788107# US

Dial:
+1-669-900-9128 US
+1-669-444-9171 US
Meeting ID: 810 5578 8107

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

5:00 p.m. Call to Order

1. **Welcome**
2. **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, or are listed on the Consent portion of the agenda, or on Closed Session item(s). Public comments on matters listed on the regular 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.

CLOSED SESSION

Public comment on the closed session items only will be read at this time.

3. **CONFERENCE WITH LEGAL COUNSEL – Potential Litigation**
   Pursuant to paragraph (4) of subdivision (d) of Section 54956.9

4. **Report out from Closed Session.**

CONSENT AGENDA

5. **Renew authorization of remote public meetings as authorized by Assembly Bill 361.**
6. **Approve June 9, 2022 Board meeting Minutes.**
7. **Receive 2022 Long Range Calendar.**
8. **Receive Financial Updates – May 31, 2022 (unaudited) financial statements.**
9. **Receive July 6, 2022 Regulatory update provided by Keyes & Fox.**
10. **Receive Community Advisory Committee June 23, 2022 meeting summary.**
11. **Receive quarterly (April – June) Customer Enrollment update.**
12. **Update on SACOG Grant – Electrify Yolo Project.**
13. **Receive memorandum on Donald Dame agreement for consulting services approving a 6 month extension and increasing the not to exceed amount.**
14. **Receive copy of signed Amendment 4 to agreement with Jim Parks Consulting extending the contract to expire on December 31, 2022 and increasing the not to exceed amount.**
15. **Ratify signed agreement with First Principles Advisory for Integrated Resource Planning portfolio modeling services for a not to exceed amount of $33,750 terminating on December 1, 2022. (Action)**
16. **Approve Amendment 5 to Keyes & Fox agreement to extend 18 months through December 31, 2023 and increase the not to exceed amount. (Action)**
17. **Adopt VCE Debt Policy. (Action)**
18. **Reappointment/Appointment of members to Community Advisory Committee. (Action)**

REGULAR AGENDA

19. **Approve Amendment 1 to the Power Purchase Agreement (PPA) with Resurgence Solar I, LLC related to price and terms. (Action)**
20. **Consider participating in California Community Power Join Powers Authority (CC Power) geothermal projects: A) Ormat Nevada Inc. and B) Open Mountain Energy, LLC. (Action)**
21. **Consider proposed three-tiered Customer Rate Structure / Product options. (Action)**
22. **Receive mid-year financials update. (Information)**
23. **Approve Amendment 2 to VCE's Joint Exercise of Powers Agreement (JPA) updating Exhibits. (Action)**

24. **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.
25. **Adjournment:** The August 11, 2022 regular meeting has been *cancelled*. The next regular meeting is scheduled for Thursday, September 8, 2022 at 5 p.m.

PUBLIC PARTICIPATION INSTRUCTIONS FOR VALLEY CLEAN ENERGY BOARD OF DIRECTORS SPECIAL MEETING ON THURSDAY, JULY 14, 2022 AT 5:00 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. When called upon, please press *6 to unmute your microphone.

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 5

TO: Board of Directors

FROM: Mitch Sears, Executive Officer
Alisa Lembke, Board Clerk/Administrative Analyst

SUBJECT: Renew Authorization to continue Remote Public Meetings as authorized by Assembly Bill 361

DATE: July 14, 2022

Recommendation

VCE Board renew authorization for remote (video/teleconference) meetings, including any standing or future committee(s) meetings and Community Advisory Committee meetings, by finding:

1. Pursuant to Assembly Bill 361 (AB 361), that the COVID-19 pandemic state of emergency is ongoing.

Background/Summary of AB 361

Pursuant to Government Code Section 54953(b)(3) legislative bodies may meet by "teleconference" only if the agenda lists each location a member remotely accesses a meeting from, the agenda is posted at all remote locations, and the public may access any of the remote locations. Additionally, a quorum of the legislative body must be within the legislative body's jurisdiction.

Due to the COVID-19 pandemic, the Governor issued Executive Order N-29-20, suspending certain sections of the Brown Act. Pursuant to the Executive Order, legislative bodies no longer needed to list the location of each remote attendee, post agendas at each remote locations, or allow the public to access each location. Further, a quorum of the legislative body does not need to be within the legislative body's jurisdiction. After several extensions, Executive Order N-29-20 expired on September 30, 2021.

On September 16, 2021, the Governor signed AB 361, which kept some of the provisions of Executive Order N-29-20. Pursuant to Government Code Section 54953(e), legislative bodies may meet remotely and do not need to list the location of each remote attendee, post agendas at each remote locations, or allow the public to access each location.

However, legislative bodies must first find either that: (1) the legislative body is meeting during a state of emergency and determine by majority vote that meeting in person would present an imminent risk to the health or safety of attendees; or (2) state or local health officials impose or recommend social distancing measures. Government Code Section 54953(e)(1). The legislative body must make the required findings every 30 days, until the end of the state of emergency or recommended or required social distancing. Government Code Section 54953(e)(3). On January 1, 2024, Government Code Section 54953(e) is repealed.

The recommended action is required by AB 361 to continue meeting remotely during a declared state of emergency. Since March 1, 2022, the Yolo County Health Officer is no longer expressly recommending social distancing, although she still encourages the use of facial coverings/masks indoors. The VCE Board retains discretion under AB 361 to independently determine that remote meetings should continue because meeting in person would present imminent risks to the health and safety of attendees. Staff recommends that the Board make a finding that holding meetings in person would present an imminent risk to the public for the following reasons:

- The facilities in which the VCE Board meet were not designed to prevent the spread of infection by promoting mask usage, social distancing (including between Board members), or by use of increased ventilation/air filtration or other sanitary measures.
- Some staff, Board members, and community members who would otherwise participate in VCE meetings to participate in Board meetings, and some of these community members are likely at high risk for serious illness from COVID-19 and/or live with someone who is high risk.

Staff continues to monitor the situation as part of our emergency operations efforts and will return to the Board every thirty (30) days or as needed with additional recommendations related to the conduct of public meetings.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 6

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk / Administrative Analyst

SUBJECT: Approval of Minutes from June 9, 2022 meeting

DATE: July 14, 2022

RECOMMENDATION

Receive, review and approve the attached June 9, 2022 meeting Minutes.

MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE
BOARD OF DIRECTORS REGULAR MEETING
THURSDAY, JUNE 9, 2022

The Board of Directors of the Valley Clean Energy Alliance duly noticed their regular meeting scheduled for Thursday, June 9, 2022 at 5:00 p.m., to be held via Zoom webinar. Chair Loren established that there was a quorum present and began the meeting at 5:01 p.m.

Board Members Present:	Jesse Loren, Tom Stallard, Dan Carson, Don Saylor, Lucas Frerichs, Mayra Vega
Members Absent:	Gary Sandy, Wade Cowan
Welcome	Chair Loren welcomed everyone.
Public Comment – General and Consent	Board Clerk informed those present that there were no verbal or written public comments on general items or those on consent.
Approval of Consent Agenda / Resolution 2022-015 through Resolution 2022-017	Motion made by Director Dan Carson to approve the consent agenda items, seconded by Director Tom Stallard. Motion passed with Directors Gary Sandy and Wade Cowan absent. The following items were: 3. Authorized to continue remote public meetings as authorized by Assembly Bill 361; 4. Approved May 12, 2022 Board meeting Minutes; 5. 2022 Long Range Calendar; 6. Received April 30, 2022 (unaudited) financial statement; 7. Received Legislative update provided by Pacific Policy Group; 8. Received June 2, 2022 Regulatory update provided by Keyes & Fox; 9. Received Community Advisory Committee May 26, 2022 meeting summary; 10. Approved Amendment 4 of Pacific Policy Group agreement to extend through December 31, 2022 and increase the not to exceed amount via Resolution 2022-015; 11. Approved Amendment 2 to Automate Mailing agreement to extend 18 months through December 31, 2023 and increased the not to exceed amount via Resolution 2022-016; 12. Received report on resumption of Customer Opt-Out Fees; 13. Received progress update on VCE 3-Year Programs Plan; and,

14. Approved updated VCE Legislative and Regulatory Policy and Procedure via Resolution 2022-017.

As mentioned above, there were no verbal or written public comments.

Item 15: Receive Net Energy Metering (NEM) 3.0 update. (Information)

VCE Executive Officer Mitch Sears introduced this item and VCE Staff Rebecca Boyles provided an update on Net Energy Metering (NEM) 3.0.

Director Carson mentioned that the City of Davis Council adopted a resolution numerous months ago asking that the California Public Utilities Commission (CPUC) to slow down the proceeding and take a closer look at the issues. There were a couple of items in the City's resolution that possibly VCE should mimic in its language and submit to the CPUC, such as: 1) before the CPUC made a proposed decision that there be "clear and unbiased expert analysis available" to demonstrate how the proposed components of the proposal would affect typical NEM and non-NEM residential customers with different levels of income and who reside in the different IOU jurisdictions; 2) that there be a full cost accounting made of all of the benefits for our local communities in the statewide electricity grid from the current ending policies that encouraged the rapid adoption of residential solar; and, 3) urge the CPUC to look at alternative approaches that strike a different balance between NEM and non-NEM customers that pose lower risks to our solar initiatives to address climate challenges and that make needed changes in a less abruptive and disruptive method.

Director Tom Stallard commented that it is a complicated subject, with many economic issues. Battery technology is progressing rapidly and the future of utilities will look different than it looks today. There are many factors that go into this issue and he would like to suggest that VCE watch and track what other CCAs are doing in order to develop a position later.

There were no written public comments.

Verbal Public Comment: George Galamba informed those present that he has solar and is a member of the Solar Rights Alliance. He thanked Director Stallard for his thoughtful insights. He and others recognize the issue as more people buy less electricity that leaves less money available to maintain the grid which has to be made up by someone. He does not agree with punishing somebody for the commitment to solar panels. If this is passed, it will eliminate any incentive going forward to install solar

panels. Most solar residential homes do contribute to supporting the grid. The current proposal punishes people who have solar panels but does not punish those who are using little to none because their home is vacant or are using efficient appliances. The problem needs to be dealt with but they need to go back to the drawing board and look at different ways to support the grid. He hopes that VCE will keep this mind.

Chair Loren expressed that VCE should continue to watch. No further comments by the Board.

Item 16: Receive presentation on VCE Electricity Load and Financial Forecasting. (Information)

Mr. Sears introduced this item informing those present that this is a summary of 3 presentations provided to the Community Advisory Committee (CAC) on load and financial forecasting. VCE Staff Gordon Samuels provided an overview of the role of load and power costs forecasting. He focused on the role of load, providing information on retail load by customer class, VCE territory historical temperature data, and impact of electric vehicle (EV) adoption and electrification. VCE Staff Edward Burnham presented a summary of the role of power costs in forecasting, focusing on total power costs, revenue and budget risks and corrective actions taken; and, the source of information used in forecasting and how it is related.

The Board asked a few questions about the information presented. There were no verbal or written public comments.

Item 17: Receive report and provided feedback on updated draft Customer Rate/Product options. (Information/Discussion)

Mr. Sears reminded those present that the purpose of this item is to re-introduce the possible expansion of customer rates options, gather input from the Board and suggest next steps. He noted that the CAC has received several presentations on this item and Staff have received their feedback which is incorporated into the Staff Report. Mr. Burnham reviewed the policy drivers for this item, primary rate setting considerations, the addition of a customer rate option, CCA/PG&E comparison chart, current customer rate/product options and analysis, CAC initial feedback, reserves timeline, and initial findings.

The Board asked questions and discussions occurred on financial stability; bond rating; providing low generation rates to customers – lower than PG&E's offering; the percentage of customers that would be eligible for the 3rd option; the opt out rate of other CCAs who have a similar rate option; scenario analysis of opt outs and opt downs; how to best address equity of rates to customers; and, rate cost sensitivity. Staff received

input from the Board and were asked to come back with some additional information. There were no verbal or written public comments.

Item 18: Board Member and Staff Announcements

Chair Loren congratulated Lucas Frerichs for being Yolo County's newest Board Supervisor.

Director Don Saylor informed those present that the Yolo County Climate Action Commission has been given a charge to assist with some work, which includes among other things, to identify some early action investments. The Yolo County Board of Supervisors allocated one million dollars from the ARP (American Rescue Plan) accounts for the Commission to address specific things that might make a difference. A few concepts have been identified of which two were submitted by VCE: 1) energy retrofit outreach and 2) 100% renewable for Yolo County accounts.

There were no other Board announcements.

Mr. Sears informed those present that the Biden Administration took action on solar tariffs setting them aside for two (2) years for those 4 countries that were subject to the tariffs. One of VCE's larger projects was directly impacted by those potential tariffs and investigation by the Department of Commerce. This action partially addresses some of the issues we are seeing in the utility scale - solar plus battery storage sectors. VCE has been in contact with one of VCE's project developers and as a result, Staff will most likely be back to the Board with contract adjustments.

He briefed those present on Provider of Last Resort (POLR), which is a back stop to load serving entities, like a CCA, when the entity goes out of business, what happens to those customers within their service territory. In this situation, the customers are returned to the Investor Owned Utility (IOU). The CPUC has directed investigation about what could be the framework for creating that type of back stop for POLR. VCE is engaged with CalCCA in that CPUC proceeding.

Mr. Sears informed those present that VCE has received initial 2023 PCIA and PG&E rate forecast which is historically fluid. Staff's initial assessment is that our net forecast of rates and PCIA are relatively accurate. The AgFIT program is moving forward on full implementation. VCE submitted a petition to modify the CPUC's decision on administrative costs for this project, said petition to modify was approved.

Lastly, VCE had a booth at the Celebrate Davis event which had a good turnout. Staff and CAC members assisted answering questions and giving out bike lights and stickers to those who visited the booth. VCE is in the the process of assisting Yuba County in their investigation and assessment of their CCA options. Staff will come back to the Board as that conversation develops.

Chair Loren announced that the Board's August 11, 2022 regular meeting has been cancelled. The next regular meeting is scheduled for Thursday, July 14, 2022 at 5 p.m.

Adjournment — Chair Loren adjourned the regular Board meeting at 6:18 p.m.

Alisa M. Lembke
VCEA Board Secretary

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 7

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk/Administrative Analyst

SUBJECT: Board and Community Advisory Committee 2022 Long-Range Calendar

DATE: July 14, 2022

Recommendation

Receive and file the 2022 Board and Community Advisory Committee long-range calendar listing proposed meeting topics.

VALLEY CLEAN ENERGY
2022 Meeting Dates and *Proposed* Topics
Board and Community Advisory Committee (CAC)
(CAC: Topics and Discussion Dates may change as needed)

MEETING DATE		TOPICS	ACTION
~~January 13, 2022~~ **Special Meeting scheduled for January 27, 2022**	**Board**	• Election of Officers for 2022 (Annual) • Near-term Procurement Directives and Delegations for 2022 Power Procurement Activities • Calendar Year Budget and 2022 VCE customer rates • GHG Free Attributes • 2022 Legislative Platform • Receive CAC 2021 Calendar Year End Report (Annual) • 2021 Year End Review: Customer Care and Marketing	• Action • Action • Action • Action • Action • Information • Information
~~January 27, 2022~~ January 20, 2022	**Advisory Committee**	• 2022 Task Groups Tasks/Charge (Annual) • Update on 2022 Power Charge Indifference Adjustment (PCIA) and Rates • Carbon Neutral by 2030 Study • CC Power long duration storage • Draft Collections Policy • Update on customer programs development (draft Heat Pump Pilot Program)	• Action • Discussion/Action • Discussion/Action • Information • Information/Discussion • Information
February 10, 2022	**Board**	• CC Power long duration storage • Update on customer programs development • Update on 2022 PCIA and Rates • Update on Time of Use (TOU) • Update on SACOG Grant – Electrify Yolo • Strategic Plan Update (Annual) • Carbon Neutral Report	• Action • Information • Information • Information • Information • Information • Information/Discussion
February 24, 2022	**Advisory Committee**	• Power Procurement / Renewable Portfolio Standard Update • Time of Use (TOU) and Bill Protection • Final Draft Collections Policy • Customer program concept (Heat Pump Pilot Program) • 2022 Task Group – energy resiliency	• Information • Discussion/Action • Action • Discussion/Action • Discussion/Action

March 10, 2022	**Board**	• Receive Enterprise Risk Management Report (Bi-Annual) • Collections Policy • Presentment of customer program concept (Heat Pump Pilot Program) • Time of Use (TOU) Bill Protection • Ag FIT (Flexible Irrigation Technology) pilot program	• Information • Discussion/Action • Action • Discussion/Action • Discussion/Action
March 24, 2022	**Advisory Committee** ~~WOODLAND~~	• Customer program concept (draft EV Rebates Program) • CC Power long duration storage project • Overview of VCE Forecasting	• Information • Information • Information/Discussion
April 14, 2022	**Board**	• Update on SACOG Grant – Electrify Yolo • 7/1/21 thru 12/31/21 Audited Financial Statements (James Marta & Co.) • CC Power long duration storage project	• Information • Action • Discussion/Action
April 28, 2022	**Advisory Committee**	• Program Concepts Development (EV Rebates Program) • Update on Customer Dividend and Programs Allocation • Forecasting – load and power costs •	• Discussion/Action • Information • Information • Discussion
May 12, 2022	**Board**	• Update on Customer Dividend and Programs Allocation • Presentment of customer program concept (EV Rebates Program) • Appointment of At-Large Members to the CAC	• Information • Action • Action
May 26, 2022	**Advisory Committee**	• Forecasting – financial modeling • Draft Rate Structure • Net Energy Metering (NEM) 3.0 Update	• Information • Information/Discussion • Information
June 9, 2022	**Board**	• Opt-Out Fees • Update on 3-Year Programs Plan • Forecasting • Draft Rate Structure • Net Energy Metering (NEM) 3.0 Update	• Information • Information • Information • Information/Discussion • Information
June 23, 2022	**Advisory Committee**	• Draft Rate Structure • Update 3-Year Programs Plan • Review CAC Charge (Annual)	• Discussion/Action • Information/Discussion • Discussion
July 14, 2022	**Board**	• Re/Appointment of Members to Community Advisory Committee (Annual) • Update on SACOG Grant – Electrify Yolo	• Action • Information

		• Draft Rate Structure • Quarterly Customer Enrollment Update	• Discussion/Action • Information
~~July 28, 2022~~ NO MEETING	**Advisory Committee**	**This meeting has been cancelled.**	
~~August 11, 2022~~ *NO MEETING*	**Board**	**This meeting has been cancelled.**	
August 25, 2022	**Advisory Committee**	• 2022 Operating Budget / Renewable Portfolio Standard update • Mid-year rate update • Power Procurement / Renewable Portfolio Standard update • Quarterly Customer Enrollment Update	• Information • Information/Discussion • Information • Information
September 8, 2022	**Board**	• 2022 Operating Budget / Renewable Portfolio Standard update • Certification of Standard and UltraGreen Products (Annual) • Enterprise Risk Management Report (Bi-Annual) • Mid-year 2022 rates review	• Information • Action • Information • Information/Discussion
September 22, 2022	**Advisory Committee**	• Legislative End of Session Update • 2023 Draft Operating Budget • Mid-year 2022 rates review	• Information • Information • Information
October 13, 2022	**Board**	• Update on SACOG Grant – Electrify Yolo • Update on 2023 draft Operating Budget • Quarterly Customer Enrollment Update	• Information • Information • Information
October 27, 2022	**Advisory Committee**	• Update on Power Content Label Customer Mailer • Review Draft CAC Evaluation of Calendar Year End (Annual) • Review 2023 customer rate study/information • Quarterly Customer Enrollment Update	• Information • Information/Discussion • Information/Discussion • Information
November 10, 2022	**Board**	• Certification of Power Content Label (Annual) • Preliminary 2023 customer rate options • Preliminary 2023 Operating Budget (Annual)	• Action • Information/Discussion • Information

November 17, 2022 (rescheduled November 24th meeting due to the Thanksgiving holiday)	**Advisory Committee**	• Finalize CAC Evaluation of Calendar Year End (Annual) • Review Procurement Directives and Delegations (Annual) • GHG Free attributes • Power Procurement / Renewable Portfolio Standard Update • ERRA Filings Update (PCIA and bundled rates) (Annual) • Preliminary 2023 customer rate options	• Discussion/Action • Information • Information • Information • Discussion • Information/Discussion
December 8, 2022	**Board**	• Approve 2023 Operating Budget (Annual) • 2023 Customer Rate Adoption • Receive Enterprise Risk Management Report (Annual) • Approve Procurement Directives and Delegations (Annual) • GHG Free attributes • Update on SACOG Grant – Electrify Yolo • Receive CAC 2022 Calendar Year End Report (Annual) • Election of Officers for 2023 (Annual)	• Action • Action • Information • Action • Action • Information • Information • Nominations
December 15, 2022 (rescheduled December 22nd meeting due to the Christmas holiday)	**Advisory Committee**	• 2023 CAC Task Group(s) formation (Annual) • Review draft 2023 Legislative Platform • Strategic Plan update (Annual) • 2023 Customer Rates • Election of Officers for 2023 (Annual)	• Discussion/Action • Discussion/Action • Information • Information • Nominations
January 12, 2023	**Board**	• Oaths of Office for Board Members (Annual if new Members) • Update on SACOG Grant – Electrify Yolo • Strategic Plan Update (Annual) • 2023 Legislative Platform • Approve Updated CAC Charge (tentative) (Annual) • Quarterly Customer Enrollment Update	• Action • Information • Action • Action • Action • Information
January 26, 2023	**Advisory Committee**	• Quarterly Customer Enrollment Update	• Information

Notes: 1. CalCCA Annual Meeting typically scheduled in November.
2. Currently all meetings are held remotely via Zoom video/teleconference, "location" is subject to change.

CAC *PROPOSED* FUTURE TOPICS **Topics and Discussion dates may change as needed**	**ESTIMATED MEETING DATE(S)**
Net Energy Metering (NEM) 3.0 (Information/Discussion/Action)	As needed
Carbon Neutral by 2030 (types of energy, where procured, BTM, FOM, policy) (Discussion/Action)	2022 Quarter 3

Integrated Resource Plan / Public Workshop **(IRP – update due 11/1/2022)** (Discussion/Action)	August/September 2022
Self Generation Incentive Program (SGIP)	TBD
Legislative Items (as needed)	
Strategic Plan additional updates (as needed)	
Time of Use (TOU) (as needed)	
SACOG Update (as needed)	

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 9

To: Board of Directors

From: Keyes & Fox, Regulatory Consultant

Subject: Regulatory Monitoring Report – Keyes & Fox

Date: July 14, 2022

Please find attached Keyes & Fox's June 2022 Regulatory Memorandum dated July 6, 2022, 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 July 6, 2022.

KEYES&FOX LLP

EQ Research

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 Jason Hoyle, Principal Analyst, EQ Research, LLC
Subject:	Regulatory Update
Date:	July 6, 2022

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:

- **Ensuring Summer 2021 Reliability:** On June 3, the CPUC issued D.22-06-005 which partially granted VCE, TeMix Inc., and Polaris Energy Services' (collectively, the Pilot Partners) Petition for Modification, approving an increase to the budget for VCE's agricultural irrigation pumping dynamic rates pilot (AgFIT Pilot) by an additional $690,000 to cover VCE's expenses in carrying out the pilot program.

- **IRP Rulemaking:** On June 15, the ALJ issued a Ruling finalizing the load forecasts and greenhouse gas emission benchmarks for use in 2022 IRP filings.

- **RPS Rulemaking:** On June 24, the Commission issued D.22-06-034 establishing rules for the PCC classification of resources obtained through the VAMO process. On July 1, VCE filed its draft RPS Procurement Plan.

- **PCIA Rulemaking:** On June 10, the ALJ issued a Proposed Decision that would, if adopted, resolve Phase 2 issues related to data access and voluntary allocations in market price benchmark (MPB) calculations. The PD may be heard by the Commission as early as July 14. A June 24 Ruling defined the scope for the next part of the proceeding.

- **PG&E Phase 1 GRC:** On June 13, intervenors submitted direct testimony in the proceeding. On June 24, the CPUC issued D.22-06-033 establishing the effective date of PG&E's 2023 test year revenue requirement as January 1, 2023.

- **RA Rulemaking (2023-2024):** On June 24, the CPUC issued D.22-06-050 adopting 2023-2025 Local Capacity Requirements (LCR), 2023 Flexible Capacity Requirements (FCR), and RA program refinements under the RA Reform Track of this proceeding.

- **PG&E Regionalization Plan:** On June 24, the CPUC issued D.22-06-028 approving and modifying settlement agreements relating to PG&E's updated regionalization plan and closing the proceeding. In response to comments by VCE and other parties, the Decision incorporated revisions to the proposed decision that require PG&E's regional leadership to hold quarterly "town hall" meetings with stakeholders in each region through at least the end of 2024, allow non-parties to participate in a stakeholder working group and clarified that recovery of regionalization costs from ratepayers is not guaranteed.

- **PG&E Phase 2 GRC:** On June 22, the CPUC issued a Proposed Decision that, if approved, would direct PG&E to implement the settlement agreement provisions for a real-time pricing pilot, adopt the methodology outlined in the marginal generation capacity cost study for use in real-time pricing rate designs, and close this proceeding. The PD may be heard as soon as the August 4 Commission meeting.

- **Provider of Last Resort Rulemaking:** No updates this month.

- **PG&E 2023 ERRA Forecast:** On May 31, PG&E filed its 2023 ERRA Forecast application and supporting testimony. PG&E filed supplemental testimony to its application on June 22.

- **PG&E 2021 ERRA Compliance:** A prehearing conference was held on June 8. A scoping ruling establishing a procedural schedule has not been issued.

- **PG&E 2019 ERRA Compliance:** No updates this month.

- **Utility Safety Culture Assessments:** No updates this month.

- **2022-2023 Wildfire Fund Nonbypassable Charge Rulemaking:** No updates this month.

Ensuring Summer 2021 Reliability

On June 3, the CPUC issued D.22-06-005 which partially granted VCE, TeMix Inc., and Polaris Energy Services' (collectively, the Pilot Partners) Petition for Modification, approving an increase to the budget for VCE's agricultural irrigation pumping dynamic rates pilot (AgFIT Pilot or Pilot) by an additional $690,000 to cover VCE's expenses in carrying out the Pilot.

Background: CAISO experienced rolling blackouts (Stage 3 Emergency) on August 14, 2020, and August 15, 2020, when a heatwave struck the Western U.S. and there was insufficient available supply to meet high demand. The OIR was issued to ensure reliable electric service in the event that an extreme heat storm occurs in the summer of 2021.

D.21-03-056 instituted modifications to the planning reserve margin (PRM), effectively increasing the PRM beginning summer 2021 from 15% to 17.5%. For 2021, this results in a minimum target of incremental procurement of 450 MW for PG&E, 450 MW for SCE, and 100 MW for SDG&E. The net costs associated with this incremental procurement would be shared by all customers (including CCA customers) in each IOU's service territory. It also authorized the IOUs to implement a Flex Alert paid media campaign program to encourage ratepayers to voluntarily reduce demand during moments of a stressed grid, adopts modifications and expansions to the Critical Peak Pricing (CPP) program, and established an emergency load reduction program.

D.21-12-015 approved VCE's AgFIT Pilot for three years (2022-2024) and directed that it start no later than May 1. VCE's Pilot will test whether agricultural irrigation pumping customers, which consume on average 18% of VCE's total annual load, can shift load to more optimal times of the day, thereby saving money, reducing the burden to the grid and reducing GHG impacts. Customers participating in VCE's Pilot will receive a "shadow bill." PG&E will continue to bill participating customers based on existing tariffs, but the shadow bill will show the customer savings under the Pilot dynamic rate, and VCE will pay customers for the difference between the shadow bill and the customer's usage under the otherwise applicable tariff. The Pilot scale will be limited to 5 MW of peak load. PG&E will provide funds to or reimburse VCE for crediting any savings realized by the customers with respect to the delivery component of the VCE dynamic rate Pilot in the customers' shadow bills. D.21-12-015 authorized new funding of $3.25 million for the pumping automation technology, pricing platform and vendor fees and PG&E's administration of the three-year Pilot.

On January 5, VCE submitted Advice Letter 11-E in accordance with D.21-12-015. Advice Letter 11-E was approved by the Energy Division via nonstandard disposition mailed April 11.

On January 31, the Pilot Partners filed a Petition for Modification (PFM) of D.21-12-015 to increase the budget for this Pilot to cover VCE's administrative costs.

On February 4, PG&E submitted Advice Letter 6495-E, which the Pilot Partners Protested on February 24. PG&E filed Supplemental Advice Letter 6495-E-A on April 7, 2022. The Energy Division approved PG&E's advice letters via nonstandard disposition letter issued April 26.

D.21-12-015 also created an additional procurement mandate of 2,000 MW-3,000 MW for 2023, allocated exclusively to the three large IOUs (900 MW-1,350 MW each for PG&E and SCE, and 200 MW-300 MW for SDG&E). It required all incremental resources procured as a result of this proceeding to be available during the net peak. It adopted numerous additional demand-side and supply-side changes aimed at ensuring sufficient resource availability to meet the summer net peak load.

Details: The Decision granted VCE's request for an incremental $690,000 in funding to reimburse VCE for its administrative costs in carrying out the Pilot. In light of the Energy Division's subsequent resolution of other issues raised in the PFM, the Decision took no further action.

Analysis: After a conflicted and procedurally complex set of interactions with PG&E regarding the Pilot, most of VCE's concerns have been resolved via the Energy Division's Advice Letter dispositions. The Decision will enable VCE to be reimbursed through distribution funds for its administrative expenses in running the Pilot.

Next Steps: VCE has launched the AgFIT Pilot and is required to submit its expenses to the Energy Division for approval of reimbursement. The first report evaluating the Pilot mid-way through its term is due December 31, 2023 and is to be prepared by an independent evaluator hired by PG&E, in consultation with VCE.

Additional Information: D.22-06-005 granting PFM (June 3, 2022); Ruling denying Pilot Partners Motion to shorten time (May 3, 2022); Proposed Decision on PFM (April 29, 2022); Energy Division's Non-Standard Disposition Letter approving PG&E AL 6495-E and PG&E AL 6495-E-A (April 27, 2002); PG&E AL 6495-E-A (April 7, 2022); Energy Division's Non-Standard Disposition Letter approving VCE AL 11-E (April 11, 2022); PG&E AL 6495-E (February 4, 2022) and Substitute Sheets for AL 6495-E (March 29, 2022); VCE, TeMix and Polaris Petition for Modification (January 31, 2022); Motion to Shorten Time (January 31, 2022); VCE AL 11-E on Ag Pumping Pilot (January 2, 2022); D.21-12-069 correcting errors in D.21-12-014 (December 27, 2021); D.21-12-015 (December 6, 2021); D.21-02-028 directing IOUs to seek additional capacity for summer 2021 (February 17, 2021); Scoping Memo and Ruling (December 21, 2020); Order Instituting Rulemaking (November 20, 2020); Docket No. R.20-11-003.

IRP Rulemaking

On June 15, the ALJ issued a Ruling finalizing the load forecasts and greenhouse gas emission benchmarks for use in 2022 IRP filings.

Background: D.20-12-044 established a backstop procurement process that would apply to LSEs that did not opt-out of self-procuring their capacity obligations under D.19-11-016. It requires LSEs to file bi-annual (due February 1 and August 1) updates on their procurement progress relative to the contractual and procurement milestones defined in the decision.

D.21-06-035 established a new "Mid-Term Reliability" (MTR) procurement mandate of 11,500 MW of additional zero-emitting or RPS-eligible net qualifying capacity to be procured by 2026 by LSEs through long-term (10 or more years) contracts. **VCE's incremental obligations, identified in Table 6, are 8 MW by 2023, 23 MW by 2024, 6 MW by 2025, 4 MW of long-duration storage and 4 MW of zero-emitting resources by 2026**. In addition, 10 MW out of its 2023-2025 procurement requirements must be met through zero-emitting generating capacity that is available from 5-10pm daily.

While each LSE is responsible for meeting procurement obligations to serve its own customers, D.19-11-016 directed IOU procurement on behalf of LSEs that either a) opt out of self-procurement or b) failed to acquire their share of required capacity after electing to do so, i.e. deficient LSEs. Similarly, D.21-06-035, while not allowing for LSEs to opt out of self-procurement, directed the IOUs to procure capacity on behalf of LSEs that failed to deliver their share of required energy or capacity, called backstop procurement.

D.22-02-004 adopted a 2021 Preferred System Plan (PSP) and certified VCE's 2020 IRP. VCE's next IRP is due November 1.

D.22-05-015 adopted Modified Cost Allocation Mechanism (MCAM) principles and methodologies that only apply to any future backstop procurement authorized in the IRP process, but not other cost allocation situations such as those related to a central procurement entity. IOUs must file Tier 2 advice letters on MCAM implementation by July 18. The MCAM is based on the original Cost Allocation Mechanism (CAM) adopted in D.06-07-029 but applies specifically to opt-out and backstop procurement conducted by IOUs on behalf of LSEs. It provides a mechanism for recovery of the net costs of electric resource procurement obligations mandated in D.19-11-016 (3,300 MW) and D.21-06-035 (11,500 MW) through nonbypassable charges (NBCs) levied against customers of non-utility LSEs.

The MCAM adjusts the traditional CAM to account for the fact that procurement costs will only be recovered from customers of LSEs that have opted-out of such procurement and customers of deficient LSEs, rather than all customers in an IOU's service territory. Backstop procurement costs are charged directly to customers of the deficient LSE, as a separate line item on the bill. Administrative costs are charged over a 10-year period and contract costs are charged over the life of the contract (generally 10 or more years), and Commission staff will allocate the resource adequacy (RA) value of backstop procurement annually to the LSE over the life of the contract(s), but backstop procurement does not convey any RPS attributes associated with the procured resources, although LSEs may obtain those RPS attributes through voluntary allocation.

One-time Option for LSEs Gaining New Load Since 2019

Because the MCAM development process was extended over several years during which LSEs were making procurement decisions, the CPUC provided a one-time procurement option for LSEs that have gained new load since 2019 as a result of customer migration from IOU service. The one-time option allows LSEs with newly migrated load to enter into bilateral agreements with the relevant IOUs to acquire resource adequacy capacity at the System RA Market Price Benchmark (MPB) as determined in the PCIA context pursuant to D.19-10-001.

Details: On June 15, the ALJ issued a Ruling finalizing the load forecasts and greenhouse gas emission benchmarks for use in 2022 IRP filings. IRP filing requirements, templates and calculators are available on the CPUC's 2022 IRP website. VCE's final energy forecast is provided in the Load Forecasts and GHG Benchmarks spreadsheet and its confidential final load forecast was provided by the Commission on July 1.

This ruling adopts planning targets for 2035, namely 30 MMT and 25 MMT. These targets are in addition to the requirements in D.22-02-004, which requires LSEs to meet their proportional share of the 2030 target of 38 MMT, and plan for a 2030 target of 30 MMT. Each LSE will have four benchmarks and must show how it intends to reach each of the benchmarks. The four benchmarks are as follows:

- For 2030: VCE's proportional share of 38 MMT = 0.112 MMT
- For 2035: VCE's proportional share of 30 MMT = 0.088 MMT
- For 2030: VCE's proportional share of 30 MMT = 0.085 MMT
- For 2035: VCE's proportional share of 25 MMT = 0.070 MMT

LSEs that intend to reduce GHG emissions below their proportional share of both the 2030 30 MMT benchmark and the 2035 25 MMT benchmark are only required to submit one preferred portfolio. However, LSEs submitting one preferred portfolio will still be required to submit that portfolio in each of the two sets of Resource Data Templates (RDTs) and Clean System Power (CSP) calculators required for each 2035 GHG target. Otherwise, each LSE must show two conforming portfolios that meet its proportional share of all four benchmarks.

Analysis: The 2022 IRP emphasizes the increasingly integrated nature of planning and procurement activities and requires LSEs to present connections among its procurement obligations for RA, reliability, energy and capacity, and the RPS. Under the MCAM Decision, a deficiency in fulfilling RA and reliability procurement obligations results in additional, likely higher, costs to the LSEs customers for at least the next decade, and the lengthy duration of both backstop procurement costs and allocation of backstop procurement resources could easily result in unnecessary and inefficient overprocurement of resources if triggered.

Next Steps: IOUs file Tier 2 Advice Letters on MCAM implementation on July 18. VCE's next IRP is due November 1.

Additional Information: Ruling on final load forecasts and GHG benchmarks (June 15, 2022); D.22-05-015 on Modified Cost Allocation Mechanism (May 23, 2022); Ruling establishing process for load forecasts and GHG benchmarks for 2022 IRP (April 20, 2022); D.22-02-004 adopting 2021 Preferred System Plan (December 22, 2021); D.21-06-035 establishing a 11,500 MW by 2026 procurement mandate (June 24, 2021); D.21-02-028 recommending portfolios for CAISO's 2021-2022 TPP (February 17, 2021); D.20-12-044 establishing a backstop procurement process (December 22, 2020); Scoping Memo and Ruling (September 24, 2020); Resolution E-5080 (August 7, 2020); Order Instituting Rulemaking (May 14, 2020); Docket No. R.20-05-003.

RPS Rulemaking

On June 24, the Commission issued D.22-06-034 establishing rules for the PCC classification of resources obtained through the VAMO process. On July 1, VCE filed its draft RPS Procurement Plan.

Background: This proceeding addresses ongoing RPS issues. VCE submitted its Final 2020 RPS Procurement Plan on February 19, 2021, and its 2020 RPS Compliance Report on August 2, 2021.

In addition, ongoing implementation issues of the Voluntary Allocation and Market Offer process (VAMO) ordered in the PCIA proceeding are considered here in the RPS proceeding. Under VAMO,

LSEs are first offered an election to take up to their load share percentage of the IOUs' PCIA-eligible RPS portfolio as a direct allocation from the IOU. In the second part of the process, called the Market Offer (MO), the IOUs will offer for sale the remaining portions of their RPS portfolios that were not claimed by LSEs in the Voluntary Allocations.

An April 11 Ruling identified requirements for 2022 RPS Procurement Plans and established two parallel tracks in the proceeding. Track 1 addresses the IOU's proposed Market Offer process and Track 2 addresses retail electricity sellers' 2022 RPS Plans.

An April 21 Ruling established revised dates for the submission of the Market Offer Process document. Pursuant thereto, the Joint IOUs submitted the Market Offer Process document on May 2, and each IOU filed a confidential sales strategy on May 16 to complete the Market Offer Process documentation.

Track 1: Market Offer Process

The Joint IOUs filed their proposed Market Offer process on May 2. The IOUs proposed that in the first step, the Joint IOUs offer Voluntary Allocations at the Market Price Benchmark (MPB) in 10% increments of each LSE's forecasted annual load share. The Joint IOUs proposed to have LSEs indicate the amounts they are taking under the Voluntary Allocation and sign pro forma Voluntary Allocation Contracts in July 2022. Then, in the second step, the Joint IOUs proposed that remaining RPS energy not claimed by LSEs in the Voluntary Allocation will be offered to all market participants through the Market Offer process.

On May 23, PG&E submitted modifications (AL 6551-E-A) to its pro forma Market Offer Contract (AL 6551-E) in response to Protests filed by the Alliance for Retail Energy Markets and CalCCA. PG&E modified the Market Offer contract to differentiate the offered products based on whether the resource is eligible for RPS compliance.

Track 2: RPS Plans

Under the April 11 Assigned Commissioner's Ruling, 2022 RPS Plans must be forward looking through 2032 and should inform the Commission of the Retail Seller's activities and plans to procure 65% of RPS resources from long-term contracts of 10 or more years for all compliance periods beginning with the current compliance period that started on January 1, 2021. The Plans must describe procurement of RPS resources that achieve the RPS targets while minimizing cost and maximizing customer value; and discuss any plans for building retail seller-owned resources, investing in third party-owned renewable resources, and engaging in the sales of RPS-eligible resources.

Details:

Track 1: On June 24, the Commission issued D.22-06-034 establishing rules for the PCC classification of resources obtained through the VAMO process. The Decision draws a clear distinction between RPS resources procured through Voluntary Allocation versus those procured through the Market Offer mechanism. Even though an LSE procures a "slice" of the IOU's RPS resource portfolio through each mechanism, the PCC classification of RPS resources procured through Voluntary Allocation does not change, while RPS resources procured through the Market Offer mechanism, particularly those with PCC-0 classification, will be treated as if they were a newly contracted resource and will not necessarily retain their original PCC classification. The CPUC also adopted the following rules related to RPS resources procured through the Voluntary Allocation process:

- Subsequent transfer/sale of Voluntary Allocation RECs after the Voluntary Allocations will be considered a resale, and the REC PCC classification will change pursuant to D.11-12-052 and other applicable Renewables Portfolio Standard (RPS) law and policy.

- The Voluntary Allocation price based on the Market Price Benchmark methodology adopted in D.21-05-030 is retained without modification.
- The IOUs are not required to submit advice letter filings for Commission approval of executed pro forma Voluntary Allocation contracts. However, the IOUs must obtain Commission approval of executed pro forma Voluntary Allocation contracts if the contract deviates from the pro forma contract via a Tier 1 advice letter filing.

This Decision also clarifies that LSEs are only expected to include Voluntary Allocation information in the July 1 Draft RPS Plan filings to the extent an LSE has information available and may include the Voluntary Allocation information in the RPS Plan Motion to Update due on August 15. In response to comments filed by CalCCA, the Decision clarified that LSEs who choose not to claim Voluntary Allocations must provide an explanation for that decision in their RPS Plans. On June 29, the CPUC issued Resolution E-5216 approving the Joint IOUs' Voluntary Allocation Pro Forma Contracts (PG&E AL 6517-E and AL 6517-E-A).

Track 2: VCE filed its Draft 2022 RPS Procurement Plan on July 1, 2022. VCE's Draft Plan demonstrates that VCE is well positioned to meet or exceed all RPS requirements in the current RPS Compliance Period 4 (2021-2024), as well as in RPS Compliance Period 5 (2025-2027) and beyond. VCE indicated in its Draft 2022 RPS Procurement Plan that it does not plan to participate in VAMO.

Analysis: 2022 RPS Procurement Plan requirements have a greater focus on long-term planning, not only maintaining the target of procuring 65% of RPS resources from long-term contracts of 10 or more years, but also aligning the RPS plan with IRP requirements in D.21-03-010. The new Voluntary Allocation mechanism has an outsized role in 2022 RPS Plans, providing LSEs an opportunity to claim a slice of an IOU's portfolio of RPS resources prior to entering a competitive bidding process, potentially with the added incentive of obtaining PCC-0 RECs that would otherwise be unavailable. Voluntary Allocation essentially provides LSEs a right of first refusal, accelerates and streamlines the procurement process, and enables RPS procurement at the MPB without competitive bidding while providing all LSEs with equal access to a representative share of an IOU's portfolio of RPS resources. The PCIA will be reduced to the extent allocations and purchases are elected under VAMO.

Next Steps:

Track 1: VAMO

- **July 29, 2022:** LSEs complete the process of determining interest in Voluntary Allocation elections and sign contracts (previous deadline was May 2022)
- **September 16, 2022:** IOUs Issue Market Offer Solicitation
- **Week of September 19-23, 2022:** Participants' Webinar
- **September 30, 2022:** Bids Due
- **October 14, 2022:** IOUs Notify Qualified Participants
- **October-November 2022:** Agreements Executed
- **November 2022:** IOU Submits Agreement for CPUC Approval
- **3Q 2022:** Proposed Decision on Market Offer process
- **3Q 2022:** Disposition on Tier 2 Market Offer Pro Forma Contract Advice Letters

Track 2: 2022 RPS Plans

- **August 1, 2022:** Opening Comments on LSEs' draft RPS Procurement Plans due

- **August 1, 2022:** Motions requesting evidentiary hearing due
- **August 15, 2022:** LSEs' motion to update draft RPS Procurement Plans due
- **August 15, 2022:** Reply Comments on LSEs' draft RPS Procurement Plans due
- **4Q 2022:** Proposed Decision on LSEs' draft RPS Procurement Plans
- **1Q 2023:** LSEs file final 2022 RPS Plans

Additional Information: VCE's 2022 Draft RPS Procurement Plan (July 1, 2022); D.22-06-034 establishing rules for PCC classification (June 24, 2022); Resolution E-5216 approving Joint IOUs' Voluntary Allocation Pro Forma Contracts (June 29, 2022); PG&E AL 6551-E-A (May 23, 2022); Ruling on Procedural Schedule (May 20, 2022); Market Offer Process proposal by Joint IOUs (May 2, 2022); Ruling on RPS Track 1 schedule (April 21, 2022); Ruling seeking comments on Voluntary Allocations and PCC issues (April 18, 2022); PG&E AL 6517-E-A (April 11, 2022); Ruling identifying RPS Plan requirements (April 11, 2022); Amended Scoping Ruling expanding scope (April 6, 2022); PG&E AL 6551-E (April 4, 2022); Joint Motion by IOUs Concerning Review of Market Offer Process (March 10, 2022); PG&E AL 6517-E (February 28, 2022); VCE's Final 2021 RPS Procurement Plan (February 17, 2022); D.22-01-004 on draft 2021 RPS Procurement Plans (January 18, 2022); Docket No. R.18-07-003.

PCIA Rulemaking

On June 10, the ALJ issued a Proposed Decision that would, if adopted, resolve Phase 2 issues related to data access and voluntary allocations in market price benchmark (MPB) calculations. The PD may be heard by the Commission as early as July 14. A June 24 Ruling defined the scope for the next part of the proceeding.

Background: D.18-10-019 was issued on October 19, 2018, in Phase 1 of this proceeding and left the current Power Charge Indifference Adjustment (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 Phase 2, D.20-08-004 following the work of Working Group 2, the Commission adopted a framework for PCIA prepayment agreements.

D.21-05-030, the Phase 2 Decision removed the cap and trigger for PCIA rate increases, authorized new Voluntary Allocation, Market Offer, and Request for Information processes for RPS contracts subject to the PCIA, and approved a process for increasing transparency of IOU resource adequacy (RA) resources. However, it did not provide unbundled customers proportional access to system and flexible RA products through the RA voluntary allocation and market offer process proposed by PCIA Working Group 3. Likewise, it declined to provide unbundled customers any access to GHG-free energy on a permanent basis. The CCA Parties' Application for Rehearing of D.21-05-030 was denied.

The most recent step in the PCIA proceeding is D.22-01-023, which modified the PCIA market price benchmark release date to October 1 and the deadline for ERRA forecast applications to May 15 to enable the Commission to timely issue decisions on ERRA forecast applications.

Details: On June 10, the ALJ issued a Proposed Decision that would, if adopted, resolve Phase 2 issues related to data access and voluntary allocations in market price benchmark (MPB) calculations. The PD may be heard by the Commission as early as July 14. The PD includes the following Orders:

- CalCCA may organize a meeting by October 3 to discuss the proposed format and content of the non-confidential analyses of PCIA forecasts that reviewing representatives may disclose to CCAs under this Decision, and the meeting must include the three large IOUs and representatives of any interested CCA.
- One member of CalCCA may file a joint Tier 2 Advice Letter by December 1 on behalf of all CCAs that seek PCIA forecasting data access. The AL must include a standard template for conveying PCIA information reviewed by CCA representatives to their clients, a public appendix with example analysis using dummy data, a proposed non-disclosure agreement (NDA) based on ERRA forecast NDA, and a list of all CCAs that seek forecasting data access and their reviewing representatives.
- CCAs' reviewing representatives must simultaneously serve the Commission and the relevant IOU all information disclosed to their clients.

On June 24, Assigned Commissioner Reynolds issued a Revised Scoping Memo and Ruling that extends the statutory deadline to June 30, 2023 to address the following issues:

- Whether greenhouse gas-free resources are under-valued in the Power Charge Indifference Adjustment (PCIA), and if so, whether to adopt an adder or allocation mechanism;
- Whether to adopt a new method to include long-term fixed-price transactions in calculating the Renewables Portfolio Standard adder;
- Whether to modify the calculation of the PCIA energy index market price benchmark; and
- Whether to modify or clarify the calculation of the PCIA for Voluntary Allocation or Market Offer transactions.

Analysis: The MPB calculation is used as the basis for the pricing RPS resources under the Voluntary Allocation process, and the MPB benchmark price is used in Energy Resource and Recovery Account (ERRA) forecasts to determine PG&E's PCIA-related revenue requirement. The April 18 ALJ ruling seeks a response to a series of questions regarding approaches to modifying the manner in which the MPB is calculated, in part, to address the potential misrepresentation of current market activity resulting from use of the prior year's MPB to value RPS resources in the Voluntary Allocation process. Changes to the MPB calculation will influence resource procurement decisions and potentially customer costs.

Next Steps:

- **July 22, 2022:** Parties may file reply comments on Energy Index MPB Proposals
- **July/August 2022:** Ruling regarding method to include long-term fixed-price transactions in RPS MPB and the value of GHG-free resources
- **August/September 2022:** Workshop on long-term fixed-price transactions in RPS MPB
- **November 2022:** Workshop on value of GHG-free resources

Additional Information: Revised Scoping Memo and Ruling (June 24, 2022); Proposed Decision on data access and MPB benchmarks (June 10, 2022); Ruling Regarding Market Price Benchmarks (April 18, 2022); Resolution E-5134 approving PCIA pre-payment framework ALs (March 21, 2022); D.22-01-023 on Phase 2 (approved January 27, 2021); Ruling requesting comments on PCIA forecasting data access (November 5, 2021); Ruling requesting comments (September 17, 2021); PG&E AL 5973-E-A PCIA pre-payment framework (August 13, 2021); CalCCA Application for Rehearing of D.21-05-030 (June 23, 2021); D.21-05-030 on PCIA Cap and Portfolio Optimization (May 24, 2021); D.21-03-051 granting petition to modify D.17-08-026 (March 26, 2021); Amended Scoping Memo and Ruling (December 16, 2020); PG&E AL 5973-E PCIA pre-payment framework

(October 12, 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); D.20-01-030 denying rehearing of D.18-10-019 as modified (January 21, 2020); D.19-10-001 (October 17, 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.

PG&E Phase 1 GRC

On June 13, intervenors submitted direct testimony in the proceeding. On June 24, the CPUC issued D.22-06-033 establishing the effective date of PG&E's 2023 test year revenue requirement as January 1, 2023.

Background: Phase 1 GRC applications cover the revenue requirement, including the functionalization of costs into categories such as electric distribution or generation, and impacts which customers (bundled, unbundled, or both) pay for the costs through rates. Phase 2 GRC applications cover cost allocation (i.e., assigning costs to customer classes, such as Residential) and rate design issues. PG&E proposes to have a second and third track of this Phase 1 GRC to request reasonableness review of certain memorandum and balancing account costs to be recorded in 2021 and 2022.

On August 25, 2021, the CPUC Executive Director granted PG&E's request to delay filing its next Phase 2 GRC application until September 30, 2024.

In their Protest of PG&E's Application, the Joint CCA parties identified the following list of preliminary issues they plan to examine or address in this proceeding:

- **Compliance with the Commission's Cost Allocation Directives in D.20-12-005** (PG&E's most recently decided Phase 1 GRC decision), including PG&E's cost functionalization methodology, wildfire costs, and allocation of Customer Care costs.
- **Reinvestments in and Recovery of Legacy Owned Generation Costs**, including solar contract renewals or the decommissioning of legacy owned assets, which impact Joint CCAs' customers through the PCIA and related vintaging of costs.
- **Other Issues that May Require Further Investigation and Analysis**, including how costs related to PSPS Events should be tracked and allocated; whether and how any funds that PG&E receives as credits (such as Department of Energy settlement funds) should be allocated to departing load customers; and how PG&E's regionalization proposal impacts its relationship and dealings with CCAs and their customers.

The October 1, 2021 Scoping Memo and Ruling divided the proceeding into two tracks. Track 1 addresses most matters, including PG&E's requested revenue requirement together with safety and environmental and social justice issues. Track 2 addresses the narrower matters of the reasonableness of the 2019-2021 actual costs recorded in the named memorandum accounts and balancing accounts and, to the extent relevant, safety and environmental and social justice.

PG&E's November 5, 2021 Motion requested extending the turn-around time for filing rebuttal testimony from 30 days to 45 days; delaying the start of evidentiary hearings by three weeks to accommodate the proposed rebuttal testimony timeline; and requested an earlier resolution than Q4 2022 as indicated in the Scoping Memo and Ruling on PG&E's July 16, 2021 Motion for a January 1, 2023 effective date for its 2023 revenue requirement.

On March 9, PG&E submitted its recorded expense and capital data testimony for 2021.

On March 10, PG&E filed an Amended Application and submitted supplemental testimony on wildfire mitigation programs. Also on March 10, the ALJ issued a Ruling on the February 25 Motion filed by TURN, PG&E, and PAO denying their request to shorten time for responses to PG&E's Amended Application and supplementary testimony on wildfire mitigation programs and suspending the March 30 submission date for intervenor testimony pending a ruling on the February 16 Motion to Modify the Schedule filed by TURN, PG&E, and the PAO.

PG&E and Caltrain submitted a joint report on the status of the third-party audit of costs that PG&E will incur to upgrade the East Grand and FMC substations in connection with Caltrain's project to electrify its commuter rail system between San Jose and San Francisco. PG&E and Caltrain also requested to move consideration of PG&E's proposal for cost recovery of Caltrain Project costs from Track 1 to Track 2 of PG&E's 2023 GRC and proposed a schedule for the submission of testimony reporting on the Audit.

The April 12 email Ruling denied the February 16 Motion to adopt a final date for discovery regarding the earlier submitted testimony and adopted a revised procedural schedule for both Track 1 and Track 2.

On April 20, PG&E filed an application to modify its cost of capital that requests an overall rate of return of 7.78% and a $69.3 million increase in its revenue requirement. The company proposed a capital structure with 47.5% debt at a cost of 4.27%, 0.5% preferred equity at a cost of 5.52%, and 52% common equity at a cost of 11%.

Details: On June 13, intervenors submitted direct testimony in the proceeding. The Joint CCAs submitted testimony regarding recovery of PG&E's proposed generation revenue requirement from bundled and unbundled customers, a Utility-Owned Generation vintaging framework to be used in future GRC proceedings to properly track and account for generation revenue requirements, and proper functionalization of costs associated with batteries on PG&E's electric distribution system.

On June 24, the CPUC issued D.22-06-033 establishing the effective date of PG&E's 2023 test year revenue requirement as January 1, 2023. A June 24 Email Ruling noticed an August 9 status conference, directed PG&E to prepare a case management statement, provided instructions for the August 15-26 hearings, requested testimony summaries in table format by July 11, and set forth a proposal for the uniform formatting of briefs.

On June 27, PG&E filed two motions: (1) a motion for modification of the email ruling noticing August 9 status conference (requesting an extension of the July 11 due date for parties to submit their Summary of Requests, as well as modifications to hearing exhibit and briefing requirements), and (2) a motion to shorten time for responses to PG&E's motions. On June 29, the ALJs granted PG&E's motions for shortened time, requiring parties to file responses to PG&E's June 27 motions by July 6.

Analysis: This proceeding will set the revenue requirement, and thereby ultimately impact PG&E's rates for 2023-2026. It will establish how the revenue requirement components will be functionalized, which impacts whether the ultimately approved costs will be borne by PG&E bundled customers, unbundled customers like VCE customers, or both. It will also address numerous other issues raised in PG&E's application that could impact rates, policies, and programs implemented by PG&E.

The resolution of the issues covered in the Joint CCAs' direct testimony will impact how certain generation-related costs in PG&E's current and future applications will be vintaged for purposes of PCIA cost recovery. It will also impact how the costs associated with an energy storage project are functionalized.

Next Steps:

The Track 1 schedule, as modified in the April 12 Ruling is:

- **July 11, 2022**: Rebuttal Testimony

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- **July 12 – August 15, 2022:** Meet & Confer (minimum of four times)
- **August 9, 2022:** Status Conference
- **August 15 – August 26, 2022:** Evidentiary Hearings
- **November 4, 2022:** Opening Briefs
- **December 9, 2022:** Reply Briefs
- **March 24, 2023:** Proceeding Submitted
- **Q3 2022:** Proposed Decision on PG&E
- **Q2 2023:** Proposed Decision on A.21-06-021

The Track 2 schedule, as modified in the April 12 ruling is:

- **July 22, 2022:** PG&E Testimony
- **November 14, 2022:** Intervenor Opening Testimony
- **December 14, 2022:** Concurrent Rebuttal Testimony
- **December 15, 2022:** January 20, 2023 – Meet & Confer (minimum of two times)
- **TBD (prior to Evidentiary Hearings):** Status Conference
- **January 23 – January 27, 2023:** Evidentiary Hearings
- **February 24, 2023:** Opening Briefs
- **March 24, 2023:** Reply Briefs
- **March 24, 2023:** Proceeding Submitted
- **2Q 2023:** Proposed Decision on A.21-06-021

Additional Information: D.22-06-033 on Effective Date of 2023 Revenue Requirement (June 24, 2022); PG&E Application to establish 2023 Cost of Capital (April 20, 2022); Ruling on Motions and Request to Modify Schedule (April 12, 2022); ALJ Ruling denying Motion to Shorten Time, accepting PG&E's Amended Application, and suspending intervenor testimony deadline (March 10, 2022); PG&E's Amended Application (March 10, 2022); PG&E Affordability Metrics Report (February 23, 2022); ALJ Ruling on Public Participation Hearings (February 2, 2022); PG&E/Caltrain Report (February 1, 2022); Ruling denying PG&E Motion to submit supplemental testimony (November 12, 2021); Motion of PG&E to modify procedural schedule (November 5, 2021); Scoping Memo and Ruling (October 1, 2021); PG&E Application (June 30, 2021); Docket No. A.22-04-008; Docket No. A.21-06-021.

RA Rulemaking (2023-2024)

On June 24, the CPUC issued D.22-06-050 adopting 2023-2025 Local Capacity Requirements (LCR), 2023 Flexible Capacity Requirements (FCR), and RA program refinements under the RA Reform Track of this proceeding.

Background: In Track 3B.2 of the 2021-2022 RA Rulemaking (R.19-11-009), D.21-07-014 rejected CalCCA/SCE's proposal for restructuring the Resource Adequacy (RA) program, and instead found that PG&E's "slice-of-day" proposal best addresses the identified principles and the concerns with the current RA framework and if further developed, is best positioned to be implemented in 2023 for

the 2024 compliance year. The Decision directed parties to collaborate to develop a final restructuring proposal based on PG&E's slice-of-day proposal through a series of workshops.

The December 2, 2021, Scoping Memo and Ruling divided the proceeding into an Implementation Track and Reform Track. The Reform Track encompasses consideration of a final proposed framework and the slice-of-day workshop report.

The Implementation Track is sub-divided into Phases 1, 2, and 3:

- Phase 1 of the Implementation Track considered critical modifications to the Central Procurement Entity (CPE) structure and concluded in March 2022 with issuance of D.22-03-034.

- Phase 2 consists of the Commission's consideration of flexible capacity requirements for the following year, local capacity requirements for the next three years, and the highest-priority refinements to the RA program including modifications to the Planning Reserve Margin Qualifying Capacity Counting Conventions, which, along with other proposals, will consider the Energy Division's biennial update to the Effective Load Carrying Capability values for wind and solar resources. Phase 2 proposals were submitted in January 2022. Neither CalCCA nor any CCAs individually filed a Phase 2 proposal.

- Phase 3 will consider the 2024 program year requirements for flexible RA, and the 2024-2026 local RA requirements. Other modifications and refinements to the RA program, as identified in proposals by parties or by the Energy Division may also be considered. Phase 3 is expected to conclude by June 2023.

D.22-03-034: This Decision established that in the event of a non-performing self-shown resource, an LSE may substitute another local resource on a like-for-like basis, and that if the CAISO makes a local Capacity Procurement Mechanism (CPM) designation for an individual deficiency then the CPE will be charged any backstop procurement costs and those costs will be allocated to all LSEs on a load ratio share basis. It also requires LSEs that either decline to self-show a local resource to the CPE or fail to bid a local resource into the CPE's solicitation process to file a justification statement in its year-ahead Resource Adequacy filing explaining why the LSE declined to self-show or bid the local resource to the CPE. An LSE's self-shown commitment must be firm for Years 1 and 2, but self-shown local resources for year 3 may be replaced like-for-like with other local resources.

Details: On June 1, an ALJ Ruling provided the Energy Division's Regional Wind Effective Load Carrying Capability (ELCC) study, and a revised version of the study was released on June 9.

On June 8, an ALJ Ruling provided the Energy Commission's Notice of Availability for Mid-Term Reliability (MTR) Analysis Supporting Data (Docket No. 21-ESR-01).

On June 22, the Energy Division released its white paper on Advanced Strategies for Demand Flexibility Management and Customer DER Compensation that addresses challenges towards reaching 100% renewables, increased electrification in buildings and of vehicles, and deployment of behind-the-meter resources.

On June 24, the CPUC issued D.22-06-050 adopting 2023-2025 Local Capacity Requirements (LCR), 2023 Flexible Capacity Requirements (FCR), and RA program refinements under the RA Reform Track of this proceeding. Among other things, with respect to RA Reform, it would adopt SCE's 24-hour "slice of day" framework, with modifications (see Appendix A), pending further development of certain implementation details. The Decision is summarized below, broken into the broad categories for the Implementation Track Phase 2 and the RA Reform Track, and the various sub-topics within each.

Implementation Track

2023-2025 LCR: The Decision adopts the LCR values from the CAISO's study without modification.

2023 FCR: The Decision adopts the FCR values contained in the CAISO's FCR report as well as CAISO's proposal to change the availability assessment hours (AAH) during which RA resources must be available for dispatch for March and April.

Planning Reserve Margin: For summers 2022 and 2023, an "effective PRM" of 20% to 22.5% was adopted in D.21-12-015 which established supply and demand-side measures to ensure reliability during extreme weather events for Summer 2022 and 2023. This Decision adopts a PRM of 16% for the 2023 RA year and a minimum of 17% for the 2024 RA year, and notes that the PRM for the 2024 RA year may be further revised in a June 2023 decision after additional review of LOLE modeling. Only amounts above the PRM are to be charged to all customers via the CAM.

Reform Track Issues

Slice of Day RA Framework: This Decision adopts a 24-hour slice-of-day framework based on a SCE proposal, which requires each LSE to demonstrate that it has enough capacity to satisfy its specific gross load profile, including PRM, in all 24 hours on CAISO's "worst day" in that month. The "worst day" is defined as the "day of the month that contains the hour with the highest coincident peak load forecast." For an LSE that uses energy storage to meet requirements, the LSE must demonstrate it has excess capacity that offsets the storage usage plus efficiency losses. An LSE could combine the capabilities of its resource mix to cover all 24 hours. The Decision eliminates the flexible RA requirement and the MCC buckets but requires additional development prior to doing so. Additionally, the Commission will maintain a public RA Resource Master Database of resources eligible to sell RA, including available MW of RA capacity, hours available for production, other use limitations, hourly profile (for solar and wind) and other details. The Decision defines three workstreams to further develop aspects of the slice of day framework.

Counting for Dispatchable Resources and Storage: The Decision directs the parties to develop an Unforced Capacity- (UCAP)-"light" mechanism to account for the effect of ambient temperature on dispatchable resources, but the Pmax values will continue to be used in the meantime.

Compliance Penalties: The Decision determines that retaining the existing RA penalty structure, as well as basing RA compliance penalties on the largest hour deficiency, is an appropriate penalty mechanism that does not double-penalize LSEs for multiple hour deficiencies under the 24-hour framework.

Analysis: The CPE framework is one of several new components added as the CPUC works toward integrating reliability, RA, and RPS obligations into the Integrated Resource Planning framework. These shifts placing greater responsibility on LSEs also add additional risk to procurement activities, particularly in the event of a delay or underperformance by a counterparty to a resource procurement contract. The Decision establishes SCE's proposed new 24-hour based RA requirements applied to day of the month with the highest coincident peak load on a monthly basis.

Next Steps: The procedural schedule for the ongoing tracks and working groups are as follows:

Reform Track Phase 2

- **July – October 2022:** Workstreams 1-3 to resolve remaining implementation details and methodologies
- **November 15, 2022:** Final proposals from Workstreams 1- 3 filed and served
- **December 1, 2022:** Opening comments on final proposals due
- **December 12, 2022:** Reply comments on final proposals due
- **Q1 2023:** Proposed decision on Reform Track Phase 2 issued

CPE Procurement Timeline

- **July 2022:** LSEs receive initial RA allocations, including Cost Allocation Mechanism (CAM) credits from CPE-procured system and flexible capacity from the prior year and any bilateral contracts.
- **Mid-August 2022:** CPE makes local RA showing to the Commission.
- **End of August 2022:** LSEs in the SCE and PG&E TAC areas receive updated CAM credits for multi-year system/flexible capacity that was procured by the CPE as a result of the CPE's multi-year local RA showing to the Commission in Mid-August.
- **September 2022:** LSEs are allocated final year-ahead system and flexible RA allocations, including CAM credits from CPE-procured system and flexible RA capacity based on revised year-ahead load forecast load ratios.
- **End of October:** LSEs make year-ahead system and flexible showings, and provide justification statements, if applicable, for local resources not self-shown or bid to the CPE.

Additional Information: D.22-06-050 on LCR and FCR Requirements and Modifications to the RA Framework (June 24, 2022); Ruling on availability of MTR analysis supporting data (June 8, 2022); Ruling on Regional Wind ELCC study (June 1, 2022); Final 2023 FCR Report (May 17, 2022); Notice of Final 2023 LCR Report (April 29, 2022); Ruling modifying schedule (April 29, 2022); CAISO Local Capacity Technical Analysis (April 7, 2022); D.22-03-034 on Phase 1 of Implementation Track Modifications (March 18, 2022); Ruling modifying Phase 2 schedule and providing LOLE study and CEC Working Group Report (February 18, 2022); Proposed Decision on CPE revisions (February 10, 2022); Scoping Memo and Ruling (December 2, 2021); Order Instituting Rulemaking (October 11, 2021); Docket No. R.21-10-002.

PG&E Regionalization Plan

On June 24, the CPUC issued D.22-06-028 approving and modifying settlement agreements relating to PG&E's updated regionalization plan and closing the proceeding.

Background: D.20-05-051 approved PG&E's reorganization following bankruptcy and directed PG&E to file a regionalization proposal (I.19-09-016). On June 30, 2020, PG&E filed its regionalization proposal, which described how it plans to reorganize operations into new regions. PG&E proposed to divide its service area into five new regions, each led by a Regional Vice President, and each with a Regional Safety Director to lead its safety efforts. 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 Maintenance and Construction, (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.

In August 2020, 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 February 2021, PG&E submitted its updated regionalization proposal ("Updated Proposal"). In response to feedback, PG&E modified its five regions (renamed North Coast, North Valley & Sierra, Bay Area, South Bay & Central Coast, and Central Valley), including moving Yolo County from Region 1 to Region 2 (North Valley & Sierra), where it would be grouped with the following counties: Colusa, El Dorado, Glenn, Lassen, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Solano, Sutter, Tehama, and Yuba.

On August 31, 2021, PG&E, the California Farm Bureau Federation, the California Large Energy Consumers Association, the Center for Accessible Technology, the Coalition of California Utility Employees, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), the Small Business Utility Advocates, and William B. Abrams filed a Motion for approval of their settlement agreement (Multi-Party Settlement Agreement, or MPSA). The MPSA provides that PG&E will facilitate a stakeholder engagement process to provide updates on PG&E's regionalization and a non-binding forum for input from stakeholders. The proposed settlement would have restricted participation in the Regionalization Stakeholder Group to Parties to the proceeding.

In the separate PG&E/SSJID Settlement Agreement, PG&E clarified and confirmed that its implementation of regionalization will not include any work to oppose SSJID's municipalization efforts. The settlement provided that PG&E may continue to respond to SSJID's municipalization efforts in other forums and proceedings separate from the regionalization proceeding and/or implementation of the Updated Regionalization Proposal.

VCE filed comments on the Motion for approval of the settlement jointly with Pioneer Community Energy that were critical of PG&E's Updated Proposal and the settlement. VCE and Pioneer recommended that the CPUC reject the settlement and require changes to PG&E's Updated Proposal, including alignment with the boundaries of regional councils of governments (COGs) and requirements to coordinate with COGs, the development of metrics to measure PG&E's progress on key safety and customer relations issues, greater coordination between PG&E and CCAs, and improvements to the Regionalization Stakeholder Group to expand its access and efficacy and not limit it to Parties to the proceeding.

On May 9, VCE and Pioneer filed comments on the Proposed Decision to approve the MPSA, recommending that the MPSA be rejected by the Commission because PG&E's Updated Proposal is highly unlikely to lead to meaningful safety, customer responsiveness or accountability improvements at PG&E. VCE and Pioneer requested that, at a minimum, the Commission keep the proceeding open to address issues arising from the stakeholder group, require PG&E to propose reasonable metrics for measuring the utility's safety performance and responsiveness to local communities, and to remove unreasonable restrictions on the scope and participation requirements in the stakeholder group.

Details: D.22-06-028 approved the MPSA but contained some modifications to the Proposed Decision with clarifications that:

- There is no guarantee of eventual recovery of costs recorded by PG&E in the memorandum account (established October 2, 2020);
- That PG&E must hold quarterly "town hall" meetings in each region until the later of Phase III completion or the end of 2024, as suggested by VCE and Pioneer; and
- In response to comments from VCE and other parties, required PG&E to submit a Tier 1 advice letter within 90 days of the final decision describing regionalization implementation activities already undertaken and planned.
- Expanded participation in the Regionalization Stakeholder Group (RSG) by any interested party rather than just parties to the proceeding, as suggested in comments by VCE and other parties. The Decision did not broaden the scope of the RSGs.

The Decision did not require PG&E to propose metrics by which to measure the success of its regionalization efforts and declined the request of all parties that filed comments, including the settling parties, to keep the proceeding open. The Decision approved the PG&E/SSJID Settlement Agreement.

Analysis: The implications of PG&E's regionalization plan on CCA operations, customers, and costs remain largely unclear. As part of Region 2, VCE would be grouped with Butte, Colusa, El Dorado,

Glenn, Lassen, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Solano, Sutter, Tehama, Yolo, and Yuba Counties. The Decision did not address most of the comments made by VCE and Pioneer regarding the inefficacy of the Updated Proposal, the need for the Commission to adopt and utilize metrics to measure the efficacy of PG&E's regionalization, suggestions for greater transparency and responsiveness, or alignment of regional boundaries with existing councils of governments.

Next Steps: PG&E's Tier 1 advice letter on regionalization implementation actions is due September 21, 2022. PG&E is required to submit a report on its quarterly town hall meetings in each region within 45 days following the end of each quarter, and the first report is due August 16.

Additional Information: D.22-06-028 on Regionalization (June 24, 2022); Joint Motion for approval of Settlement Agreements (August 31, 2021); Amended Scoping Memo and Ruling (June 29, 2021); PG&E Updated Regionalization Proposal (February 26, 2021); Application (June 30, 2020); A.20-06-011.

PG&E Phase 2 GRC

On June 22, the CPUC issued a Proposed Decision that, if approved, would direct PG&E to implement the settlement agreement provisions for a real-time pricing pilot, adopt the methodology outlined in the marginal generation capacity cost study for use in real-time pricing rate designs, and close this proceeding. The PD may be heard as soon as the August 4 Commission meeting.

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. D.21-11-016 largely adopted PG&E's proposed marginal costs and methodologies for deriving them but adopted marginal connection equipment costs proposed by the Agricultural Energy Consumers Association and marginal transmission capacity costs proposed by the Solar Energy Industries Association. It also adopted, without modification, several uncontested settlements on rate design issues (residential rate design settlement; settlement on streetlight rate design issues; Economic Development Rate (EDR) settlement; agricultural rate design; C&I rate design) and revenue allocation.

On January 18, parties filed a Settlement Agreement that includes the following terms of the Stage 1 RTP Pilot:

Eligibility: PG&E's bundled customers who are eligible for the B-20, B-6 and E-ELEC rates may participate on an opt-in basis. CCAs will need to affirmatively decide to participate in the Stage 1 Pilots for their customers to be eligible. PG&E agrees to work with its twelve CCAs to seek agreement from one or two of them to participate in the Stage 1 Pilots, if possible.

Duration: Stage 1 Pilots shall have a duration of 24 months, subject to potential extension.

Enrollment: PG&E will make its best efforts to program and make available for enrollment the three Stage 1 RTP rates by October 1, 2023.

Pricing: The RTP element of the Stage 1 Pilot RTP rates will replace the generation component of the customer's otherwise applicable rate schedule. The remaining transmission, distribution, Public Purpose Program and other charges and taxes remain the same as the otherwise applicable underlying rate. The generation component to be used in the Stage 1 Pilots' RTP rates will include: (1) a Marginal Energy Charge, (2) a Marginal Generation Capacity Cost, and (3) a Revenue Neutral Adder (designed to make the forecasted annual generation revenue collected under the three Stage 1 Pilot RTP rates revenue neutral to the base schedule). Residential customers would have 1 year of bill protection. There would be a limited amount of participation incentives as well.

All development, implementation, and operating costs for the Stage 1 Pilots, as well as for the separate Customer Research Study for residential, agricultural, and small commercial customers, will be recovered in distribution rates from all customers.

D.22-03-012 (March 18) adopted the Joint Stipulation resolving the single carryover issue of material fact about the MGCC Property Tax Adder and established a property tax factor of 1.25% for the 2021-2026 marginal generation capacity cost (MGCC) for new customer rates effective June 1. A corrected version of PG&E's MGCC Report was filed on March 17.

On March 24, PG&E proposed an export compensation mechanism for non-NEM customers enrolled in the Day-Ahead Hourly Real Time Pricing (DAHRTP) rate. The proposed Business Electric Vehicle (BEV) Pilot will include customers on any BEV rate and not only customers on the DAHRTP Commercial Electric Vehicle (CEV) rate. Compensation for energy will come from the CAISO market participation entity, and to the extent available will include compensation for Resource Adequacy. PG&E has not yet proposed a budget for the Pilot but has proposed a cost-effectiveness evaluation and a report on lessons learned to be issued two years after implementation. The proposal includes a market participation option instead of a tariff rate to allow all BEV customers in the PG&E service territory (including customers of CCAs or direct access providers) to participate without requiring each retail LSE to offer its own tariff rate. Some key considerations that PG&E has requested be addressed through a stakeholder process include interconnection jurisdiction, resource adequacy compensation methodology, and managing and monitoring customer revenue generation.

PG&E served the required supplemental testimony (March 24) for its proposed export compensation mechanism for customers enrolled in the day-ahead real-time pricing (DAHRTP-CEV) rate that do not participate in net metering but provide behind-the-meter resources. The Vehicle Grid Integration Council (VGIC) was the only party to file responsive testimony, and rebuttal testimony was scheduled to be served on April 29. PG&E's Motion for Evidentiary Hearing in A.20-10-011 (filed April 22) requested the Commission grant evidentiary hearings on several disputed questions related to the export compensation mechanism for customers enrolled in the DAHRTP-CEV rate that do not participate in net metering but provide behind-the-meter resources. The disputed issues raised by VGIC, as identified in PG&E's Motion, are:

- Whether PG&E's market participation approach belongs in this proceeding;
- PG&E's consideration of resource adequacy valuation and compensation;
- PG&E's proposed use of a "complex and lengthy approach" that includes a cost-benefit analysis for export valuation;
- Potential use of the same compensation mechanism for DAHRTP-CEV Non-NEM as DAHRTPCEV NEM customers; and
- Dual participation in ELRP.

Details: On June 2, the CPUC issued a disposition letter accepting PG&E's AL 6563-E, which replaced fixed-price hourly rates charged for CCA services with charges based on labor costs, pursuant to D.21-11-016.

On June 7, the CPUC issued a disposition letter accepting PG&E's AL 6566-E, which provides electric rate changes pursuant to D.21-11-016. The final system average PCIA rate for 2022 vintage is $0.02456/kWh.

On June 22, the CPUC issued a Proposed Decision that, if approved, would direct PG&E to implement the provisions of the January 18 settlement on real-time pricing issues, adopt the methodology outlined in the marginal generation capacity cost study for use in real-time pricing rate designs approved in D.21-11-017, order that the marginal generation capacity cost study working group be reconvened after initial evaluation of PG&E's real-time pricing rates is complete but no later than October 1, 2025 to consider whether any revisions should be made to the marginal generation capacity cost hourly price signal methodology, and close A.20-11-019 (A.20-10-011 would remain open).

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Analysis: This phase of the proceeding could impact real-time pricing rate design issues for PG&E customers. If the settlement agreement is adopted, VCE could elect to allow its customers to participate in the Stage 1 RTP Pilot. The Settlement Agreement provides that cost recovery of development, implementation, and operating costs for the Stage 1 Pilots, as well as for the separate Customer Research Study, would be recovered in distribution rates that both bundled PG&E and VCE customers pay.

Next Steps: The PD may be heard no earlier than the **August 4** Commission meeting. Comments on the PD are due **July 12**.

Additional Information: PD on RTP Pilot (June 22, 2022); PG&E Motion for Evidentiary Hearing (April 22, 2022); PG&E AL 6566-E on Illustrative Electric Rate Changes (April 18, 2022); PG&E AL 6563-E for CCA Service Fees (April 15, 2022); PG&E Proposal for non-NEM export compensation (March 24, 2022); PG&E MGCC Report (corrected) (March 17, 2022); D.22-03-012 on property tax adder (March 18, 2022); Ruling on timing to respond to PG&E/CLECA Motion (January 25, 2022); Motion by PG&E/CLECA to establish a separate expedited schedule (January 21, 2022); PG&E Motion on MGCC Study (January 18, 2022); PG&E Motion (January 18, 2022); Motion to Adopt Settlement Agreement (January 18, 2022); D.21-11-016 on revenue allocation and rate design (November 19, 2021); Amended Scoping Memo and Ruling (August 25, 2021); Ruling bifurcating RTP issues into separate track (February 2, 2021); D.20-09-021 on EUS budget (September 28, 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); RTP Pilot Docket No. A.20-10-011; Phase 2 GRC Docket No. A.19-11-019.

Provider of Last Resort Rulemaking

No updates this month.

Background: A Provider of Last Resort (POLR) is the utility or other entity that has the obligation to serve all customers (e.g., PG&E is currently the POLR in VCE's territory).

The Scoping Memo and Ruling issued September 16, 2021, provides that Phase 1 of this OIR will address POLR service requirements, cost recovery, and options to maintain GHG emission reductions in the event of an unplanned customer migration to the POLR. Phase 2 will build on the Phase 1 decision to set the requirements and application process for other non-IOU entities (i.e., a CCA, Energy Service Provider, or third-party) to be designated as the POLR in place of an existing POLR. Phase 3 will address specific outstanding issues not resolved in Phase 1 and 2 of this proceeding.

A workshop was held on October 29, 2021, for the purpose of reviewing the operation and expectation of Provider of Last Resort service, registration, and financial security requirements, and a second workshop was held on March 7 for the purpose of developing a framework to consider the issues and recommendations of the previous workshop.

Party comments on the first workshop were filed on March 28. CalCCA's comments urged a more pragmatic approach based on recent actual experience of customer returns and an evidence-based examination of the actual risks of customer returns to addressing POLR issues. Some of CalCCA's proposals include maintaining the six-month runway to prepare for the return of customers, refining the Financial Service Requirements (FSRs) to reflect the current Market Price Benchmarks (MPBs) for Resource Adequacy (RA) and RPS products, maintaining the existing right to an RA waiver, not requiring resource procurement in advance of customer returns, providing for recovery of financing costs if the POLR must pay for costs prior to receipt of revenues from customer returns, refining the implementation planning process for new CCAs, and implementing a three-tiered reporting rubric calibrated to the operating CCA's circumstances.

PG&E's comments on the first workshop included a proposal for an insurance pool to ensure liquidity equal to about two months incremental energy procurement costs for the POLR with each CCA posting its annual contribution to the insurance pool in the form of either cash or a letter of credit, and a proposed initial set of metrics for monitoring the financial health of CCAs that the company recommended be further developed and refined through a workshop process or with other stakeholder feedback.

The primary issues raised in comments to Workshop 2 were:

- Applicability of POLR to Electric Service Providers (ESPs): Both CalCCA and TURN argue that there is no basis for excluding ESPs from any POLR obligations adopted by the Commission since ESPs are subject to the same market conditions that cause CCA defaults.
- Upfront Liquidity: PG&E expressed the need for upfront liquidity equal to two months of POLR costs and estimated the cost of providing energy-only service for two months to CCA customers in its territory at between $200 and $400 million. CalCCA estimated the costs for two months of CAISO service if all CCA customers statewide returned their load to POLR service to be about $800 million, and recommended that risks be defined not only by their costs but also by their probability of occurrence since it is very unlikely that all or even a majority of CCAs would fail simultaneously and "failing to account for the probability of an event will significantly over-securitize the risk at the expense of customers."
- Right of First Refusal (ROFR) or Novation: There are differences among the parties regarding both the need for the costs and benefits of resources procured by a failing LSE to follow those customers returned to POLR service, and the mechanism by which those resources might follow customers.

Other topics discussed include the mechanism of the FSR, mechanisms for financial monitoring, and the possibility of a statewide not-for-profit central entity to manage POLR.

On May 10, PG&E submitted AL 6589-E with calculated financial security requirements for CCAs, followed by submission of supplemental AL 6589-E-A on May 17.

Details: On May 31, CalCCA filed a protest of PG&E ALs 6589-E and 6589-E-A requesting that the Commission require PG&E to correct the period for determination of "peak load" in applying the applicable resource adequacy (RA) cost based on PG&E's own tariff by updating the proposed FSR amount using a peak demand based on the most recent 12 months of historical peaks.

Analysis: This proceeding is addressing aspects of financial security requirements that will apply to VCE when finalized. The amount, methods of compliance (i.e., cash deposit, letter of credit, etc.), and organization of FSR management will impose a financial obligation on VCE at some future time of a currently unknown nature and amount. Additionally, this proceeding could impact VCE operations in a couple of ways. First, in establishing rules for existing POLRs, it will address POLR service requirements, cost allocation, and cost recovery issues should a CCA or other LSE discontinue supplying customers resulting in the need for the POLR to step in to serve those customers. Second, in setting the requirements and application process for another entity to be designated as the POLR, it could create a pathway for a CCA or other retail provider to elect to become a POLR for its service area.

Next Steps:

- **July 19, 2022:** Reply Comments on questions presented in May 2 Ruling
- **August 2022:** Energy Division Staff Proposal on Phase 1 Issues
- **September 2022:** Workshop on Energy Division Staff Proposal
- **September 2022:** Workshop on Potential/Example Changes to FSR Calculator

- **October 2022:** Opening Comments Filed and Served on Energy Division Staff Proposal/Potential Changes to FSR Calculator
- **October 2022:** Reply Comments Filed and Served on Energy Division Staff Proposal/Potential Changes to FSR Calculator
- **Q1 2023 – Q2 2023:** Phase 1 Proposed Decision

Additional Information: CalCCA Protest of AL 6589-E (May 31, 2022); Ruling granting extension of time and modifying procedural schedule (May 24, 2022); PG&E's AL 6589-E-A on FSR Requirements (May 17, 2022); PG&E's AL 6589-E on FSR Requirements (May 10, 2022); Ruling Requesting Comments (May 2, 2022); POLR webpage with workshop presentations and videos; Golden State Power Cooperative Motion to remove cooperatives as respondents (October 28, 2021); Scoping Memo and Ruling (September 16, 2021); Order Instituting Rulemaking (March 25, 2021); Docket No. R.21-03-011.

PG&E 2023 ERRA Forecast

On June 22, PG&E filed supplemental testimony in support of its 2023 ERRA Forecast application.

Background: Energy Resource and Recovery Account (ERRA) forecast proceedings establish the amount of the Power Charge Indifference Adjustment (PCIA) and other nonbypassable charges (NBCs) for the following year, as well as fuel and purchased power costs associated with serving bundled customers that utilities may recover in rates.

On May 31, PG&E filed its 2023 ERRA Forecast application, requesting a 2023 ERRA forecast revenue requirement for ratesetting purposes of $4.736 billion. After accounting for $2.479 billion of Utility Owned Generation (UOG)-Related Costs and amounts related to capped 2020 departing load PCIA rates addressed in D.20-12-038, PG&E requested a revenue requirement in this application of $2.263 billion.

D.22-02-002 approved a 2022 forecast of electric sales and energy procurement revenue requirements of $2.4 billion, effective in rates on March 1. It found the December Update, updated again with the actual year-end ERRA main account balance, provided the most accurate forecast for 2022 revenue requirements, and approved the 12-month amortization that was supported by CCAs. Under the December Update adopted in D.22-02-002, **the 2022 total PCIA rate for 2017-vintaged customers (i.e., most VCE customers) will fall 59% relative to 2021 to $0.01969/kWh for residential customers and to $0.01897/kWh on a system-average basis.** The Decision also found that all customers who were financially responsible for the ERRA-PCIA Financing Subaccount (ERRA-PFS) balance should be entitled to the appropriate credit and directed PG&E to transfer the $95 million ERRA-PFS credit for 2022 to the 2020 vintage subaccount. It approved a request by CCAs and directed PG&E to include the confidential workpapers supporting the PCIA rates from the prior year's ERRA Forecast proceeding as part of the Master Data Request it will provide in each subsequent ERRA Forecast proceeding. D.22-02-002 denied without prejudice the CCA's request to direct PG&E to provide data demonstrating its future role as a CPE in future ERRA forecast proceedings.

On March 14, the California Large Energy Consumers Association and Agricultural Energy Consumers Association filed an Application for Rehearing (AFR) of D.22-02-002. The AFR argues that the Commission should have adopted a 24-month amortization period for the undercollected ERRA balance. PG&E filed its response to the AFR on March 29, defending the use of a 12-month amortization period. The Commission has not yet acted on the AFR.

Details: N/A

Analysis: D.22-02-002 results in a 59% reduction to VCE's PCIA rates in 2022 compared to 2021. While the PCIA rate will fall substantially in 2022 for VCE customers, the non-RPS benchmarks that contributed to the reduction in the PCIA in 2022 could result in the opposite effect in 2023. That is, the same high benchmarks that helped reduce the 2022 forecast case may be too high compared to next year's actuals, which would create large Portfolio Allocation Balancing Account (PABA) undercollection balances for 2023 rates. The change in the PCIA rate from the December Update will help mitigate such a swing in rates in 2023. D.22-02-002 also improves transparency by requiring PG&E to provide confidential workpapers supporting the PCIA rates from the prior year's ERRA Forecast proceeding as part of the Master Data Request it will provide in each subsequent ERRA Forecast proceeding.

Next Steps: No procedural schedule has been issued in this proceeding, however, protests to PG&E's Application are due on July 6, and replies are due on July 16.

Additional Information: Application (May 31, 2022); Docket No. A.22-05-029.

PG&E 2021 ERRA Compliance

A prehearing conference was held on June 8. At that conference, the Administrative Law Judge indicated that she would establish an eighteen-month schedule for this proceeding, and issue a procedural schedule consistent with that timeline. A scoping ruling has not been issued.

Background: PG&E's application requested that the CPUC find that during 2021:

- It complied with its CPUC-approved Bundled Procurement Plan (BPP) in the areas of fuel procurement, administration of power purchase contracts, greenhouse gas compliance instrument procurement, resource adequacy sales, and least-cost dispatch of electric generation resources.
- It managed its utility-owned generation (UOG) facilities reasonably.
- Its expenditures in the Green Tariff Shared Renewables Memorandum Account (GTSRMA) were reasonable.
- Its entries in the Portfolio Allocation Balancing Account (PABA), Energy Resource Recovery Account (ERRA), Green Tariff Shared Renewables Balancing Account (GTSRBA), Disadvantaged Community – Single-Family Affordable Solar Homes (DAC SASH) balancing account (DACSASHBA), Disadvantaged Community - Green Tariff Balancing Account (DACGTBA), and Community Solar Green Tariff Balancing Account (CSGTBA) were consistent with applicable tariffs and CPUC directives.

PG&E also presents its Central Procurement Entity's administrative costs recorded to the Centralized Local Procurement Sub-Account (CLPSA) in the New System Generation Balancing Account (NSGBA).

PSPS Impacts: PG&E states that since the CPUC is currently considering the utilities' proposed common methodology for calculating unrealized volumetric sales and unrealized revenues resulting from Public Safety Power Shutoff (PSPS) events in the consolidated Phase II 2019 ERRA Compliance proceeding, it has not included with this 2021 ERRA Compliance application any testimony addressing the calculation of unrealized volumetric sales or unrealized revenues. PG&E plans to send an email to the assigned ALJ requesting direction regarding whether and in what format PSPS information should be presented as part of this Application once the Commission has resolved the issue in the Phase II 2019 ERRA Compliance proceeding.

Issues: PG&E proposes the following issues be considered in this proceeding:

- Whether PG&E, during the record period, prudently administered and managed the following, in compliance with all applicable rules, regulations, and Commission decisions, including but not limited to Standard of Conduct No. 4 (SOC 4):
  - Utility-Owned Generation Facilities
  - Qualifying Facilities (QF) Contracts and Non-QF Contracts. If not, what adjustments, if any, should be made to account for imprudently managed or administered resources?
- Whether PG&E achieved least-cost dispatch of its energy resources and economically triggered demand response programs pursuant to SOC 4;
- Whether the entries recorded in the Energy Resource Recovery Account and the Portfolio Allocation Balancing Account are reasonable, appropriate, accurate, and in compliance with Commission decisions;
- Whether PG&E's greenhouse gas instrument procurement complied with its Bundled Procurement Plan;
- Whether PG&E administered resource adequacy procurement and sales consistent with its Bundled Procurement Plan;
- Whether the costs incurred and recorded in the following accounts are reasonable and in compliance with the applicable tariffs and Commission directives:
  - Green Tariff Shared Renewables Memorandum Account;
  - Green Tariff Shared Renewables Balancing Account;
  - Disadvantaged Community - Single Family Solar Affordable Homes Balancing Account;
  - Disadvantaged Community - Green Tariff Balancing Account;
  - Community Solar Green Tariff Balancing Account; and
  - Centralized Local Procurement Sub-Account.
- Whether there are any safety considerations raised by this Application.

Details: Protests of PG&E's application were filed by three parties including CalCCA and the Cal Advocates office. At the prehearing conference on June 8, the Administrative Law Judge indicated that she would establish an eighteen-month schedule for this proceeding and issue a procedural schedule consistent with that timeline. A scoping ruling has not been issued.

Analysis: The proceeding has just begun, and its full scope is yet to be determined. A CPUC determination in the Phase II 2019 ERRA Compliance proceeding on the utilities' proposed common methodology for calculating unrealized volumetric sales and unrealized revenues resulting from PSPS events could expand the scope of this proceeding.

Next Steps: PG&E, in agreement with parties filing protests, proposed the following timeline:

- **August 24, 2022:** Cal Advocates and Intervenor Testimony
- **October 1, 2022:** PG&E Rebuttal Testimony
- **October - November 2022:** Settlement Discussions
- **November 14-16, 2022:** Evidentiary Hearings
- **December 2, 2022:** Opening Briefs
- **December 19, 2022:** Reply Briefs

Additional Information: Notice rescheduling prehearing conference (May 3, 2022); PG&E 2021 ERRA Compliance Application (February 28, 2022); Docket No. A.22-02-015.

PG&E's 2019 ERRA Compliance

No updates this month.

Background: Phase 1 has been resolved. The September 7, 2021, Ruling consolidated the Phase 2 ERRA compliance proceedings of PG&E, SCE, and SDG&E. The issues scoped for Phase 2 are:

- What is the appropriate methodology for calculating a utility's unrealized volumetric sales and unrealized revenues resulting from PSPS events in any given record year? Based on this methodology, what are the utilities' (PG&E, SCE, and SDG&E) unrealized volumetric sales and unrealized revenues resulting from 2019 Public Safety Power Shutoff (PSPS) events?

- Whether it is appropriate for the utilities to return the revenue requirement equal to the unrealized volumetric sales and unrealized revenue resulting from the PSPS events in 2019.

At the October 26, 2021, workshop hosted by Energy Division, the IOUs (PG&E, SCE, and SDG&E) made a joint presentation of their proposal for a methodology to calculate the revenue requirement of the estimated unrealized volumetric sales and unrealized revenue resulting from PSPS events.

The Joint CCAs filed a Motion on November 4, 2021, requesting the CPUC clarify the scope of issues in this proceeding. The November 12, 2021, Ruling clarified the CPUC's intent to consider a range of PSPS methodologies, which may be proposed by both the IOUs and other parties. It provided that parties may conduct additional discovery to support their proposal of a reasonable alternative PSPS methodology. The CPUC will consider a PSPS methodology that includes unrealized generation-related volumetric sales and revenues, along with the joint IOU proposal and potentially other PSPS methodologies

Details: The Joint IOUs' recommendations to adopt their common methodology for calculating unrealized revenue from end-use customers de-energized during PSPS events were determined to be reasonable and approval was recommended in the Joint Case Management Statement.

Previously, the CCA Parties' testimony identified all retail rate components that should be considered to provide a full accounting of the unrealized retail revenue during PSPS events. The testimony also described how, absent a ratemaking remedy, the IOUs will fully recover their authorized revenue requirement from all customers, including those receiving no electricity service during PSPS events, through pre-established balancing account mechanisms. The CCA Parties also explained the potential impact of PSPS events on wholesale generation revenue and the need to account any such reductions if generation resources are forced offline due to PSPS events.

The CCA Parties made recommendations on the following issues which remain in dispute per the Joint Case Management Statement:

- The calculation of unrealized retail revenue during PSPS events should include additional CPUC-jurisdictional rate components tied to balancing accounts that record IOU costs incurred despite lost sales to end use customers.

- Each IOU should make a full accounting of the balancing accounts implicated by the total unrealized retail revenue.

- Unrealized wholesale generation revenue should be quantified if utility-owned generation resources, or contracts with take-or-pay provisions, are forced out of service due to a PSPS event.

- Each IOU should record adjusting entries to affected balancing accounts, equal to the unrealized retail and wholesale generation revenue as applicable, to comply with the Commission's directive to "forgo collection in rates from customers of all authorized revenue requirement equal to estimated unrealized volumetric sales and unrealized revenue resulting from PSPS events."

TURN also filed testimony recommending that ***all*** revenue requirements from retail sales be disallowed.

Analysis: Phase 2 of the proceeding is assessing whether PG&E should be required to return its revenue requirement associated with unrealized sales associated with its 2019 PSPS events, and the methodology and inputs for calculating such a disallowance. VCE's customers could benefit from such a CPUC-determined disallowance, e.g., via a bill credit or reduced PG&E charges.

Next Steps: There is no current procedural schedule for the proceeding.

Additional Information: Amended Procedural Schedule (April 6, 2022); Joint Case Management Statement (February 25, 2022); Order Denying Rehearing of D.21-07-018 and PG&E's application for rehearing of D.21-07-013 (December 3, 2021); Ruling consolidating ERRA compliance proceedings (September 7, 2021); PG&E Application for Rehearing of D.21-07-013 (August 16, 2021); D.21-07-013 resolving Phase 1 (July 16, 2021); Joint Motion to Adopt Settlement Agreement (October 22, 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.

Utility Safety Culture Assessments

No updates this month.

Background: IOU safety culture assessments are required as part of AB 1054 and SB 901. AB 1054 directed the CPUC's Wildfire Safety Division, now the Office of Energy Infrastructure Safety, to conduct annual safety culture assessments of each electrical corporation that are specific to wildfire safety efforts and include a workforce survey, organizational self-assessment, supporting documentation, and interviews. SB 901 directed the CPUC to establish a safety culture assessment for each electrical corporation that is conducted by an independent third-party evaluator at least every five years. This proceeding will implement the statutory requirements of SB 901 relating to the Commission's assessment of safety culture for regulated utilities, examine what methodologies should be employed in the safety culture assessments to ensure results are comparable across IOUs and can measure changes in IOU safety culture over time, consider requiring that IOUs implement specific safety management practices to improve safety culture through adoption of a Safety Management System standard, consider adopting a maturity model to use in safety culture assessments, and determine accountability metrics.

The April 28 Scoping Ruling divided the proceeding into multiple phases and established the scope for Phase 1 to focus on developing safety culture assessments for the large investor-owned electric and natural gas corporations, while Phase 2 will focus on developing safety culture assessments for the small multi-jurisdiction utilities and the gas storage operators.

Phase 1 issues to be determined or considered include defining "safety culture", the design of an inclusive and collaborative framework for conducting safety culture assessments focused on actual safety improvement, creating metrics and methodologies to evaluate the efficacy of the safety culture assessment process, and procedural matters related to the Phase 1 process timeframe, management, and coordination with other ongoing safety-related initiatives.

Details: N/A

Analysis: This rulemaking will assess the safety culture of PG&E and other IOUs in California. It could impact VCE and its customers to the extent it succeeds or fails to influence PG&E's safety culture and hence the safety of VCE customers. It could also impact the rates VCE customers pay to PG&E to mitigate or address safety issues (e.g., wildfires caused by PG&E transmission equipment; explosions from PG&E natural gas infrastructure, etc.).

Next Steps: A series of Technical Working Group meetings will be held in July 2022, followed by a Staff Proposal in August 2022.

- **July 2022:** Safety Policy Division Technical Working Group Meetings #3 and #4
- **TBD:** All Party Consensus Workshop on Technical Working Group Topics
- **August 2022:** ALJ Ruling issuing Safety Policy Division Staff Proposal for Conducting Safety Culture Assessments and the Maturity Model for the Large Investor-Owned Electric and Natural Gas Corporations
- **September 2022:** Safety Policy Division Workshop on Staff Proposal
- **October 2022:** Opening Comments on Staff Proposal
- **November 2022:** Reply Comments on Staff Proposal

Additional Information: CPUC Safety Culture and Governance webpage; Scoping Ruling with procedural schedule (April 28, 2022); Webinar recording of the workshop (March 11, 2022); Order Instituting Rulemaking (October 7, 2021); Docket No. R.21-10-001.

2022-2023 Wildfire Fund Nonbypassable Charge Rulemaking

No updates this month.

Next Steps: The Department of Water Resources will issue a notice in September 2022 identifying the amount they calculate will be needed for the 2023 Wildfire Fund NBC.

Glossary of Acronyms

AB	Assembly Bill
AET	Annual Electric True-up
ALJ	Administrative Law Judge
BEV	Business Electric Vehicle
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
DA	Direct Access
ELCC	Effective Load Carrying Capacity
ERRA	Energy Resource and Recovery Account
GRC	General Rate Case
IEPR	Integrated Energy Policy Report
IFOM	In Front of the Meter
IRP	Integrated Resource Plan
IOU	Investor-Owned Utility
LSE	Load-Serving Entity
MCC	Maximum Cumulative Capacity
OII	Order Instituting Investigation
OIR	Order Instituting Rulemaking
PABA	Portfolio Allocation Balancing Account
PFM	Petition for Modification
PCIA	Power Charge Indifference Adjustment
POLR	Provider of Last Resort
PSPS	Public Safety Power Shutoff
PUBA	PCIA Undercollection Balancing Account
PURPA	Public Utility Regulatory Policies Act of 1978 (federal)
QC	Qualifying Capacity
QF	Qualifying Facility under PURPA
RA	Resource Adequacy
ReMAT	Renewable Market Adjusting Tariff
RPS	Renewables Portfolio Standard
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 10

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk / Administrative Analyst

SUBJECT: Community Advisory Committee June 23, 2022 Meeting Summary

DATE: July 14, 2022

This report summarizes the Community Advisory Committee's meeting held via Zoom webinar on Thursday, June 23, 2022.

A. **Reviewed and considered recommendation on draft Customer Rate structure.** This item was brought to the CAC after feedback was provided to Staff on a draft rate structure. Staff were seeking additional feedback, comments and a recommendation to the Board. Staff provided a brief background and highlighted updates made to the draft customer rate / product options. Staff incorporated into the updated rate/product options information on product differentiation, highlights of base green option, marketing framework and organizational cost/benefits. Staff and the CAC discussed the carbon free percentage and the benefits of the Base Green option, talking points and messaging about the options to customers, rate setting, maintenance of renewable content and low greenhouse gas (Ghg), and rate options for Net Energy Metering (NEM) customers. The CAC recommended that the Board adopt the following:
   1. adopt a new rate structure with three customer options starting in 2023: (1) Standard Green (default) and (2) UltraGreen (100% renewable) with rates based on cost-recovery and (3) Base Green option with rates at or below PG&E rates on a total bill comparison; and,
   2. automatically enroll California Alternative Rates for Energy (CARE) and Family Electric Rates Assistance (FERA) customers in the Base Green option as described in the staff report. CARE/FERA customers will not have access to the Customer Dividend program but will retain access to all other programs. (10-0-0)

B. **Received and considered recommendation to the Board to participate in California Community Power Joint Powers Authority (CC Power) geothermal projects: A) Ormat Nevada Inc. and B) Open Mountain Energy, LLC.** Staff provided an overview of two CC Power geothermal projects. After a brief discussion, the CAC recommended that VCE participate in the CC Power geothermal projects: A) Ormat Nevada Inc. (Ormat) Portfolio of Geothermal Projects and B) Open Mountain Energy LLC., Fish Lake Geothermal (OME). (10-0-0)

C. **Long Range Calendar update.** The CAC have cancelled their July 28, 2022 meeting and will resume their regular meeting schedule on Thursday, August 25, 2022.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 12

TO: Board of Directors

FROM: Mitch Sears, Executive Officer
Rebecca Boyles, Director of Customer Care and Marketing

SUBJECT: SACOG Grant - Electrify Yolo Update

DATE: July 14, 2022

RECOMMENDATION
Informational item. The purpose of this report is to give an update on the status of the Electrify Yolo (SACOG grant) project.

BACKGROUND
In December 2018, the Sacramento Area Council of Governments (SACOG) authorized the award of a Green Region grant in the amount of $2,912,000, representing the regional "Electrify Yolo" project, with the purpose of installing publicly accessible electric vehicle (EV) charging stations. The City of Davis distributed funds to each entity once the Memoranda of Understanding (MOUs) were approved by each jurisdiction. All projects are to be finished by December 31, 2023.

UPDATE
As shown in the attached progress reports each jurisdiction is making progress toward meeting its obligations under the grant. All MOUs were signed (Davis, VCE/Winters, Woodland, unincorporated Yolo County) as of April 2021, and some EV charger installation projects have begun, and some are finished. Staff does note that EV charger installations have been subject to some delays including impacts from the COVID-19 pandemic and staffing shortages, as well as materials prices rising more than anticipated.

VCE Staff is working with each jurisdiction to design banners to be hung at each charging station with logos of all project partners, as well as permanent aluminum signs. Temporary banners will inform members of the public that there will be EV chargers coming soon in that location and aim to increase the public's brand association with VCE and electric vehicles. Banners have been hung in Winters at the Community Center charging stations, as well as a permanent aluminum sign.

ATTACHMENTS:
1. Annual Report on SACOG Green Region Grant July 2022
2. VCE SACOG Progress Report Winters - June 2022
3. VCE SACOG Progress Report Yolo - June 2022
4. VCE SACOG Progress Report Woodland – June 2022

Status Report

DATE: June 29, 2022

TO: Sacramento Area Council of Governments (SACOG)

FROM: Stan Gryczko, Director, Public Works Utilities and Operations

SUBJECT: Annual Reporting for the Electrify Yolo Project (FY 21/22) - SACOG 2018 Green Region Grant

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Background

The City of Davis as the lead agency, per the fund exchange agreement between SACOG and the City of Davis City Council, is providing the following update on behalf of the regional partners, Valley Clean Energy (VCE), City of Woodland, and Yolo County.

The total award of $2,912,000 is divided among the Cities/Partners as follows:

- City of Davis $1,912,000
- Yolo County $700,000
- City of Woodland $150,000
- City of Winters/VCE $150,000

The project goals include:

- 15-40 Level 2 chargers
- 2-5 DC Fast Chargers
- 2-10 Mobile Chargers
- Purchase or Lease of One or More Electric Vehicles

Partner Updates

City of Davis:

Work completed:

As reported previously, the City entered into an agreement with Frontier Energy, Inc. to provide analysis and design of the City's portion of the EV Charging project. Over the past year the analysis and drafting of the report included multiple discussions with the Natural Resources Commission and community input. The report was approved by the Davis City Council on June 28. Immediate next steps include design and construction of electrical improvements to install chargers intended to meet the fund exchange agreement commitments. Five sites have been chosen for the initial installations.

Included in the report are additional sites with potential for installation of chargers. The City will continue to study these additional locations, with community input, and pursue additional infrastructure after implementation of this initial effort. The sites under design now should be in construction by the end of 2022.

Valley Clean Energy/City of Winters:
Work completed:

- Two level 2 chargers installed at the community center. Became operational September 2021.
- One level 2 and one DC charger purchased for the parking lot at First/Abbey. Installation is pending coordination with PGE associated with Rule 20A. Anticipated completion by August 2022.

City of Woodland:
Work completed:
Woodland has completed site selection and received information from PG&E regarding necessary supply upgrades. Design, permitting, and material ordering should begin shortly with an anticipated installation by the end of 2022.

Yolo County:
Work completed:
Three sites have been selected for charger installation with two sites in Woodland and one in Davis. Currently, the two sites in Woodland are being designed and permitted. The site in Davis requires coordination with the property owner and should begin the process of installation in the near future.

In addition to the traditional sites, County staff continues to look at deploying mobile chargers. The mobile chargers are solar powered and can be placed in the rural parts of the county to help understand the need and utilization. Being mobile, the mobile charges can be moved around to the various communities and see where the County may have need for a more permanent solution.

Overall Project Status
It is anticipated that the projects will be completed by each partner agency and the fund exchange agreement terms will be met prior to the deadline of December 31, 2023.

1. Project Summary - Install car charging stations at Community Center and City parking lot.
2. Project Manager – Eric Lucero
3. Site (s) Description – Winter Community Center and city parking lot at First and Abbey.
4. Site information (Maps, Pictures, Etc.) Attached
5. Description of any material planned changes to the Project. - None
6. Table schedule showing progress on achieving each of the Milestones. – See below
7. Summary of activities during the previous calendar quarter or month. - No activities this quarter
8. Forecast of activities scheduled for the current calendar quarter. - No activities planned
9. Written descriptions about the progress relative to Milestones, including whether the milestone has been met or is on target to meet the Milestones
10. List of issues that are reasonably likely to affect Milestones. – PG&E Rule 20A utility project
11. A status report of activities, including a forecast of ongoing activities, information on project performance, and projections for the next twelve (12) months. Attached
12. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements, and purchase orders showing the start dates, completion dates, and completion percentages. Attached

Dashboard

Site Selection	Contract Award	Permits	Installation	Testing	Go Live
Completed	Completed	Completed	In Progress	50%	50%

TABLE 1

Milestone Description	Status	% Completion	Estimated Completion Date	Notes
Community Center charging stations are complete and in operation	Complete	100%	9-23-2021	Chargers have been in operation since September
First & Abbey Street charging stations are on hold waiting for	On Hold	10%	7-21-2022	Chargers and materials have been purchased

318 First Street
Winters, CA 95694
Phone.530.795.4910
Fax. 530.795.4935

COUNCIL MEMBERS
Harold Anderson
Jesse Loren
Pierre Neu

MAYOR
Wade Cowan

MAYOR PRO TEM
Bill Biasi

CITY CLERK
Ashley Bussart

CITY TREASURER
Shelly Gunby

CITY MANAGER
Kathleen Salguero Trepa

PG&E Rule 20A project to underground power.				

Overview of Charger Locations

Winters Community Center Operational Chargers with permanent aluminum sign and temporary banner

318 First Street
Winters, CA 95694
Phone.530.795.4910
Fax. 530.795.4935

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CITY TREASURER
Shelly Gunby

CITY MANAGER
Kathleen Salguero Trepa

Photo of 1st & Abbey Parking Lot Charger Locations

318 First Street
Winters, CA 95694
Phone.530.795.4910
Fax. 530.795.4935

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Kathleen Salguero Trepa

VALLEY CLEAN ENERGY

SACOG GRANT

JUNE 2022 PROGRESS REPORT FOR CITY OF WOODLAND

1. Project Summary
   The City of Woodland was apportioned $150,000 to install at minimum two Level 2 EV charging stations in Woodland that are accessible to the public.

2. Project Manager
   Rosie Ledesma, Environmental Resource Analyst, Community Development Department

3. Site (s) Description
   City of Woodland public parking lot near 430-434 College St, Woodland CA 95695.

4. Site information (Maps, Pictures, Etc.)
   June: See updated site map.

5. Description of any material planned changes to the Project.
   N/A

6. Table schedule showing progress on achieving each of the Milestones
   See Table 1 below.

7. Summary of activities during the previous calendar quarter or month.
   June: Received response from PG&E regarding supply upgrade and location. Finalized installation locations and updated budget. Re-appropriated funds to special energy account. Researched alternative charging stations.

8. Forecast of activities scheduled for the current calendar quarter
   June: Continue designing engineering plan and submitting permit requirements. Order supplies for initial groundwork. Potentially begin ground work and EV charging station orders via the City's Electrical Division of Public Works.

9. Written descriptions about the progress relative to Milestones, including whether the milestone has been met or is on target to meet the Milestones
   June: We are currently making progress on the milestones that we can control. Meeting our target for the installation and finalization will depend on PG&E's progress on the power supply upgrade.

10. List of issues that are reasonably likely to affect Milestones
    June: We continue to see increased costs for materials. In addition, much of our work is based on PG&E's schedule for the power supply upgrade.

VALLEY CLEAN ENERGY

SACOG GRANT

JUNE 2022 PROGRESS REPORT FOR CITY OF WOODLAND

11. A status report of activities, including a forecast of ongoing activities, information on project performance, and projections for the next twelve (12) months.
N/A

12. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements, and purchase orders showing the start dates, completion dates, and completion percentages.
N/A

13. Pictures, in sufficient quantity and of appropriate detail, document the Project's progress.
N/A

14. Workforce Development or Supplier Diversity Reporting (if applicable)
N/A

15. Any other documentation to be included for Board Update

Dashboard

Site Selection	Contract Award	Permits	Installation	Testing	Go Live
In progress	N/A	In Progress			

DASHBOARD KEY

Completed	IN PROGRESS	DELAYED	ON HOLD

TABLE 1

Milestone Description	Status	% Completion	Estimated Completion Date	Notes
Site selection and feasibility	Completed	95%	June 2022	
Power supply upgrade	In progress	30%	Fall 2022	
Charging station orders	In progress	10%	Summer 2022	
Groundwork prep and installation	In progress	5%	Summer 2022	

Charging station installation		0%	Fall 2022	
Charging station payment policy		0%	Fall 2022	

VALLEY CLEAN ENERGY

SACOG GRANT

PROGRESS REPORT – YOLO COUNTY JUNE 2022

- Project Summary
  Install EV charging stations throught Yolo County that are accessible to the pubic
- Project Manager
  Mike Martinez, IT & Projects Manager, County Of Yolo General Services Department

- Site (s) Description
  Various County owned properties in the cities of Woodland, Davis, and Winters
  - Site 1: 137 N Cottonwood St, Woodland, California 95695 Bauer Building 2-Dual Charging Stations
  - Site 2: 25 N. Cottonwood Street Woodland, CA 95695 Gonzalez Building 2-Dual Charging Stations
  - Site 3: 315 E 14th St, Davis, CA 95616 Mary L. Stephens Davis Branch Library 1-Dual Charging Station
- Summary of activities during the previous calendar quarter or month.
  - Finishing up the design process for the station at 137 N Cottonwood St. and 25 N Cottonwood St. in Woodland.
    - Next steps: permitting and installation
  - Delay on the stations at the Davis Branch Library (315 E 14th St, Davis) due to question about land ownership
    - Next step: reach out to landowner to secure permission to install chargers
- Forecast of activities scheduled for the current calendar quarter
  - Start conversation with Contractor and Department of Community Services for permitting
  - Follow-up on 600A and Winters Community Library site
- List of issues that are reasonably likely to affect Milestones
  Design and permitting issues may cause delays

Dashboard

Site Selection	Contract Award	Permits	Installation	Testing	Go Live
Completed	Completed – for 3 sites	IN PROGRESS			

DASHBOARD KEY

Completed	IN PROGRESS	DELAYED	ON HOLD

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 13

TO: Board of Directors

FROM: Mitch Sears, Executive Officer
Edward Burnham, Finance and Operations Director

SUBJECT: Consultant Donald Dame Contract extension and increase not to exceed amount

DATE: July 14, 2022

RECOMMENDATION

Approve a contract extension of consulting services of Donald Dame for the time period of July 1, 2022 through December 31, 2022 and increase the not to exceed amount by $5,000 for a new not to exceed amount of $25,000.

BACKGROUND & DISCUSSION

Donald Dame has provided professional consulting services for VCE since pre-launch in 2018. He continues to provide consulting services related to enterprise risk management, electric utility analysis, and program implementation assistance among other related activities. In addition, during 2020/21 and most recently in the new budget year (2022), Mr. Dame assisted VCE with the analysis of the potential acquisition of PG&E's local electricity distribution system and related PG&E bankruptcy matters.

In April 2021, the Board extended Don Dame's contract through June 30, 2022 with a not to exceed amount of $20,000. As of May 2022, approximately $6,612 remains in the $20,000 not to exceed amount. Average spending on this contract over the past 13 months is $719 per month. Due to his experience in the utility sector and deep knowledge of VCE, staff is recommending a six month contract extension until December 31, 2022 and increase the not to exceed amount by $5,000 for a new not to exceed amount of $25,000.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 14

To: Board of Directors

From: Rebecca Boyles, Director of Customer Care & Marketing

Subject: Receive signed Amendment 4 to Jim Parks Agreement for Consultant Services extending contract six (6) months and increasing the not to exceed amount

Date: July 22, 2022

RECOMMENDATION

Receive copy of signed Amendment 4 to Jim Parks Agreement for Consultant Services extending the contract six (6) months for a new expiration date of December 31, 2022 and increase the not to exceed amount by $28,750 for a new not to exceed amount of $46,750.

BACKGROUND

On June 29, 2020, VCE entered into an agreement for consultant services with James Parks to provide transitional director duties, including SACOG grant and other program activities, with the new Director of Customer Care and Marketing Rebecca Boyles. The agreement was for a not to exceed amount of $10,000 and was set to expire on December 31, 2020.

In December 2020, Amendment 1 to the agreement was signed expanding the tasks to include key account services and extending the contract through December 31, 2021. In July 2021, Amendment 2 to the agreement was signed to increase the not to exceed amount by $8,000 for a new not to exceed amount of $18,000. In December 2021, Amendment 3 extended the expiration date to June 30, 2022.

Mr. Parks continues to provide assistance to Staff with key account services for designated commercial, industrial, and agricultural customer outreach and programmatic work for the SACOG grant. Additionally, staff may rely on Mr. Parks for programmatic support for two newly approved programs – the Heat Pump Pilot Program, and the EV Rebate Program.

Through March 2022, a total of $12,275 has been expended of the not to exceed amount of $18,000 leaving $5,725 remaining. Amendment 4 extends the expiration date of June 30, 2022 by six (6) months for a new expiration date of December 31, 2022 and increases the not to exceed amount by $28,750 for a new not to exceed amount of $46,750.

Attachments

1. Amendment 4 to the Jim Parks Agreement for Consultant Services
2. Exhibit C – Schedule of Services
3. Exhibit D - Payment

FOURTH AMENDMENT

TO THE AGREEMENT FOR CONSULTANT SERVICES

BETWEEN

VALLEY CLEAN ENERGY ALLIANCE

AND

JIM PARKS

1. Parties and Date.

This Fourth Amendment to the Consultant Services Agreement ("#3 Amendment"), is made and entered into as of this 14th day of June 2022, 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 Consultant, Jim Parks, with its principal place of business at 4478 G Street, Sacramento, California 95819 ("Jim Parks"). VCE and Jim Parks are sometimes individually referred to as "Party" and collectively as "Parties."

Recitals.

1. On June 29, 2020 VCE and Jim Parks entered into an "Agreement for Consultant Services", for the purpose of retaining Jim Parks to provide the services described in Exhibit A of the Agreement. The Agreement was for a term of six (6) months and a total amount not to exceed $10,000.

2. On December 28, 2021 Interim General Manager signed Amendment One (1), extending the term for one year, for a new expiration date of December 31, 2021, and expanding tasks to include key account services. On June 29, 2021 Interim General Manager signed Amendment Two (2), increasing the not to exceed amount by $8,000 for a new not to exceed amount of $18,000. On December 29, 2021, Interim General Manager signed Amendment Three (3), extending the term for six (6) months, for a new expiration date of June 30, 2022.

3. VCE and Jim Parks now desire to further amend the Agreement to extend the term by six (6) months, through December 31, 2022, and increase the not to exceed amount by $28,750 for a total amount not to exceed $46,750.

Now therefore, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, the Parties agree as follows:

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

1.4 Term. The term of this Agreement, which began on June 29, 2020, shall end on December 31, 2022 unless amended as provided in this Agreement, or when terminated as provided in Article 5.

3.2 Section 4.1 Compensation 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, Amendment Four (4) will add Twenty-eight Thousand Seven Hundred Fifty Dollars ($28,750) to Amendment Two (2) not to exceed amount of Eighteen Thousand Dollars ($18,000) total compensation for a new not to exceed amount of Forty-six Thousand Seven Hundred Fifty Dollars ($46,750) 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.

2. Exhibit C – Schedule of Services is hereby replaced in its entirety by Exhibit C – Schedule of Services and Exhibit D – Payment is hereby replaced in its entirety by Exhibit D – Payment attached hereto.

3. Except as amended by this #4 Amendment, all other provisions of the Agreement will remain in full force and effect.

4. If any portion of this #4 Amendment 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 #4 AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES BETWEEN VALLEY CLEAN ENERGY ALLIANCE AND JIM PARKS

IN WITNESS WHEREOF, the Parties have entered into this #4 Amendment as of the 14th day of June 2022.

VALLEY CLEAN ENERGY ALLIANCE

By: _____
Mitch Sears
Executive Officer

NAME OF CONSULTANT

By: James M Parks

Its: Sole Proprietor

Printed Name: Jim Parks

EXHIBIT C

SCHEDULE OF SERVICES

The scope of this contract commences on June 29, 2020 to expire on December 31, 2022. The Agreement and the schedule may be extended by mutual agreement in writing by both parties.

EXHIBIT D

PAYMENT

The Scope of Work shall be performed on an individual task, consulting time, travel time, materials, and actual direct expense basis with work assigned as needed.

Designated Employees and Rates:

Professional/Title	Hourly Consulting Rate
James Parks	$100.00 per hour

Other Applicable Reimbursement Rates:

Particulars	Rate
Air Travel Time	$50.00 / hour
Auto Travel Time (one hour or more)	$50.00 / hour
Auto Mileage Rate (or current IRS reimbursement rate)	$0.58 / mile
Actual Direct Expenses (Receipts required above $25.00)	Actual Expense
Phone/postage/printing/office materials	No Charge

Amendment Two (2) to the agreement will add $8,000 to the $10,000 (original agreement amount) for a new "Total Not to Exceed Amount" of: $18,000.00 unless amended by written agreement of both parties.

Amendment Four (4) to the agreement will $28,750 to the $18,000 not to exceed amount, for a new "Total Not To Exceed Amount" of $46,750 unless amended by written agreement of both parties.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 15

TO: Board of Directors

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

SUBJECT: Ratify services agreement with First Principles Advisory, LLC for Integrated Resource Planning Portfolio Modeling

DATE: July 14, 2022

RECOMMENDATION

Ratify signed agreement with First Principles Advisory for Integrated Resource Planning (IRP) portfolio modeling services for an amount not to exceed $33,750 for a term July 1, 2022 expiring December 1, 2022.

BACKGROUND

VCE was required by the California Public Utilities Commission (CPUC) to prepare an IRP for the supply of energy in the period from 2020 to 2030. The objective of the IRP is to provide guidance for VCEA's Board, executive management, and the public regarding the expected power supply cost and the resources needed for meeting electric demand in the 2020-2030 period. VCE submitted VCE's first IRP and associated Action Plan to the CPUC on August 1, 2018. The IRP process calls for an update every two years with the update originally due May 1, 2020; however, due to the COVID-19 pandemic, the CPUC extended the due date twice with a final due date of September 1, 2020. VCE submitted their update to the CPUC on September 1, 2020. The next two year update of the IRP is due to the CPUC on November 1, 2022.

Historically, SMUD has assisted VCE by performing portfolio modeling to be included in VCE's two year IRP update with the assistance of VCE's regulatory legal counsel Keyes & Fox who finalizes and submits the update to the CPUC. Assistance elsewhere was needed to prepare portfolio modeling. As a result, VCE advertised a Request for Proposal for IRP portfolio modeling services on May 5, 2022 with a due date of May 27, 2022. Proposals were received and negotiations with First Principles Advisory to perform the work occurred. After review by VCE's general legal counsel Richards, Watson, & Gershon, Executive Officer Mitch Sears signed the agreement attached.

NEXT STEPS

The scope of work is to take place over the next five (5) months with periodic updates being provided to both the Board and the Community Advisory Committee (CAC). The final report is anticipated to be available and presented in late quarter 3 or early quarter 4 of 2022.

CONCLUSION

Staff is recommending that the Board ratify via resolution agreement with First Principles Advisory for Integrated Resource Planning (IRP) portfolio modeling services for an amount not to exceed $33,750 for a term July 1, 2022 expiring December 1, 2022.

ATTACHMENTS

1. RFP for consulting services
2. Agreement between VCE and First Principles Advisory, LLC
3. Resolution 2022-XXX

Valley Clean Energy Alliance
604 2nd Street, Davis, California 95616
Phone: (530) 446-2750

REQUEST FOR PROPOSALS
FOR
2022 Integrated Resource Plan Portfolio Modeling

PROPOSALS ARE DUE:
Friday, May 27, 2022 BY 4:00 P.M. (Pacific Daylight Time)
Proposals must be e-mailed in PDF form to Gordon.Samuel@ValleyCleanEnergy.org with any preliminary redlines to VCE Sample Agreement

Valley Clean Energy Alliance is a Joint Powers Authority consisting of the Cities of Davis, Woodland, and Winters and the County of Yolo.

Scope of Services

2022 IRP Modeling

I. INTRODUCTION

Valley Clean Energy (VCE) is seeking a qualified consultant (Contractor) to provide system modeling and technical support that will be used in the 2022 Integrated Resource Plan (IRP) process at the California Public Utilities Commission (CPUC).

The successful proposal submittal must demonstrate that the Contractor has the appropriate professional and technical background to fulfill the scope of work. The contractor must have expertise in electric system modeling and a proven ability to update, maintain, and run such models.

The chief use of this production cost modeling is in the context of the CPUC's IRP proceeding, although VCE reserves the right to request modeling for other proceedings where modeling is relevant, such as Resource Adequacy (RA).

II. BACKGROUND

2.1 VCE is a joint powers authority providing a state-authorized Community Choice Energy (CCE) program. Participating VCE governments include the City of Davis, the City of Woodland, the City of Winters and the unincorporated areas of Yolo County. PG&E continues to deliver the electricity procured by VCE and to perform billing, metering, and other electric distribution utility functions and services. Customers within the participating jurisdictions have the choice not to participate in the VCE program.

2.2 Since VCE started serving load in June 2018, VCE has added resources under long term contracts and is gradually building up a portfolio of short and long term assets in line with its vision and the demand of its customers. To date, VCE has relied mainly on market purchases of energy, RA, and Renewable Energy Credits (RECs) in order to serve its electric demand and meet regulatory requirements with respect to RA and renewable energy. VCE has since contracted for solar, solar plus energy storage, standalone energy storage, and demand response resources.

III. DETAILED SCOPE OF WORK

The scope of work for this project includes the following:

- **Compile and maintain** electric system model database from public sources where possible, including:
    - Generator list and specifications, including heat rates, outages, retirement dates, etc.
    - Transmission constraints
    - Load Data
    - Weather Data

- **Provide and update** written documentation of model assumptions and logic as requested
- **Integrate** CPUC's Preferred System Portfolios (PSPs) into system model once they become available on or around June 15, 2022, along with other modeling requirements known as Inputs & Assumptions (I&A) such as Effective Load Carrying Capacity (ELCC) values for different resources
- **Integrate** VCE's load from the CEC's 2021 IEPR forecast (Mid Baseline – [Additional Achievable Energy Efficiency] AAEE Scenario 3, [Additional Achievable Fuel Substitution] AAFS Scenario 3) Form 1.1c as modified by VCE (if applicable) into system model
- **Integrate** VCE's existing and planned portfolio into system model
- **Integrate** Inputs & Assumptions to be determined by Astrape, E3, and CPUC Staff
- **Run system model** to develop reliability assessment, decarbonization metrics, and cost analysis
    - Compare PSPs to VCE's existing and planned resources portfolio
    - Perform sensitivities and scenario analysis to identify possible emissions or cost savings
- **Provide** relevant data cleaning and analysis scripts to VCE staff as requested for review
- **Develop** charts and graphs summarizing outputs to be used in the IRP Narrative as requested by VCE staff for use by VCE's other consultants who will be writing the Narrative
- **Coordinate and Timely Provide** necessary graphs, charts, and data points with VCE staff and its other consultants for the purpose of completing all required IRP compliance files such as the Narrative, Resource Data Template, and Clean System Power Calculator
- **By July 11, 2022, Enter Data into Templates** by filling out the Clean System Power Calculator and the Resource Data Template with data on RA, energy, load, criteria pollutants, energy contract information, and all other information from the model and from VCE staff to meet the compliance requirements of the PSPs and any requested alternative VCE portfolio (if applicable) and provide the templates to VCE staff and its other consultants for review, editing, and Narrative development
- **Develop Outline for the Reliability Section** of the Narrative based on model outputs
- **Ensure Timely Preparation** of all requirements for the November 1, 2022 due date

IV. FEE SCHEDULE

Contractor shall provide a not to exceed lump sum price. If VCE modifies the scope and additional study work needs to be performed, Contractor shall provide a change order price before initiating the work.

V. PROPOSAL REQUIREMENTS

In order to be considered, all proposals must be submitted by the deadlines listed in the RFP schedule included herein. When completing the Contractor's RFP response, Contractor must include the following detail:

- Background and experience of all staff involved in modeling, including:

  - Name, position, and short biography of employee(s) responsible for providing this service
  - Hourly rate
  - Modeling / quantitative analysis expertise
- Description of the modeling tools used, including:
  - Scope (CAISO/California/WECC)
  - Time horizon (full year, multiple years, etc.).
  - Granularity (daily, hourly, sub-hourly)
  - Runtime (hours per model run, including min/max ranges depending on number of scenarios and any performance improvements that can be realized through running multiple scenarios in parallel)
  - Any data or cloud services (AWS, etc.) used for storing data or improving performance.
  - List and detailed description of model outputs (cost, emissions, reliability metrics, etc.), providing samples where relevant
  - Granularity of outputs (generator level / balancing authority level)
  - System requirements for the model (Mac / Windows, which OS, RAM, etc.)
  - A description of how the model stores data for, and handles analysis of, multiple scenarios—i.e., how a user can run different scenarios without having to manually change the database every time
- Reports or presentations summarizing model results
- Experience with CPUC proceedings, especially an understanding of CPUC-jurisdictional load-serving entity IRP requirements, familiarity with the RESOLVE model, and the Clean System Power tool and Resource Data Template developed by E3
- The Contractor should affirm whether the model's database is already "in-model," or would have to be purchased separately, and provide relevant pricing data for access and maintenance
- Describe how the Contractor will adhere to anti-trust and collusion laws while providing this service to VCE
- Describe how the Contractor will avoid conflicts of interest with other power providers and/or regulatory bodies while providing this service to VCE
- The Contractor should provide a project management plan with proposed dates and milestones
- Any preliminary redlines to the VCE Sample Contract should be provided with RFP response

VI. PROPOSAL EVALUATION

VCE will evaluate all proposals based on the following criteria:

- Experience with production cost models
- Staff qualifications
- Model specs
- Fee Schedule
- Project management plan with proposed dates and milestones

- Compliance with VCE Sample Contract

VCE may, or may not, negotiate contract terms with selected Contractor(s) prior to award, and expressly reserves the right to negotiate with several Contractors simultaneously and, thereafter, to award a contract to the Contractor(s) offering the most favorable terms. Proposals submitted, therefore, should contain the Contractor's most favorable terms and conditions, as the selection and tentative award may be made without further discussion with any Contractor.

VCE reserves the right to accept or reject any and all submitted proposals, to waive minor irregularities, modify services, and to request additional information or revisions to offers, and to negotiate with any or all Contractors at any stage of the evaluation.

VCE will not make a final contract award unless it is approved by its Board of Directors.

VII. CONTRACTOR MINIMUM QUALIFICATIONS

The proposals submitted in response to this RFP shall be evaluated for award based on the following criteria and weighting.

Item	Criteria Description	Weighting
	Experience and Qualifications 1. Experience of firm 2. Resumes of staff designated to support this scope 3. CCA/Public Power/Energy experience	**40%**
	Compliance with VCE Sample Contract	**20%**
	Price	**40%**
	Total	**100%**

7.1 Proposal Submittal Requirements

1. Ten pages maximum submitted electronically. Executive Summary with brief description of company including Firm or individual name and contact information, including e-mail and website addresses, year organized, principals with the firm, types of work performed, number of employees.
2. Resumes of key staff that would work on VCE projects.
3. Information on any previous experience or services provided, including CCA experience.

4. Other factors or special considerations you feel would influence the selection of your proposal.
5. List of references and contact information.
6. Preliminary redlines to VCE Sample Contract (if any).

7.2 Miscellaneous

1. Additional Information

Scope of Services may be revised upon mutual agreement between the Contractor and VCE.

2. Ownership of Work Products

All notes, documents, and final products in all native formats (e.g., Word, Excel, PowerPoint, databases, handwritten notes) produced in the performance of this agreement shall be the property of VCE and shall not be shared with other entities without permission from VCE staff.

VIII. RFP Timeline

8.4 Instructions to Proposers

1. Time and Manner of Submission

The Proposal shall be submitted electronically to and received by VCE's office no later than 4:00 p.m. PDT on Friday, May 27, 2022.

Submit to:

Gordon Samuel, Assistant General Manager
Email: Gordon.Samuel@ValleyCleanEnergy.org
Use the subject line: "IRP Modeling Consulting Services"

- Each proposal shall include the full business legal name, DBA, and address and shall be signed by an authorized official of the company. The name of each person signing the proposal shall be typed or printed below the signature.
- All proposals submitted become the property of VCE.

2. Explanations to Proposers

All requests, questions or other communications regarding this RFP shall be made in writing to VCE via email **no later than 4:00 p.m. PDT on Friday, May 20, 2022. Address all communications to Gordon Samuel (Gordon.Samuel@ValleyCleanEnergy.org)**. To ensure that written requests are received and answered in a timely manner, email correspondence is required. An FAQ response document will be posted on VCE's RFP Website at https://valleycleanenergy.org/solicitations-rfp the week responses are due.

VCE will not be bound by any oral interpretation of the Request for Proposal, which may be made by any of its representatives or employees, unless such interpretations are subsequently issued in the form of an addendum to this Request for Proposal.

3. **Withdrawal or Modification of Proposals**
   Proposals may be modified or withdrawn only by an electronic request received by VCE prior to the Request for Proposal due date.

4. **Revisions and Supplements**
   Addenda: If it becomes necessary to revise or supplement any part of this Request for Proposal an addendum will be provided.

5. **Proposal Evaluation and Selection Process**
   The proposals submitted shall be evaluated for award based on the criteria described in the "Proposal Requirements" section of this RFP.

   VCE may request additional information from any or all Proposers after the initial evaluation of the proposals to clarify terms and conditions.

   Based on VCE's review of the proposals received, a "short listed" group of Proposers may be selected. The "short listed' firms may be required to make verbal presentations of their qualification to VCE. If a presentation is determined to be required, the presentation will be considered in the overall technical rating.

   The contract will be awarded to the best-qualified Proposer, after price and other factors have been considered, provided that the proposal is reasonable and is in the best interests of VCE to accept it.

   The right is reserved, as the interest of VCE may require, to reject any or all proposals and to waive any irregularity in the proposals received.

   Within fourteen (14) calendar days after notice of award, the successful Proposer shall deliver to VCE the required insurance certificates as per section 3.10 of the sample contract and the signed copies of the contract. The contract forms will be forwarded to the Proposer with the award notification.

6. **Duration of Contract**
   This contract shall be for one year, subject to approval by VCE's Board of Directors of the corresponding annual budget, unless otherwise mutually agreed upon in writing.

   The Budget is subject to the approval of VCE's Board of Directors.

7. **Qualifications of Proposers**
   VCE expressly reserves the right to reject any proposal if it determines that the business and technical organization, financial and other resources, or experience of the Proposer, compared to the work proposed justifies such rejection.

8. Proposal Preparation Costs

The costs of developing proposals are entirely the responsibility of the Proposer and shall not be charged in any manner to VCE.

9. Conflicts

If conflicts exist between the contract and the other elements of this Request for Proposal, the contract prevails. If conflict exists within the contract itself, the Terms and Conditions govern, followed by Scope of Services. If conflict exists between the contract and applicable Federal or State law, rule, regulation, order, or code; the law, rule, regulation, order, or code shall control. Varying levels of control between the Terms and Conditions, drawings and documents, laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement(s) shall control.

10. Manner and Time of Payment

Billing shall be submitted monthly with a detailed, itemized billing on a monthly basis in order to avoid any confusion of services provided.

11. Subcontractors

The Proposers must describe in their proposals the areas that they anticipate subcontracting to specialty firms. Identify the firms and describe how Proposer will manage these subcontracts.

Contractor will pay subcontractors in a timely manner.

Nothing contained in the Contract shall create any contractual relation between any subcontractor and VCE.

12. Notice Related to Proprietary/Confidential Data

Proposers are advised that the California Public Records Act (the “Act”, Government Code §§ 6250 et seq.) provides that any person may inspect or be provided a copy of any identifiable public record or document that is not exempted from disclosure by the express provisions of the Act. Each Proposer shall clearly identify any information within its submission that it intends to ask VCE to withhold as exempt under the Act. Any information contained in a Proposer’s submission which the Proposer believes qualifies for exemption from public disclosure as "proprietary” or “confidential” must be identified as such at the time of first submission of the Proposer’s response to this RFP. A failure to identify information contained in a Proposer’s submission to this RFP as "proprietary” or “confidential” shall constitute a waiver of Proposer’s right to object to the release of such information upon request under the Act. VCE favors full and open disclosure of all such records. VCE will not expend public funds defending claims for access to, inspection of, or to be provided copies of any such records.

13. Contract

VCE's standard contract (Attachment A – sample contract) is included in the Sample Contract section of this Request for Proposal. VCE may reject proposals that contain exceptions to the Terms and Conditions included in the sample contract.

5.5 Performance Requirements

Performance Requirements/Acceptance Criteria

a. All Milestones shall be completed in accordance with approved schedule.

b. Deliverable items must be complete, legible, comprehensible, and satisfy all requirements set forth in the scope of work.

5.6 Reference Documents

VCE will provide reference documents to aid in the preparation of RFP responses after execution of the non-disclosure agreement (NDA) – a sample NDA is attached as Attachment B.

5.7 Resource and Submittal Requirements

Contractor shall provide all resources required to complete the work described herein, including but not limited to skills, services, supervision, tools, documents, information, labor, materials, equipment, computing capability, transportation, and any other necessary item or expense to fulfill the work requirements.

ATTACHMENT A - SAMPLE CONTRACT

A SAMPLE CONTRACT IS ATTACHED HERETO.

SAMPLE CONTRACT INTENTIONALLY REMOVED

ATTACHMENT B – SAMPLE NON-DISCLOSURE AGREEMENT

A SAMPLE NON-DISCLOSURE AGREEMENT IS ATTACHED HERETO.

SAMPLE NON-DISCLOSURE AGREEMENT

INTENTIONALLY REMOVED

AGREEMENT BETWEEN THE VALLEY CLEAN ENERGY ALLIANCE AND FIRST PRINCIPLES ADVISORY, LLC FOR INTEGRATED RESOURCE PLANNING PORTFOLIO MODELING

THIS AGREEMENT, is entered into this 1st day of July 2022, by and between the VALLEY CLEAN ENERGY ALLIANCE, a Joint Powers Authority organized and operating under the laws of the State of California, with its principal place of business at 604 Second Street, Davis, California, 95616 ("VCE"), and First Principles Advisory, a LLC whose address is 1116 Sills Court #3, Capitola CA 95010 (hereinafter referred to as "Consultant") (collectively referred to as the "Parties" and individually as a "Party").

RECITALS:

A. VCE is an independent public agency duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq.*) ("Act") with the power to conduct its business and enter into agreements.

B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein.

C. VCE and Consultant desire to enter into an agreement for Integrated Resource Planning Portfolio Modeling upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

6. **TERM**

The term of this Agreement shall commence on July 1, 2022 and shall terminate on December 1, 2022, unless terminated earlier as set forth herein.

7. **SERVICES TO BE PERFORMED**

Consultant shall perform each and every service set forth in Exhibit "A" pursuant to the schedule of performance set forth in Exhibit "B," both of which are attached hereto and incorporated herein by this reference.

8. **COMPENSATION TO CONSULTANT**

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed Thirty-three thousand seven hundred and fifty dollars ($33,750.00) based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

9. **TIME IS OF THE ESSENCE**

Consultant and VCE agree that time is of the essence regarding the performance of this Agreement.

10. STANDARD OF CARE

Consultant agrees to perform all services required by this Agreement in a manner commensurate with the prevailing standards of specially trained professionals in the San Francisco Bay Area under similar circumstances and in a manner reasonably satisfactory to VCE and agrees that all services shall be performed by qualified and experienced personnel. Consultant shall be responsible to VCE for any errors or omissions in the performance of work pursuant to this Agreement. Should any errors caused by Consultant be found in such services or products, Consultant shall correct the errors at no additional charge to VCE by redoing the professional work and/or revising the work product(s) called for in the Scope of Services to eliminate the errors. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by VCE, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, VCE may deduct the cost of such correction from any retention amount held by VCE or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

11. INDEPENDENT PARTIES

VCE and Consultant intend that the relationship between them created by this Agreement is that of an independent contractor. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Consultant's services. None of the benefits provided by VCE to its employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available from VCE to Consultant, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Consultant. Payments of the above items, if required, are the responsibility of Consultant. Consultant shall indemnify and hold harmless VCE and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of VCE officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Consultant's personnel practices. VCE shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to VCE from Consultant as a result of Consultant's failure to promptly pay to VCE any reimbursement or indemnification arising under this section.

12. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF VCE

VCE is organized as a Joint Powers VCE in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members. VCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of VCE's constituent members in connection with this Agreement.

13. NON-DISCRIMINATION

In the performance of this Agreement, Consultant, and any subconsultant under the Consultant, shall not discriminate against any employee, subcontractor or applicant for

employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation, military or veteran status, or other basis prohibited by law, except as provided in Government Code section 12940. Consultant shall have responsibility for compliance with this Section.

14. HOLD HARMLESS AND INDEMNIFICATION

A. Intellectual Property Indemnification. Consultant hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights"), except as otherwise expressly provided by this Agreement. Consultant warrants that the services to be provided pursuant to this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall indemnify, defend, and hold Indemnitees, harmless from and against any Liabilities by a third party that the services to be provided pursuant to this Agreement infringe or violate any third-party's IP Rights, provided any such right is enforceable in the United States. Such costs and expenses shall include reasonable attorneys' fees of counsel of VCE's choice, expert fees and all other costs and fees of litigation.

B. The acceptance of the services by VCE shall not operate as a waiver of these rights of indemnification. The hold harmless and indemnification provisions of this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability.

C. Consultant's indemnifications and obligations under this section shall survive the expiration or termination of this Agreement.

15. INSURANCE

A. General Requirements. On or before the commencement of the term of this Agreement, Consultant shall furnish VCE with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements listed in Exhibit "D," which is attached hereto and incorporated herein by this reference. Such insurance and certificates, which do not limit Consultant's indemnification obligations under this Agreement, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to VCE by certified mail, Attention: Chief Executive Officer." Consultant shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to VCE and licensed to do insurance business in the State of California. Endorsements naming VCE as additional insured shall be submitted with the insurance certificates.

B. Subrogation Waiver. Consultant agrees that in the event of loss due to any of the perils for which he/she has agreed to provide comprehensive general and automotive liability insurance, Consultant shall look solely to his/her/its insurance for recovery. Consultant hereby grants to VCE, on behalf of any insurer providing comprehensive general and automotive liability

insurance to either Consultant or VCE with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of Consultant may acquire against VCE by virtue of the payment of any loss under such insurance.

C. Failure to secure or maintain insurance. If Consultant at any time during the term hereof should fail to secure or maintain the foregoing insurance, VCE shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. Additional Insured. VCE, its members, officers, employees and volunteers shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. Sufficiency of Insurance. The insurance limits required by VCE are not represented as being sufficient to protect Consultant. Consultant is advised to confer with Consultant's insurance broker to determine adequate coverage for Consultant.

F. Maximum Coverage and Limits. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be the minimum coverage and limits specified in this Agreement, or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

16. CONFLICT OF INTEREST

Consultant warrants that it, its officers, employees, associates and subcontractors, presently have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any way with the performance of this Agreement, and that it, its officers, employees, associates and subcontractors, will not employ any person having such an interest. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this Agreement, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the VCE Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this section into any subcontract that Consultant executes in connection with the performance of this Agreement. Consultant understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant to

make certain governmental decisions or serve in a staff VCE, as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

17. PROHIBITION AGAINST TRANSFERS

Consultant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of VCE. Any attempt to do so without such consent shall be null and void, and any assignee, sublessee, pledgee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Consultant from VCE under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to VCE by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Consultant is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

18. SUBCONTRACTOR APPROVAL

Unless prior written consent from VCE is obtained, only those persons and subcontractors whose names are attached to this Agreement shall be used in the performance of this Agreement.

In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance in substantial conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

Consultant agrees to include within their subcontract(s) with any and all subcontractors the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Consultant shall agree to be bound to Consultant and VCE in the same manner and to the same extent as Consultant is bound to VCE under this Agreement. Subcontractors shall agree to include these same provisions within any sub-subcontract. Consultant shall provide a copy of the Indemnity and Insurance provisions of this Agreement to any subcontractor. Consultant shall require all subcontractors to provide valid certificates of insurance and the required endorsements prior to commencement of any work and will provide proof of compliance to VCE.

19. REPORTS

A. Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by Consultant pursuant to or in connection with this Agreement, shall be the exclusive property of VCE. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to VCE the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall

become the property of VCE, and all publication rights are reserved to VCE. Consultant may retain a copy of any Report furnished to VCE pursuant to this Agreement.

B. All Reports prepared by Consultant may be used by VCE in execution or implementation of: (1) The original project for which Consultant was hired; (2) Completion of the original project by others; (3) Subsequent additions to the original project; and/or (4) Other VCE projects as VCE deems appropriate in its sole discretion.

C. Consultant shall, at such time and in such form as VCE may require, furnish reports concerning the status of services required under this Agreement.

D. All Reports shall also be provided in electronic format, both in the original file format (e.g., Microsoft Word) and in PDF format.

E. No Report, information or other data given to or prepared or assembled by Consultant pursuant to this Agreement that has not been publicly released shall be made available to any individual or organization by Consultant without prior approval by VCE.

F. VCE shall be the owner of and shall be entitled upon request to immediate possession of accurate reproducible copies of Reports or other pertinent data and information gathered or computed by Consultant prior to termination of this Agreement or upon completion of the work pursuant to this Agreement.

20. RECORDS

Consultant shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by VCE that relate to the performance of services under this Agreement, in sufficient detail to permit an evaluation of the services and costs. All such records shall be clearly identified and readily accessible. Consultant shall provide free access to such books and records to the representatives of VCE or its designees at all proper times, and gives VCE the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a minimum period of five (5) years after Consultant receives final payment from VCE for all services required under this agreement

21. PARTY REPRESENTATIVES

The Executive Officer ("VCE Representative") shall represent VCE in all matters pertaining to the services to be performed under this Agreement. James Himelic (Consultant Representative") shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

22. INFORMATION AND DOCUMENTS

A. Consultant covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Consultant or provided for

performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by VCE. VCE shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the VCE Representative or unless requested in writing by VCE's counsel, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within VCE. Response to a subpoena or court order shall not be considered "voluntary," provided Consultant gives VCE notice of such court order or subpoena.

B. Consultant shall promptly notify VCE should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within VCE. VCE may, but has no obligation to, represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with VCE and to provide VCE with the opportunity to review any response to discovery requests provided by Consultant. However, VCE's right to review any such response does not imply or mean the right by VCE to control, direct or rewrite the response.

C. In the event VCE gives Consultant written notice of a "litigation hold", then as to all data identified in such notice, Consultant shall, at no additional cost to VCE, isolate and preserve all such data pending receipt of further direction from VCE.

D. Consultant's covenants under this section shall survive the expiration or termination of this Agreement.

23. NOTICES

Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Consultant's and VCE's regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

TO VCE:
Valley Clean Energy Alliance
604 Second Street
Davis, CA 95616
Attention: Executive Officer

TO CONSULTANT:
James Himelic
First Principles Advisory, LLC
1116 Sills Court #3
Capitola, CA 95010

24. TERMINATION

In the event Consultant fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant shall be deemed in default in the performance of this Agreement. If Consultant fails to cure the default within the time specified (which shall be determined by VCE but shall be not less than 10 days) and according to the requirements set forth in VCE's written notice of default, and in addition to any other remedy available to VCE by law, the VCE Representative may terminate the Agreement by giving Consultant written notice thereof, which shall be effective immediately. The VCE Representative shall also have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) calendar days' prior written notice to Consultant as provided herein. Upon receipt of any notice of termination, Consultant shall immediately discontinue performance. If VCE shall fail to fulfill in a timely and proper manner its obligations under this Agreement, Consultant shall thereupon have the right to terminate this Agreement if such violation is not corrected within ten (10) days after submitting written notice to VCE. In the event of such termination, Consultant shall be entitled to receive just and equitable compensation, not to exceed the agreed amount for services provided before termination, for any satisfactory work completed on such documents and other materials prior to receipt of notice of default.

In the event of VCE's termination of this Agreement due to no fault or failure of performance by Consultant, VCE shall pay Consultant for services satisfactorily performed up to the effective date of termination. Upon termination, Consultant shall immediately deliver to VCE any and all copies of studies, sketches, drawings, computations, and other material or products, whether or not completed, prepared by Consultant or given to Consultant, in connection with this Agreement. Such materials shall become the property of VCE. Consultant shall have no other claim against VCE by reason of such termination, including any claim for compensation.

25. COMPLIANCE WITH LAWS

Consultant shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements which may, in any manner, affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Consultant shall, at all times, observe and comply with all such laws and regulations. VCE, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Consultant to comply with this paragraph.

Consultant represents and agrees that all personnel engaged by Consultant in performing services are and shall be fully qualified and are authorized or permitted under state and local law to perform such services. Consultant represents and warrants to VCE that it has all licenses, permits, certificates, qualifications, and approvals required by law to provide the services and work required to perform services under this Agreement, including a business license. Consultant further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

26. CONFLICT OF LAW

This Agreement shall be interpreted under, and enforced by the laws of the State of California. The Agreement and obligations of the Parties are subject to all valid laws, orders, rules,

and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the Superior Court of the County of Yolo, State of California.

27. **ADVERTISEMENT**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from VCE to do otherwise.

28. **WAIVER**

A waiver by VCE of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

29. **INTEGRATED CONTRACT**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by a written document signed by both VCE and Consultant.

30. **AUTHORITY**

The individual(s) executing this Agreement represent and warrant that they have the legal authority and authority to do so on behalf of their respective legal entities.

31. **INSERTED PROVISIONS**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either Party.

32. **CAPTIONS AND TERMS**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

33. **VCE'S RIGHTS TO EMPLOY OTHER CONSULTANTS**

VCE reserves the right to employ other consultants in connection with the subject matter of the Scope of Services.

34. **EXHIBITS**

The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Consultant's proposal, the provisions of this Agreement shall control.

35. **FORCE MAJEURE**

Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in VCE's reasonable judgment, that such failure was due to acts of God, pandemics, embargoes, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

36. **RESERVED**

37. **ATTORNEY FEES**

In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

38. **SEVERABILITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

39. **SUCCESSORS AND ASSIGNS**

The terms and conditions of this Agreement shall be binding on the successors and assigns of the Parties to this Agreement.

40. **NO THIRD PARTY BENEFICIARIES INTENDED**

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

41. **COUNTERPARTS; FACSIMILE/PDF/ELECTRONIC SIGNATURE**

This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument. The Parties agree that a

facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.

42. **DRAFTING PARTY**

This Agreement shall be construed without regard to the Party that drafted it. Any ambiguity shall not be interpreted against either Party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed as of the date set forth above.

RECOMMENDED FOR APPROVAL

FIRST PRINCIPLES ADVISORY LLC

By: _____
Name: James Himelic
Title: Founder
Date: 7/6/2022

VALLEY CLEAN ENERGY ALLIANCE
A Joint Powers Authority

By: _____
Name: Mitch Sears
Title: Executive Officer
Date: July 6, 2022

APPROVED AS TO FORM:

_____
Counsel for VCE

EXHIBIT A

SCOPE OF SERVICES

a) Aggregating VCE's Needs

First Principles will host a kick-off meeting to walk through the proposed project plan and the information it will require from VCE to provide an on time, high-quality set of final deliverables.

b) Understanding VCE's Values and Incorporating Them into the Model

For any portfolio optimization process to be successful, two requirements must be met: 1) a complete and accurate identification of the short- and long-term portfolio objectives and 2) the effective translation of these objectives into the appropriate model constraints. One of the key objectives of the ongoing meetings between VCE and First Principles will be to ensure that VCE's portfolio targets and goals are accurately represented in the models prior to optimizing the local portfolio(s).

c) Accounting for VCE Loads and Load Profiles

First Principles will work with VCE to ensure that all of the agency's load-related requests are appropriately accounted for when constructing the local portfolio(s). First Principles will utilize the default IEPR load forecasts assigned to VCE and, if applicable, coordinate with VCE's data analytics team to account for any custom load shapes.

d) Incorporating VCE Resources and Commitments

As a part of the ongoing meetings between First Principles and VCE, the firm will provide the agency with a data request template that outlines the contract information and portfolio constraints required for accurate and complete modeling runs and a successful submission of the IRP filing requirements.

e) Accommodating Centrally Mandated or IOU-Mandated Procurement

First Principles will work alongside VCE to fully account for the implications of the procurement orders recently issued by the CPUC. Given the large magnitude of scope for Commission orders D.19-11-016 and D.21-06-035, it's important that the modeling process accurately incorporates these orders. First Principles will define additional model constraints to capture VCE's allocated share of these orders and factor in any compliance-related procurement activity already taken by VCE.

f) Optimizing Resource Values and Developing a Preferred Portfolio

Resource evaluation and selection is a key phase in any IRP effort. By coupling its regional production cost models with its local portfolio optimization capabilities, First Principles is able

to present VCE with a robust set of portfolio options for a variety of scenarios. The firm will include supporting commentary that outlines the key trade-offs identified for each scenario evaluated.

g) Participating in CPUC IRP-Related Discussions

First Principles has been an active attendee in previous CPUC-led IRP workshops and plans to continue its participation in this meeting series for the 2022 cycle to stay informed on any changes enacted by the CPUC prior to final submission.

h) Documentation

First Principles recognizes the importance of good documentation. Thus, the firm will provide VCE with constructive documentation that outlines the key findings from the modeling along with the key assumptions defined for each scenario. First Principles will also provide VCE with completed versions of the Resource Data Template (RDT) and Clean System Power (CSP) tool along with a draft of the reliability section from the Narrative filing.

i) Administrative

First Principles anticipates that it will require 1-2 hours of VCE staff time per week. This time will be utilized to provide project status updates, communicate information requests, and discuss results.

EXHIBIT B

SCHEDULE OF PERFORMANCE

This schedule may be modified with the written approval of VCE.

Task	Begin	Complete
1. Project Kick-Off		July 2022
2. Data Request for VCE-related Portfolio Information		July 2022
1. Base Case Capacity Expansion Modeling Run for 1) an Aggregated System Target of 38 MMT of GHG Emissions in 2030 and 35 MMT in 2035 (the "30 MMT Portfolio") and 2) an Aggregated System Target of 30 MMT or Less in 2030 and 25 MMT in 2035 (the "25 MMT Portfolio")		August 2022
2. Base Case Production Cost Modeling Run for the 30 MMT Portfolio and the 25 MMT Portfolio		August 2022
3. Optimize a Preferred Conforming VCE Portfolio to apply to both the 30 MMT and 25 MMT Aggregated System Portfolios		September 2022
4. Deliver IRP Filing Requirements		No later than October 1, 2022

EXHIBIT C

COMPENSATION

VCE shall compensate Consultant for professional services in accordance with the terms and conditions of this Agreement based on the rates and compensation schedule set forth below. Compensation shall be calculated based on the hourly rates set forth below up to the not to exceed budget amount set forth below.

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit "A" and reimbursable expenses shall not exceed a total of thirty three thousand seven hundred and fifty dollars ($33,750), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to VCE unless previously approved in writing by VCE.

Task	Estimated Budget
1. Capacity Expansion Modeling	$10,000
2. Production Cost Modeling	$15,000
3. Local Portfolio Modeling	$5,000
4. CPUC IRP Filing Requirements	$3,750
Total	$33,750

Rates

Personnel	Title	Hourly
James Himelic	Founder	$225/hr

Invoices

Monthly Invoicing: In order to request payment, Consultant shall submit monthly invoices to VCE describing the services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, hours worked, task(s) for which work was performed). VCE shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth herein. VCE does not pay interest on past due amounts.

Reimbursable Expenses

Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. Travel expenses must be authorized in advance in writing by VCE.

Additional Services

Consultant shall provide additional services outside of the services identified in Exhibit A only by advance written authorization from VCE Representative prior to commencement of any additional services. Consultant shall submit, at the VCE Representative's request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

EXHIBIT D

INSURANCE REQUIREMENTS AND PROOF OF INSURANCE

Consultant shall maintain the following minimum insurance coverage:

A. **COVERAGE**:

(1) **Workers' Compensation**:
Statutory coverage as required by the State of California.

(2) **Liability**:
Commercial general liability coverage with minimum limits of $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury and property damage. ISO occurrence Form CG 0001 or equivalent is required.

(3) **Automotive**:
Comprehensive automotive liability coverage with minimum limits of $1,000,000 per
accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.

(4) **Professional Liability**
Professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least $1,000,000.

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2022- _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE RATIFYING AN AGREEMENT WITH FIRST PRINCIPLES ADVISORY, LLC FOR INTEGRATED RESOURCE PLANNING PORTFOLIO MODELING SERVICES

WHEREAS, the Valley Clean Energy Alliance ("VCE") was formed as a community choice aggregation agency ("CCA") on November 16, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions. The City of Winters, located in Yolo County, was added as a member of VCE and a party to the JPA in December of 2019; and,

WHEREAS, on May 5, 2022, a Request for Proposal (RFP) was released by VCE seeking proposals for Integrated Resource Planning (IRP) portfolio modeling services to assist in the two year update of the IRP to be submitted to the California Public Utilities Commission (CPUC); and,

WHEREAS, VCE staff reviewed and evaluated the RFP responses; and

WHEREAS, staff recommended to VCE's Executive Officer that VCE enter into an agreement with First Principles Advisory, LLC (FPA) to prepare portfolio modeling services; and,

WHEREAS, the Executive Officer signed the agreement with FPA effective July 1, 2022.

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

1. Ratifies VCE entering into a services agreement with First Principles Advisory, LLC to prepare portfolio modeling services for VCE's two year update of the Integrated Resource Plan, for an amount not to exceed $33,750 effective July 1, 2022 terminating December 1, 2022.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____ 2022 by the following vote:
AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Jesse Loren, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary
Attachment A: First Principles Advisory, LLC agreement

ATTACHMENT A

INTEGRATED RESOURCE PLAN PORTFOLIO MODELING SERVICES AGREEMENT WITH FIRST PRINCIPLES ADVISORY, LLC

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 16

To: Board of Directors

From: Mitch Sears, Executive Officer

Subject: Keyes & Fox – Fifth (5th) Amendment to Agreement extending contract and increase not to exceed amount

Date: July 14, 2022

RECOMMENDATION

Adopt a resolution authorizing the Executive Officer, in consultation with VCE Legal Counsel, to execute an amendment extending VCE's existing contract with Keyes & Fox LLP for regulatory compliance and advocacy legal services for 18 months and in an amount not to exceed $262,500.

BACKGROUND & DISCUSSION

The VCE Board has previously authorized the Executive Officer to execute a contract and subsequent contract extensions with Keyes & Fox LLP for legal services related to regulatory compliance and regulatory advocacy. The original contract expired December 31, 2018 with a not to exceed amount of $66,667. Subsequently, the following amendments were approved by the Board:

- Amendment 1: on January 23, 2019 (Resolution 2019-001) provided for a term starting January 1, 2019 expiring December 31, 2019 increasing the total amount not to exceed by an additional $142,600;
- Amendment 2: on February 13, 2020 (Resolution 2020-002) provided for a term starting January 1, 2020 expiring June 30, 2020 increasing the total amount not to exceed by an additional $88,300;
- Amendment 3: on June 11, 2020 (Resolution 2020-017) provided a term starting July 1, 2020 expiring June 30, 2021 increasing the total amount not to exceed by an additional $180,800;
- Amendment 4: on June 10, 2021 (Resolution 2021-013) provided a term starting July 1, 2021 expiring June 30, 2022 increasing the total amount not to exceed by an additional $177,000.
- Cumulatively, the Agreement to date (up to and including Amendment No. 4) provides that the total amount not to exceed is $655,367.

The Keyes & Fox contract provides the following scope of services: 1) determine and review regulatory compliance obligations, 2) support VCE staff as its expert regulatory resource and 3) review contracts between VCE and third parties.

In addition to services provided to VCE, Keyes & Fox provides regulatory counsel support to CalCCA and other CCA joint CPUC filings. Since a majority of VCE's advocacy in proceedings before regulators has been through CalCCA since program launch in 2018, the need for substantial amount of regulatory advocacy for VCE by Keyes & Fox is anticipated to be limited

at this time. However, VCE requires continued regulatory counsel support for CPUC filings and regulatory activities specific to VCE (e.g. Resource Adequacy filings, Integrated Resource Plan submissions, etc). The scope of Keyes & Fox work for VCE is similar to regulatory counsel work required by all individual CCA's.

The recommended Fifth Amendment will extend the Keyes & Fox contract eighteen (18) months covering the time period of July 1, 2022 through December 31, 2023 and increase the not to exceed amount by an additional $287,500, for a total cumulative amount not to exceed of $942,867. Accordingly, Exhibits A – Scope of Services, C – Schedule of Services, and D – Payment have been updated. All other provisions remain unchanged.

FISCAL IMPACT

The costs associated with the Keyes & Fox contract extension are accounted for in VCE's Calendar Year (CY) 2022 Budget and will be included in the proposed CY 2023 budget.

Costs for the Keyes & Fox contract extension is not to exceed $287,500 for the time period of July 1, 2022 through December 31, 2023 and is a time and materials-based agreement.

ATTACHMENTS

1. Resolution including the following exhibits:
    a. Fifth (5^{th}) Amendment
    b. Amended Exhibit A – Scope of Services
    c. Amended Exhibit C – Schedule of Services
    d. Amended Exhibit D - Payment

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2022- ____

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING FIFTH (5TH) AMENDMENT TO THE KEYES & FOX LLP AGREEMENT FOR REGULATORY COMPLIANCE AND ADVOCACY LEGAL SERVICES AND AUTHORIZING VCE'S EXECUTIVE OFFICER TO EXECUTE THE AMENDMENT

WHEREAS, the Valley Clean Energy Alliance ("VCE") was formed as a community choice aggregation agency ("CCA") on November 16, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions. The City of Winters, located in Yolo County, was added as a member of VCE and a party to the JPA in December of 2019; and,

WHEREAS, on June 26, 2018 an agreement was entered into between Valley Clean Energy and Keyes & Fox LLP to provide legal services related to regulatory compliance and regulatory advocacy in the amount not to exceed $66,667, expiring December 31, 2018; and

WHEREAS, Keyes & Fox LLP also provides regulatory counsel support to CalCCA and other Community Choice Aggregators on joint California Public Utilities Commission filings; and

WHEREAS, on January 23, 2019 Amendment One (1) to the Keyes & Fox LLP agreement was approved extending the term through December 31, 2019, refining the previous scope of services and budget for 2019, and increasing the total amount not to exceed by an additional $142,600; and,

WHEREAS, on February 13, 2020 Amendment Two (2) to the Keyes & Fox LLP agreement was approved extending the term through June 30, 2020 to align the contract from a calendar year to a fiscal year (July – June), increasing the total amount not to exceed by an additional $88,300, and updating the scope of work and budget consistent with the contract extension; and,

WHEREAS, on June 11, 2020 Amendment Three (3) to the Keys & Fox LLP agreement was approved extending the term through June 30, 2021, revising the scope of service, and increasing the total amount not to exceed by an additional $180,800; and,

WHEREAS, on June 30, 2021 Amendment Four (4) to the Keyes & Fox LLP agreement was approved extending the term through June 30, 2022, revising the scope of services, and increasing the total amount not to exceed by an additional $177,000; and,

WHEREAS, Amendment Five (5) extends the Agreement for eighteen (18) months to expire on December 31, 2023 to align with the Budget Calendar Year 2023, revises the scope of services, and increases the total amount not to exceed by an additional $287,500, or a total cumulative amount not to exceed of $942,867.

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

1. Authorizes the VCE Executive Officer, in consultation with VCE Legal General Counsel, to finalize, approve and execute on behalf of VCE the Fifth (5th) Amendment to the Keyes & Fox LLC Agreement for regulatory compliance and advocacy legal services attached hereto and incorporated herein extending agreement term for eighteen (18) months effective July 1, 2022 terminating December 31, 2023, and increasing the total amount not to exceed by an additional $287,500, for a total cumulative not to exceed amount of $942,867, and updating the Exhibits, as set forth in Attachment A – Fifth Amendment to Keys & Fox LLC Agreement.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____ 2022 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Jesse Loren, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

Attachment A: Fifth (5th) Amendment to Keyes & Fox LLC Agreement

ATTACHMENT A

FIFTH (5TH) AMENDMENT TO KEYES & FOX LLC AGREEMENT

FIFTH AMENDMENT

TO THE AGREEMENT FOR CONSULTANT SERVICES

BETWEEN

VALLEY CLEAN ENERGY ALLIANCE

AND

KEYES & FOX LLP

1. Parties and Date.

This Fifth Amendment to the Consultant Services Agreement ("5th Amendment"), is made and entered into as of this 1st day of July 2022, 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 Consultant, **Keyes & Fox LLP**, a Limited Liability Partnership, with its principal place of business at 580 California Street, 12th Floor, San Francisco, California 94104 ("K&F"). VCE and K&F are sometimes individually referred to as "Party" and collectively as "Parties."

Recitals.

1. On June 26, 2018 VCE and K&F entered into an "Agreement for Consultant Services," for the purpose of retaining K&F to provide services described in the Agreement. The Agreement was for a term starting May 1, 2018 expiring December 31, 2018 for a total amount not to exceed $66,667.

2. On January 23, 2019 the VCE Board of Directors ("Board") approved Resolution 2019-001 approving Amendment No. One to that Agreement, which provides for a term starting January 1, 2019 expiring December 31, 2019 increasing the total amount not to exceed by an additional $142,600; on February 13, 2020 the Board approved Resolution 2020-002 approving Amendment No. Two to that Agreement, which provides for a term starting January 1, 2020 expiring June 30, 2020 increasing the total amount not to exceed by an additional $88,300; on June 11, 2020, the Board approved Resolution 2020-017 approving Amendment No. Three to that Agreement, which provides for a term starting July 1, 2020 expiring June 30, 2021 increasing the total amount not to exceed by an additional $180,800; and, on June 10, 2021 the Board approved Resolution 2021-013 approving Amendment No. Four to that Agreement, which provides for a term starting July 1, 2021 expiring June 30, 2022 increasing the total amount not to exceed by an additional $177,000 (collectively referred to as "Agreement"). Cumulatively, the Agreement to date (up to and including Amendment No. 4) provides that the total amount not to exceed is $655,367.

3. VCE and K&F now desire to further amend the Agreement to extend the term by eighteen (18) months for an expiration date of December 31, 2023 and increase the not to exceed amount by an additional $287,500, for a total cumulative amount not to exceed of $942,867.

Now therefore, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, the Parties agree as follows:

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, which began on May 1, 2018 shall end on December 31, 2023, unless amendment as provided in this 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 an additional two hundred eighty-seven thousand five hundred and no/100 dollars ($287,500), or a total cumulative amount of nine hundred forty-two thousand eight hundred sixty-seven and no/100 dollars ($942,867) 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.

4. Except as amended by this Fifth Amendment, all other provisions of the Agreement will remain in full force and effect.

5. If any portion of this Fifth Amendment 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 FIFTH AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES BETWEEN VALLEY CLEAN ENERGY ALLIANCE AND KEYES & FOX LLP

IN WITNESS WHEREOF, the Parties have entered into this Fifth Amendment as of the ____ day of _____, 2022.

VALLEY CLEAN ENERGY ALLIANCE

By: _____
Mitch Sears
Executive Officer

KEYES & FOX LLP

By: _____

Its: Partner

Printed Name: Sheridan Pauker

APPROVED AS TO FORM:

By: _____
Inder Khalsa
VCE Attorney

EXHIBIT A

SCOPE OF SERVICES

Services Keyes & Fox LLP Will Provide
Task 1: Maintain a calendar of regulatory compliance filing obligations and deadlines and provide a weekly snapshot highlighting upcoming filing dates and responsibilities. The weekly snapshot includes CPUC, CAISO, CEC, CARB, and U.S. EIA compliance deliverables.
Task 2: Review compliance filings after they are prepared by SMUD to ensure they are complete and correct prior to filing. A compliance review will be conducted for the following filings: (1) 2020 RPS Compliance Report; (2) 2021 and 2022 RPS Procurement Plans; (3) D.19-11-016 and additional mid-term procurement compliance requirements and reporting; (4) 2022 IRP preparation; (5) Month-Ahead Resource Adequacy (RA) templates (12 templates total); (6) Monthly Load Migration Forecast (12 templates total); (7) Year-Ahead System, Local and Flexible RAR compliance showing (6 templates total); (8) Power Content Label Audit (October 2021); (9) Energy Storage Procurement Tier 2 Advice Letter (January 2022); (10) Emission Performance Standard Advice Letter (February 2022); (11) Supplier Diversity Report (March 2022); and (12) Annual report on vehicle-grid integration strategies pursuant to D.20-12-029 (March 2022). Once complete, K&F will submit the above-referenced filings and complete required service, as well as filing and serving the Annual Data Privacy Report (April 2022)[1] to appropriate regulatory authorities on behalf of VCE.
Task 3: Support VCE staff team as its expert regulatory resource by (i) monitoring key regulatory proceedings (initial list in Exhibit A), notifying VCE in a timely manner of issues arising in those proceedings that will critically impact VCE, and attending monthly Board Meetings to explain such issues, if necessary, and (ii) drafting monthly informational memos for the Board of Directors covering the key regulatory proceedings and additional proceedings that may have an impact on VCE's compliance obligations.
Task 4: Review contracts entered between VCE and SMUD and VCE and third parties. K&F understands many of the key contracts between VCE and SMUD have already been executed and that the need for additional contracting with SMUD and third parties will be limited, so K&F proposes setting aside a small portion of the total budget for this item. PPA negotiations will be billed to separate matters and are not included within this task.

[1] There is a 3-year audit due in April 2022, however, EQ/K&F's involvement would likely be restricted to filing/service only. This audit requires IT specialization that EQ/K&F does not have.

An initial list of the key regulatory proceedings at the California Public Utilities Commission discussed above is as follows:

Docket Number	Subject Matter
I.15-08-019	Investigation into PG&E Organization, Culture & Governance
R.16-02-007 and R.20-05-003	Integrated Resource Planning Rulemakings
R.17-06-026	Power Charge Indifference Adjustment Rulemaking
R.20-11-003	Ensuring Summer 2021 Reliability Rulemaking
R.11-05-005, R.15-02-020, and R.18-07-003	RPS Rulemakings
A.19-11-019	PG&E 2020 Phase II GRC
A.21-06-021	PG&E Test Year 2023 Phase I GRC
A.XX-XX-XXX	PG&E 2023 Phase II GRC *(filing date TBD)*
R.19-03-009	Direct Access Rulemaking
R.19-07-017 and R.21-03-001	Wildfire Fund Non-Bypassable Charge (AB 1054) Rulemakings
R.19-11-009, R.21-10-002 and R23-XX-XXX	Resource Adequacy Rulemakings (2021-2022, 2023-2024, and 2025-2026 or equivalent)
A.20-06-011	PG&E Regionalization Application
A.22-05-XXX and A.23-05-XXX	PG&E Energy Resource and Recovery Account Forecast Proceeding (2023-2024)
A.20-02-009, A.22-02-015, and A.23-02-XXX	PG&E Energy Resource and Recovery Account Compliance Proceeding (2019-2022)
R.21-03-011	Provider of Last Resort Rulemaking
R.21-10-001	Safety Culture Assessments
A.20-10-011	RTP Pilot
R.18-12-006	Transportation Electrification
R.19-01-011	Building Decarbonization OIR
A.22-05-002 et al	PG&E DR Programs, Pilots, and Budgets for 2023-2027
R.19-09-009	Microgrids OIR

Note re Regulatory Advocacy: Since the vast majority of VCE's advocacy in proceedings before regulators is anticipated to be through CalCCA and others during 2022-23, the need for drafting of motions for party status, pleadings, discovery requests or responses thereto, comments related to compliance filings, or Advice Letters; conducting significant legal or policy research; reviewing or providing feedback to VCE on CalCCA or other CCA joint filings; attending CalCCA-related calls other than the monthly regulatory call; or attending hearings, workshops or meetings with regulators is anticipated to be very limited at this time. To the extent VCE requires such work, that work, and any associated expenses, travel, and time spent filing and serving documents, shall be considered "Extra Work" pursuant to Section 4.5 of this Agreement and invoiced at the hourly rates listed in Exhibit D.

EXHIBIT C

SCHEDULE OF SERVICES

The scope of this contract commences on July 1, 2022 and terminates December 31, 2023. The schedule may be extended by mutual agreement in writing by both parties.

EXHIBIT D

PAYMENT

Subject to adjustments necessary for the do-not-exceed levels related to Tasks 1-4 ("Do-Not-Exceed") below, all work in 2022 will be performed at the hourly billing rates set forth below as "Keyes & Fox LLP 2022 Hourly Rates". Historically, rate increases have been between 5-8% per year. Work performed in 2023 will be at the Keyes & Fox and EQ Research 2023 hourly rates, which will be provided to VCE in late 2022.

Keyes & Fox LLP ("K&F") will invoice Valley Clean Energy Alliance ("VCE") monthly. K&F will keep an hourly total of any time spent on VCE matters. K&F invoices will list the matter worked on and provide information on the dates of service, time involved, attorney or other personnel responsible and activity undertaken. Any unpaid amounts after forty-five (45) days will accrue interest at a rate of nine percent (9%) per annum. All fees for services will be earned as of the time of invoicing.

Expenses, travel time, and time for filing and service are included in the fee structure outlined below unless they are associated with "Extra Work" pursuant to Section 4.5 of this Agreement and, in that case, will be billed at cost (for expenses) or at the billable rates below (for time spent travelling, filing and serving).

Services Keyes & Fox LLP Will Provide	Fee Structure
Task 1: Maintain a calendar of regulatory compliance filing obligations and deadlines and provide a weekly snapshot highlighting upcoming filing dates and responsibilities. The weekly snapshot includes CPUC, CAISO, CEC, CARB, and U.S. EIA compliance deliverables.	Billed hourly with a Do-Not-Exceed of $7,500
Task 2: Review compliance filings to ensure they are complete and correct prior to filing. A compliance review will be conducted for the following filings: (1) 2021 and 2022 RPS Compliance Reports; (2) Draft and Final 2022 and 2023 RPS Procurement Plans; (3) D.19-11-016, D.20-12-044, D.21-06-035, and additional reliability procurement compliance requirements and reporting; (4) 2022 IRP development, drafting, legal review and filing; (5) Month-Ahead Resource Adequacy (RA) templates (18 templates total); (6) Monthly Load Migration Forecast (18 templates total); (7) Year-Ahead System, Local and Flexible RAR compliance showing (9 templates total); (8) Power Content Label Review (October 2022, October 2023); (9) Energy Storage Procurement Tier 2 Advice Letter (January 2023); (10) Emission Performance Standard Advice Letter (February 2023); (11) Supplier Diversity Report (March 2023); (12) Annual report on vehicle-grid integration strategies pursuant to D.20-12-029 (March 2023), (13) Annual Data Privacy Report (April 2023), (14) SB 255/GO 156 Supplier Diversity Report (March 2023), (15) 2022 Integrated Energy Policy Report Electricity Resource Planning Forms (September 2022), (16) 2023 Integrated Energy Policy Report Electricity Resource Planning Forms (September 2023) and Demand Forecast Forms (June 2023). Once complete, K&F will submit the above-referenced filings and complete required service to appropriate regulatory authorities on behalf of VCE.	Billed hourly with a Do-Not-Exceed of $163,000

Services Keyes & Fox LLP Will Provide	Fee Structure
Task 3: Support VCE staff team as its expert regulatory resource by (i) monitoring key regulatory proceedings (initial list in Exhibit A), notifying VCE in a timely manner of issues arising in those proceedings that will critically impact VCE, and attending monthly Board Meetings to explain such issues, if necessary, and (ii) drafting monthly informational memos for the Board of Directors covering the key regulatory proceedings and additional proceedings that may have an impact on VCE's compliance obligations.	Billed hourly with an annual Do-Not-Exceed of $100,000
Task 4: Review contracts entered between VCE and third parties. PPA negotiations will be billed to separate matters and are not included within this task.	Billed hourly with a Do-Not-Exceed of $17,000

Note re Regulatory Advocacy: Since the vast majority of VCE's advocacy in proceedings before regulators is anticipated to be through CalCCA and others, the need for drafting of motions for party status, pleadings, discovery requests or responses thereto, comments related to compliance filings, or Advice Letters; conducting significant legal or policy research; reviewing or providing feedback to VCE on CalCCA or other CCA joint filings; attending CalCCA-related calls other than the monthly regulatory call; or attending hearings, workshops or meetings with regulators is anticipated to be very limited at this time. To the extent VCE requires such work, that work, and any associated expenses, travel, and time spent filing and serving documents, shall be considered "Extra Work" pursuant to Section 4.5 of this Agreement and invoiced at the hourly rates listed herein.

K&F and VCE will review the Do-Not-Exceed amounts set forth above upon a request from either VCE or K&F for such a review. Any changes to the Do-Not-Exceed amounts resulting from such review shall not affect the amount of any fees already earned.

Keyes & Fox LLP 2022 Hourly Rate Sheet

Attorneys

Kevin Fox, Partner	445
Sheridan Pauker, Partner	395/420+
Tim Lindl, Partner	385
Mark Valentine, Partner	350
Jake Schlesinger, Partner	340
Scott Dunbar, Partner	305
Beren Argetsinger, Partner	285
Ann Springgate, Of Counsel	350
Caryn Lai, Counsel	380
Nikhil Vijaykar, Associate	315
Julia Kantor, Associate	280
Lee Ewing, Associate	260

Non-Attorneys

Justin Barnes	190/280*
Miriam Makhyoun	210/255*
Jason Hoyle	170
Blake Elder	170
Alicia Zaloga	120

+ Rates with a plus sign are transactional/compliance rates
* Rates with an asterisk are expert witness rates

Travel Policy: Unless special arrangements are made, travel time is billed at the full hourly rate. Every effort will made to work productively on PCE matters during travel. If work is performed for another client during travel, PCE will not be billed for that time. All reasonable travel expenses are billable – hotel, airfare, car rental, meals, taxi, public transit, etc.

Work Policy: Reasonable time for filing and service is billed at regular billable rates.

Miscellaneous Expenses Policy: Expenses for postage, photocopying, printing, faxing and other minor expenses directly related to a matter are billable at cost to PCE.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 17

TO: Board of Directors

FROM: Edward Burnham, Director of Finance & Internal Operations
Mitch Sears, Executive Officer

SUBJECT: Adopt VCE Debt Policy

DATE: July 14, 2022

RECOMMENDATION
Adopt a resolution approving a Debt Policy for VCE.

BACKGROUND AND ANALYSIS
In order to achieve its strategic goals, VCE must maintain liquidity for day-to-day operations. VCE's ability to access capital markets to fund short-term and long-term objectives remains a fundamental role in financial stability.

The California Legislature created the California Debt and Investment Advisory Commission (CDIAC) in 1981 for the primary purpose of collecting, maintaining, and providing comprehensive information on all State and local debt obligations. The statutes, particularly California Government Code sections 8855(i) and 8855(j) provide a framework and authority for this work.

Effective January 1, 2017, the CDIAC requires that issuers of government debt recognize their responsibility to maintain fiscally prudent policies. Adoption of this type of policy will help formalize VCE's current fiscal practices that are designed to maintain a sound financial position with sufficient flexibility to respond to changes in future service priorities, revenue levels, and operating expenses in order to protect both current and future VCE customers.

The attached policy is intended to comply with these CDIAC recommendations and may be amended by the Board of Directors, from time to time, as necessary.

CONCLUSION
Staff recommends that the Board adopt the attached Debt Policy.

Attachments
1. VCE Debt Policy
2. Resolution 2022-XXX

VALLEY CLEAN ENERGY ALLIANCE

DEBT POLICY

I. Purpose

The purpose of this Debt Policy (the "Debt Policy") is to establish comprehensive guidelines for the issuance and management of debt (herein referred as "Debt") issued by the Valley Clean Energy Alliance (the "Issuer"). This Debt Policy is intended to help ensure that: (i) the Issuer, the governing body of the Issuer (the "Board of Directors" or the "Board"), and Issuer management and staff adhere to sound debt issuance and management practices; (ii) the Issuer achieves the most advantageous cost of capital within prudent risk parameters; (iii) the Issuer preserves future financial flexibility; and (iii) the Issuer preserves and enhances the credit ratings assigned to its debt.

II. Scope of Debt Policy

This Debt Policy shall provide guidance for the issuance and management of bonds and other forms of indebtedness of the Issuer, together with any credit, liquidity and other ancillary instruments and agreements secured or executed in connection with such transactions. While adherence to this Debt Policy is recommended in applicable circumstances, the Issuer recognizes that changes in the capital markets, Issuer programs and other unforeseen circumstances may produce situations that are not covered by the Debt Policy or require modifications or exceptions to achieve Debt Policy goals. In these cases, management flexibility is appropriate, provided specific authorization from the Board is obtained. The Issuer may approve Debt and other related agreements the terms or provisions of which deviate from this Debt Policy, upon the recommendation and approval of the Director of Finance of the Issuer (the "Director of Finance") as circumstances warrant. The failure by the Issuer to comply with any provision of this Debt Policy shall not affect the validity of any Debt that is otherwise duly authorized and executed.

The Director of Finance is the designated administrator of the Debt Policy. The Director of Finance has the day-to-day responsibility and authority for structuring, implementing and managing the Issuer's debt and financing program. The Debt Policy requires that each debt issuance be specifically authorized by the Board of Directors.

III. Legal Authority; Compliance with Laws, Resolutions, Debt Documents and Contracts

A) Legal Authority

The Issuer has exclusive authority to plan and issue Debt for Issuer related purposes, subject to approval by the Board of Directors.

B) Compliance with Law

All Debt of the Issuer shall be issued in accordance with applicable Federal and State laws, rules and regulations, including without limitation the Internal Revenue Code of 1986 (the "Code") with respect to the issuance of tax-exempt Debt, the Securities Act of 1933 and the Securities Exchange Act of 1934, in each case as supplemented and amended, and regulations promulgated pursuant to such laws.

C) Compliance with Issuer Resolutions and Debt Documents

Debt of the Issuer shall be issued in accordance with applicable resolutions and debt documents of the Issuer, in each case as supplemented and amended.

D) Compliance with Other Agreements

Debt of the Issuer shall be issued in compliance with any other agreements of the Issuer with credit or liquidity providers, bond insurers or other third parties.

E) Compliance with SB 1029

This Debt Policy complies with California Senate Bill 1029 (2016). As amended by Senate Bill 1029, California Government Code Section 8855(i) requires issuers to adopt debt policies addressing each of the five items below:

1) *The purposes for which the debt proceeds may be used.*

Section V (Purposes for Debt) and Section VI (Types of and Limitations on Debt) address the purposes for which debt proceeds may be used.

2) *The types of debt that may be issued.*

Section VI (Types of and Limitations on Debt) provides information regarding the types of debt that may be issued.

3) *The relationship of the debt to, and integration with, the issuer's capital improvement program or budget, if applicable.*

Section XV (Budgeting and Capital Planning) provides information regarding the relationship between the Issuer's debt and budgeting process, including its budgeting process for capital expenditures.

4) *Policy goals related to the issuer's planning goals and objectives.*

As described in Section I (Purpose), Section XVI (Credit Rating Objectives), Section XVII (Debt Affordability), and other sections, this Policy has been adopted to assist with the Issuer's goals of adhering to sound debt issuance and management practices, achieving the most advantageous cost of capital within prudent risk parameters,

preserving future financial flexibility, and preserving and enhancing the credit ratings assigned to its debt.

5) *The internal control procedures that the issuer has implemented, or will implement, to ensure that the proceeds of the proposed debt issuance will be directed to the intended use.*

Section IVA.6 (Administration of Debt Policy) provides information regarding the Issuer's internal control procedures designed to ensure that the proceeds of its debt issues are spent as intended.

IV. Administration of Debt Policy

A) Issuer

The Issuer shall be responsible for:

1) Approval of the issuance of all Debt and the terms and provisions thereof;

2) Appointment of municipal advisors, bond counsel, disclosure counsel, Issuer consultants, underwriters, feasibility consultants, trustee and other professionals retained in connection with the issuance of Debt;

3) Approval of this Debt Policy and any supplements or amendments;

4) Periodic approval of the Issuer's expenditure plans;

5) Periodic approval of proposed Issuer annual and supplemental budgets for submission to the Board of Directors, including without limitation provisions for the timely payment of principal of and interest on all Debt; and

6) Maintaining internal control procedures with respect to Debt proceeds. Debt proceeds will be held either by a third-party trustee, which will disburse such proceeds to the Issuer upon the submission of one or more written requisitions, or by the Issuer to be held and accounted for in a separate fund or account, the expenditure of which will be carefully documented by the Issuer.

B) Director of Finance

The Director of Finance shall have responsibility and authority for the structure, issuance and management of the Issuer's Debt and financing programs. These responsibilities shall include, but not be limited to, the following:

1) Determining the appropriate structure and terms for all proposed debt transactions;

2) Undertaking to issue Debt at the most advantageous interest and other costs consistent with prudent levels of risk;

3) Ensuring compliance of any proposed Debt with any applicable additional debt limitations under State law, or the Issuer's Debt Policy, resolutions and debt documents;

4) Seeking approval from the Board of Directors for the issuance of Debt or other debt obligations;

5) Coordinating with other public agencies in connection with necessary approvals associated with Debt issuance;

6) Recommending to the Board of Directors the manner of sale of any Debt or other debt transactions;

7) Monitoring opportunities to refund outstanding Debt to achieve debt service savings, and recommending such refunding to the Board, as appropriate;

8) Providing for and participating in the preparation and review of all legal and disclosure documents in connection with the issuance of any Debt by the Issuer;

9) Recommending the appointment of municipal advisors, bond counsel, disclosure counsel, Issuer consultants, underwriters, feasibility consultants and other professionals retained in connection with the Issuer's debt issuance as necessary or appropriate;

10) Distributing information regarding the business operations and financial condition of the Issuer to appropriate bodies on a timely basis in compliance with any applicable continuing disclosure requirements;

11) Communicating regularly with the rating agencies, bond insurers, investment providers, institutional investors and other market participants related to the Issuer's Debt; and

12) Maintaining a database with summary information regarding all of the Issuer's outstanding Debt and other debt obligations.

C) Procedures for Approval of Debt

Any proposed issuance of Debt by the Issuer shall be submitted to and subject to authorization and approval by the Board of Directors.

D) Considerations in Approving Issuance of Debt

The Issuer may take into consideration any or all of the following factors, as appropriate, prior to approving the proposed issuance of Debt:

1) Whether the proposed issuance complies with this Debt Policy;

2) Source(s) of payment and security for the Debt;

3) Projected revenues and other benefits from the projects proposed to be funded;

4) Projected operating costs and other costs related to the proposed projects;

5) Impacts, if any, on Issuer and Debt credit ratings;

6) Period, if any, over which interest on the Debt should be capitalized;

7) Extent to which debt service on the Debt should be level or non-level;

8) Appropriate lien priority of the Debt; and

9) Adequacy of the proposed disclosure document.

V. Purposes for Debt

The Issuer may issue Debt for the purposes of financing and refinancing the costs of capital projects undertaken by the Issuer. The Issuer may also issue Debt for working capital purposes/startup related costs and expenses and to pay other extraordinary unfunded costs, including, but not limited to, termination or other similar payments due in connection with interest rate swaps (if any) and investment agreements entered into in connection with Debt. Proceeds of Debt may be applied to pay costs of issuance, to fund capitalized interest and debt service reserves and to pay costs incurred in connection with securing credit enhancement, including, but not limited to, premiums payable for bond insurance and reserve fund sureties.

A) New Money Debt

New money issues are typically those financings that generate additional funding to be available for expenditure on capital projects. New money proceeds may not be used to fund non-capital operational activities other than working capital or startup related costs. Working capital or startup related costs may be financed by short term Debt, as provided in Section VI.B.

B) Refunding Debt

The Issuer may issue Debt to refund the principal of and interest on outstanding Debt of the Issuer in order to (i) achieve debt service savings; (ii) restructure scheduled debt service; (iii) convert from or to a variable or fixed interest rate structure; (iv) change or modify the source or sources of payment and security for the refunded Debt; or (v) modify covenants otherwise binding upon the Issuer. Refunding Debt may be issued either on a current or advance basis, as permitted by applicable Federal tax laws. The Issuer may also utilize a tender offer process to refund Debt that is not otherwise subject to optional call by the Issuer.

Refunding Debt should be issued to achieve debt service savings in most cases. Refundings which do not produce savings are permitted if justified based on the need for restructuring to remove covenants/pledges that are restrictive and/or no longer required by the market and/or to make other changes in debt documents that would benefit the current, short-term, or long term capital cost of the Issuer.

VI. Types of and Limitations on Debt

A) Long-Term Debt

The Issuer may issue Debt with longer-term maturities to amortize Issuer capital or other costs over a period commensurate with the expected life, use or benefit provided by the project, program or facilities financed from such Debt. Long-term Debt will generally have a final maturity of five (5) years or more. Long-term debt is appropriate for financing essential capital projects and certain capital equipment where the project being financed will provide benefit over multiple years and the Issuer considers the project to be of vital, time-sensitive need and there are no plausible alternative financing sources after considering other alternatives, such as pay-as-you-go funding or existing funds on hand.

B) Short-Term Debt

The Issuer may issue Debt with shorter-term maturities to provide interim funding for capital projects and expenditures that will ultimately be funded from another source such as a grant, a long-term Debt issue, or the receipt of Federal or State grants, other revenues, and/or for cash flow management (including but not limited to working capital or startup related costs). Short-term Debt generally shall consist of Debt of an issue with a final maturity of five (5) years or less and may include, but is not limited to, Debt in the form of Tax and Revenue Anticipation Notes, Bond Anticipation Notes, Grant Anticipation Notes, and/or Commercial Paper.

C) Power Revenue Debt

If and to the extent authorized in accordance with applicable provisions of State law, the Issuer may issue Debt payable in whole or in part from power revenues. It is expected that power revenue debt will represent the principal form of Debt of the Issuer.

D) Other Revenue Debt

If and to the extent authorized in accordance with applicable provisions of State law, the Issuer may issue Debt payable in whole or in part from other types of revenues.

E) Other Federally Supported Programs

The Issuer may also participate in federal loans administered or provided by the United States as well as federally subsidized taxable and tax-exempt bond programs, and may secure credit enhancement and/or credit support provided under Federal programs, provided such loans, bonds or programs provide an attractive funding cost or other desirable features such as, but not limited to, deep subordination of the repayment obligation, an unusually long repayment term, or no payment due until a certain period after substantial project completion.

F) Fixed-Rate Debt

The Issuer may issue Debt that bears a fixed-rate rate of interest.

G) Variable Rate Debt

The Issuer may also issue Debt that bears a variable rate of interest, including, but not limited to, variable rate demand obligations, commercial paper and floating rate notes.

VII. Terms and Provisions of Debt

A) Debt Service Structure

The Issuer shall design the financing schedule and repayment of debt so as to take best advantage of market conditions, provide flexibility and, as practical, to recapture or maximize its debt capacity for future use. Annual debt service payments will generally be structured on a level basis; however, principal amortization may occur more quickly or slowly where permissible, to mirror debt repayment streams and/or provide future financing flexibility.

B) Amortization of Principal

Long-term Debt of the Issuer shall be issued with maturities that amortize the principal of such Debt over a period commensurate with the expected life, use or benefit (measured in years) provided by the projects, programs and/or facilities financed from the proceeds of such Debt. The weighted average maturity of such Debt (if issued as tax-exempt Debt) should not exceed one hundred and twenty percent (120%) of the reasonably estimated weighted average life, use or benefit (measured in years) of the projects, programs and/or facilities financed from the proceeds of such Debt.

Amortization of principal may be achieved either through serial maturities and/or through term Debt subject to mandatory sinking fund payments and/or optional redemptions.

C) Capitalized Interest

The Issuer may fund interest on Debt from proceeds of Debt for legal, budgeting or structuring purposes.

D) Call Provisions for Debt

1) Optional Call Provisions. The Issuer shall seek to include the shortest practicable optional call rights, with and/or without a call premium, consistent with optimal pricing of such Debt. Call premiums, if any, should not be in excess of then prevailing market standards and to the extent consistent with the most advantageous borrowing cost for the Issuer. Non-callable maturities may be considered and used to accommodate market requirements or other advantageous benefits to the Issuer.

2) Extraordinary Call Provisions. The Issuer, at its option, may include extraordinary call provisions, including for example with respect to unspent proceeds, damage to or destruction of the project or facilities financed, or other matters, as the Issuer may determine is necessary or desirable.

E) Payment of Interest

1) Current Interest Debt may be issued. It is anticipated that the interest on most, if not all, Debt issued will be paid on a current interest basis.

2) Deferred Interest Debt may also be issued. Debt of the Issuer may be issued with the payment of actual or effective interest deferred in whole or in part to the maturity or redemption date of each debt instrument, or the conversion of such debt instrument to a current interest-paying debt instrument (known, respectively, as capital appreciation bonds, zero coupon bonds and convertible capital appreciation bonds). Deferred Interest Debt may be issued to achieve optimal sizing, debt service structuring, pricing or other purposes.

F) Determination of Variable Interest Rates on Debt

The interest rate from time to time on Debt the interest of which is not fixed to maturity may be determined in such manner that the Issuer determines, including without limitation on a daily, weekly, monthly or other periodic basis, by reference to an index, prevailing market rates or other measures, and by or through an auction or other method.

G) Tender Options on Debt

The Issuer may issue Debt subject to the right or obligation of the holder to tender the Debt back to the Issuer for purchase, including, for example, to enable the holder to liquidate their position, or upon the occurrence of specified credit events, interest rate mode changes or other circumstances. The obligation of the Issuer to make payments to the holder upon any such tender may be secured by (i) a credit or liquidity facility from a financial institution in an amount at least equal to the principal amount of the Debt subject to tender, (ii) a liquidity or similar account into which the Issuer shall deposit and maintain an amount at least equal to the principal amount of the Debt subject to tender, or (iii) other means of self-liquidity that the Issuer deems prudent.

H) Multi-Modal Debt

The Issuer may issue Debt that may be converted between two or more interest rate modes without the necessity of a refunding. Such interest rate modes may include, without limitation: daily interest rates, weekly interest rates, other periodically variable interest rates, commercial paper rates, auction rates, fixed rates for a term and fixed rates to maturity (in each case with or without tender options).

I) Debt Service Reserve Funds

The Issuer may issue Debt that is secured by amounts on deposit in or credited to a debt service reserve fund or account in order to minimize the net cost of borrowing and/or to provide additional reserves for debt service or other purposes. Debt service reserve funds may secure one or more issues of Debt, and may be funded by proceeds of Debt, other available moneys of the Issuer, and/or by surety policies, letters or lines of credit or other similar instruments. Surety policies, letters or lines of credit or other similar instruments may be substituted for amounts on deposit in a debt service reserve fund if such amounts are needed for capital projects or other purposes.

Amounts in the debt service reserve funds shall be invested in accordance with the requirements of the applicable Debt documents in order to (i) maximize the rate of return on such amounts; (ii) minimize the risk of loss; (iii) minimize volatility in the value of such investments; and (iv) maximize liquidity so that such amounts will be available if it is necessary to draw upon them.

J) Lien Levels

The Issuer may create senior and junior lien pledges, as well as pledges at various lien priority levels, for each fund source which secures Debt repayment in order to optimize financing capacity.

VIII. Maintenance of Liquidity; Reserves

The Issuer may maintain unencumbered reserves in amounts sufficient in the determination of the Issuer to cover unexpected revenue losses, extraordinary payments and other contingencies, and to provide liquidity in connection with the Issuer's outstanding Debt.

IX. Investment of Debt Proceeds and Related Moneys

Proceeds of Debt and amounts in the Issuer's debt service, project fund and debt service reserve funds with respect to outstanding Debt shall be invested in accordance with the terms of the applicable Debt documents and other applicable agreements of the Issuer.

X. Third Party Credit Enhancement

The Issuer may secure credit enhancement for its Debt from third-party credit providers to the extent such credit enhancement is available upon reasonable, competitive and cost-effective terms. Such credit enhancement may include municipal bond insurance ("Bond Insurance"), letters of credit and lines of credit (collectively and individually, "Credit Facilities"), as well as other similar instruments.

A) Bond Insurance

All or any portion of an issue of Debt may be secured by Bond Insurance provided by municipal bond insurers ("Bond Insurers") if it is economically advantageous to do so, or if it is otherwise deemed necessary or desirable in connection with a particular issue of Debt. The relative cost or benefit of Bond Insurance may be determined by comparing the amount of the Bond Insurance premium to the present value of the estimated interest savings to be derived as a result of the insurance.

B) Credit Facilities

The issuance of certain types of Debt requires a letter of credit or line of credit (a "Credit Facility") from a commercial bank or other qualified financial institution to provide liquidity and/or credit support. The types of Debt where a Credit Facility may be necessary include commercial paper, variable rate Debt with a tender option and Debt that could not receive an investment grade credit rating in the absence of such a facility.

The criteria for selection of a Credit Facility provider shall include the following:

1) Long-term ratings from at least two nationally recognized credit rating agencies ("Rating Agencies") preferably to be equal to or better than those of the Issuer, if any;

2) Short-term ratings as appropriate for the type of Debt being issued;

3) Experience providing such facilities to state and local government issuers;

4) Fees, including without limitation initial and ongoing costs of the Credit Facility; draw, transfer and related fees; counsel fees; termination fees and any trading differential; and

5) Willingness to agree to the terms and conditions proposed or required by the Issuer.

XI. Use of Derivatives

Derivative products include but are not limited to interest rate swaps, interest rates caps and collars and forward or other hedging agreements. Derivative products will be considered in the issuance or management of debt only in instances where it has been demonstrated that the derivative product will either provide a hedge that reduces risk of fluctuations in expense or revenue, or, alternatively, where it will reduce total debt service cost in a manner that exceed the risks. Derivative products will only be utilized following the adoption of derivative product policy and with prior Board approval. In addition, an analysis of early termination costs and other conditional terms must be completed by the Issuer's municipal advisor prior to the approval of any derivative product by the Board. Such analysis will document the risks and benefits associated with the use of the particular derivative product.

XII. Methods of Sale and Pricing of Debt

There are three principal methods for the sale of Debt: (i) competitive; (ii) negotiated and (iii) private placement. In addition, Debt may be incurred as a direct loan. The Issuer shall utilize the method of sale that (a) is reasonably expected to produce the most advantageous interest cost with respect to the Debt and (b) provides the Issuer with the flexibility most desirable in connection with the structuring, timing or terms of such Debt. The Issuer shall utilize such method that is likely to provide the most advantageous borrowing costs and execution on behalf of the Issuer.

Debt may be sold at such prices, including at par, a premium or a discount, as the Issuer, in consultation with its municipal advisor, may determine is likely to produce the most advantageous interest cost under then prevailing market conditions, subject to compliance with applicable State law and Federal securities laws.

A) Competitive Sale

The competitive method of sale is appropriate when:

1) Bond prices are stable and/or there is strong demand for the bonds;

2) Market timing and interest rate sensitivity are not critical to the pricing;

3) Issuer has a strong credit rating and is well known to investors;

4) The Issuer has straightforward political and organizational structure, and the project, funding, and credit quality are easy to understand and market to potential investors; and

5) The Debt type and structure are conventional and the transaction size is manageable.

B) Negotiated Sale

A negotiated sale is appropriate when:

1) There is market volatility and/or weak demand and high supply of competing financings;

2) The Debt structure is complex;

3) Issuer has lower or weakening credit rating and is not well known to investors;

4) The Debt has non-standard structural features, such as a forward delivery, issuance of variable rate bonds, use of derivative products, or possesses a specific structuring feature that benefits from a negotiated sale;

5) Early structuring and market participation by underwriters are desired and there is strong projected retail demand for the Debt; and

6) The Debt size is significantly larger and would limit competition.

For a negotiated bond sale, the Issuer, with the assistance of its municipal advisor, will conduct a competitive underwriter selection process for either a specific Debt issue or through the establishment of an underwriter pool from which to choose over a defined period of time.

C) Private Placement

A private placement is structured for one purchaser or a group of purchasers, who are typically qualified institutional buyers, in a non-public offering conducted by an underwriting firm serving as placement agent. Since no public offering is involved, securities disclosure requirements are not as heavy. If a private placement is considered as the optimal sale method for the Issuer, the municipal advisor will conduct a competitive selection process to recommend the placement agent.

D) Direct Purchase; Direct Loan; Revolving Obligations

A direct purchase or direct loan is structured specifically for one bank (or a syndicate of banks), putting the Issuer and bank in a bilateral borrower-lender relationship. Examples include a direct purchase agreement or revolving credit facility. Securities

disclosure requirements are the least burdensome for this structure. A direct purchase or direct loan may be advisable if the Issuer is unable to access the municipal capital markets or for other reasons. If a direct purchase or direct loan is contemplated, a municipal advisor, if any, should conduct a competitive selection process to recommend the bank. Selection criteria will include:

1) A term sheet to be provided along with the request for qualifications, with any requested modifications to be highlighted by the bank and taken into consideration in the evaluation process;

2) A representative list of clients for whom the bank has provided similar agreements; and

3) Evaluation of fees, specifically, cost of the agreement including index, spread, and other administrative charges. The evaluation of fees, terms and conditions will be compared to other alternative financing methods.

XIII. Debt Redemption Programs

The Issuer may establish from time-to-time a plan or program for the payment and/or redemption of outstanding Debt and/or interest thereon from revenues and/or other available funds pursuant to a recommendation from the Director of Finance. Such plan or program may be for the purposes of reducing outstanding Debt, managing the amount of debt service payable in any year, or other suitable purposes, as determined by the Issuer.

XIV. Professional Services

The Issuer may retain professional services providers as necessary or desirable in connection with: (i) the structuring, issuance and sale of its Debt; (ii) monitoring of and advice regarding its outstanding Debt; and (iii) the negotiation, execution and monitoring of related agreements, including without limitation Bond Insurance, Credit Facilities, Derivatives and investment agreements; and (iv) other similar or related matters. Professional service providers may include municipal advisors, bond counsel, disclosure counsel, Issuer consultants, bond trustees and Federal arbitrage rebate services providers, and may include, as appropriate, underwriters, feasibility consultants, remarketing agents, auction agents, broker-dealers, escrow agents, verification agents and other similar parties.

The Issuer shall require that its Municipal Advisors, bond and disclosure counsel and other Issuer consultants be free of any conflicts of interest, or that any necessary or appropriate waivers or consents are obtained.

A) Municipal Advisors

The Issuer may utilize one or more municipal advisors to provide ongoing advisory services with respect to the Issuer's outstanding and proposed Debt and related agreements, including without limitation Bond Insurance, Credit Facilities, Derivatives, investment agreements and other similar matters. Municipal advisors must be registered with the Municipal Securities Rulemaking Board and as a municipal

advisor as such term is defined in the Securities Exchange Act of 1934 and shall be required to disclose any conflicts of interest.

B) Bond Counsel, Disclosure Counsel and Other Legal Counsel

1) Bond Counsel. The Issuer may utilize one or more bond counsel firms to provide ongoing legal advisory services with respect to the Issuer's outstanding and proposed Debt and related agreements, including without limitation Credit Facilities, Derivatives, investment agreements and other similar matters. All Debt issued by the Issuer shall require a written opinion from the Issuer's bond counsel, as appropriate, regarding (i) the validity and binding effect of the Debt, and (ii) the exemption of interest from Federal and State income taxes.

2) Disclosure Counsel. The Issuer may utilize a disclosure counsel firm to provide ongoing legal advisory services with respect to initial and continuing disclosure in connection with the Issuer's outstanding and proposed Debt. Such firm may be one of the Issuer's bond counsel firms.

3) Other Legal Counsel. The Issuer may encourage or require, as appropriate, the retention and use of legal counsel by other parties involved in the issuance of Debt and the execution of related agreements which are approved by the Issuer.

C) Issuer Consultant

The Issuer may utilize one or more outside Issuer consultants to provide ongoing advisory services with respect to the Issuer's outstanding and proposed Debt, Issuer fares, strategic business and financial decisions and such other matters as the Issuer requires.

D) Trustees and Fiscal Agents

The Issuer may engage bond trustees and/or fiscal agents, paying agents and tender agents, as necessary or appropriate, in connection with the issuance of its Debt.

E) Underwriters/Remarketing Agents/Broker-Dealers

The Issuer may engage an underwriter or a team of underwriters, including a senior managing underwriter, in connection with the negotiated sale of its Debt. The Issuer also may engage one or more underwriters, as necessary or appropriate, to serve as remarketing agents, broker-dealers or in other similar capacities with respect to variable rate, auction, tender option, commercial paper and other similar types of Debt issued by the Issuer.

F) Feasibility Consultants

The Issuer may retain feasibility consultants in connection with proposed project, programs, facilities or activities to be financed in whole or in part from proceeds of Debt. The criteria for the selection of such feasibility consultants, in addition to those

set forth above, shall include their expertise and experience with projects, programs, facilities or activities similar to those proposed to be undertaken by the Issuer.

G) Arbitrage Rebate Services Providers

Because of the complexity of the Federal arbitrage rebate statutes and regulations, and the severity of potential penalties for non-compliance, the Issuer may retain an arbitrage rebate services provider in connection with its outstanding and proposed Debt, and may also solicit related legal and tax advice from its bond counsel or separate tax counsel. The responsibilities of the arbitrage rebate services provider shall include: (i) the periodic calculation of any accrued arbitrage rebate liability and of any rebate payments due under and in accordance with the Code and the related rebate regulations; (ii) advice regarding strategies for minimizing arbitrage rebate liability; (iii) the preparation and filing of periodic forms and information required to be submitted to the Internal Revenue Service; (iv) the preparation and filing of requests for reimbursement of any prior overpayments; and (v) other related matters as requested by the Issuer.

The Issuer shall maintain necessary and appropriate records regarding (i) the expenditure of proceeds of Debt, including the individual projects and facilities financed and the amounts expended thereon, and (ii) investment earnings on such Debt proceeds. The Issuer shall maintain such records for such period of time as shall be required by the Code.

H) Other Professional Services

The Issuer may retain such other professional services providers, including without limitation verification agents, escrow agents, auction agents, as may be necessary or appropriate in connection with its Debt.

XV. Budgeting and Capital Planning

The Issuer's budgeting process, including its budgeting process for capital expenditures, shall provide a framework for evaluating proposed Debt issuances.

XVI. Credit Rating Objectives

The Issuer shall seek to preserve and enhance the credit ratings with respect to its outstanding Debt, if any, to the extent consistent with the Issuer's current and anticipated business operations and financial condition, strategic plans and goals and other objectives, and in accordance with any developed credit strategies.

XVII. Debt Affordability

The Issuer shall periodically review its debt affordability levels and capacity for the undertaking of new financing obligations to fund its expenditure plans. Debt affordability

measures shall be based upon the credit objectives of the Issuer, criteria identified by rating agencies, comparison of industry peers and other internal factors of the Issuer.

XVIII. Relationships with Market Participants

The Issuer shall seek to preserve and enhance its relationships with the various participants in the municipal bond market, including without limitation, the Rating Agencies, Bond Insurers, credit/liquidity providers and current and prospective investors, including through periodic communication with such participants.

The Issuer shall prepare or cause to be prepared appropriate disclosures as required by the Securities and Exchange Commission Rule 15c2-12, the federal government, the State of California, rating agencies and other persons or entities entitled to disclosure to ensure compliance with applicable laws and regulations and agreements to provide ongoing disclosure.

XIX. Periodic Review

The Director of Finance shall review this Debt Policy on a periodic basis, and recommend any changes to the Board for consideration.

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2022- ___

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE ADOPTING A DEBT POLICY

WHEREAS, the Valley Clean Energy Alliance ("VCE") was formed as a community choice aggregation agency ("CCA") on November 16, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions. The City of Winters, located in Yolo County, was added as a member of VCE and a party to the JPA in December of 2019; and,

WHEREAS, the California Legislature created the California Debt and Investment Advisory Commission (CDIAC) to collect, maintain, and provide comprehensive information on all State and local debt obligations; and,

WHEREAS, effective January 1, 2017, the CDIAC requires that issuers of government debt recognize their responsibility to maintain fiscally prudent policies that will help maintain a sound financial position with sufficient flexibility to respond to changes in future service priorities, revenue levels, and operating expense in order to protect both current and future customers; and,

WHEREAS, in order to achieve its strategic goals, VCE must maintain liquidity for day-to-day operations, which includes the ability to access capital markets to fund short-term and long-term objectives; and,

WHEREAS, a Debt Policy is necessary to comply with CDIAC's recommendations and to maintain VCE's financial stability.

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

1. The Board of Directors hereby adopts the attached Debt Policy.

PASSED, APPROVED AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____, 2022, by the following vote:
AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Jesse Loren, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary
Attachment: Exhibit A – Valley Clean Energy Alliance Debt Policy

EXHIBIT A

VALLEY CLEAN ENERGY DEBT POLICY

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 18

TO: Board of Directors

FROM: Mitch Sears, Executive Officer
Alisa Lembke, VCE Board Clerk/Administrative Analyst

SUBJECT: Consider Reappointment(s)/Appointments to jurisdictional seats on Community Advisory Committee

DATE: July 14, 2022

RECOMMENDATION

1. Reappoint the following Community Advisory Committee (CAC) Members for a three (3) year term to expire 2025:
    a. City of Winters – David Springer
    b. City of Woodland – Mark Aulman
    c. County of Yolo – Cynthia Rodriquez

2. Based on City of Davis jurisdictional Board member recommendation, appoint Rahul Athalye to fill a City of Davis jurisdictional seat for a three (3) year term to expire 2025.

BACKGROUND/ANALYSIS

The Board at their September 9, 2021 meeting, adopted a revised Community Advisory Committee (CAC) structure with eleven total members: eight jurisdictional members (two per jurisdiction) and three additional seats for At-large members intended to fill specific subject matter expertise/experience areas. As part of the newly adopted CAC structure, the Board adopted Item 15 on October 14, 2021, which included nonbinding recruitment/selection guidelines for recruiting and considering CAC applicants for At-Large seats and reappointed CAC Member Lorenzo Kristov to fill one of the three At-Large seats. On May 12, 2022, the Board appointed Keith Taylor and Kristin Jacobs to the two (2) vacant CAC At-Large seats, leaving two (2) applications on file.

Currently, several Members' terms expired in June 2022 (Class 1) and have agreed to stay on until the Board reappoints and/or appoints new applicants to fill each jurisdiction seat: Davis, Woodland, Winters and unincorporated Yolo County. Staff advertised on VCE's website, through local newspapers and jurisdiction partners seeking applicants for jurisdiction seats. In addition, CAC members sought out applicants. In response, Staff received two (2) new applications from City of Davis residents. No other applications were received.

As noted two (2) applications were on file from residents of the City of Davis who had previously applied for consideration for the two vacant At-Large seats: Mark Braly and Maris Samsel.

Staff reviewed the two new applications from City of Davis residents: Eugen Dunlap and Rahul Athalye.

Eugen Dunlap is interested in encouraging and educating others on the usage of electric vehicles and solar; he has 20 years experience in the promotion of electric vehicles, including participating in Sac-EVA; experience and a supporter of solar; knowledge of his community; and owned an environmental building material business.

Rahul Athalye is interested in providing renewable energy to households of all incomes in the community; has over 15-years experience working with building codes and standards, bringing technical and analytical perspective to the CAC and local communities; and, experience in building energy modeling and simulation, including source energy and energy costs.

Consistent with past practice, staff provided the four (4) applications to the jurisdiction Board Members (City of Davis), who after careful review and consideration recommend appointing Rahul Athalye to the Community Advisory Committee to the City of Davis seat for a three (3) year term to expire 2025.

Reappointment Applications of Existing CAC Members
Those Members whose term expired in June 2022 (Class 1) have submitted their interest to be reappointed for an additional three-year term ending in 2025.

CLASS 1 - term expired in June 2022:
Winters Rep. – David Springer
Woodland Rep. – Mark Aulman
Yolo County Rep. – Cynthia Rodriguez

All but Yvonne Hunter (City of Davis) are seeking reappointment.

If those mentioned above are reappointed/appointed, below is a listing of the other “classes” and expiration terms:

CLASS 2 – term expiring June 2023
Yolo Rep.– Marsha Baird
Woodland Rep. – Christine Shewmaker
Davis Rep.– Gerry Braun
Winters Rep. – Jennifer Rindahl

CLASS 3 – term expiring June 2024
At-Large – Lorenzo Kristov
At-Large – Keith Taylor
At-Large – Kristin Jacobs

CONCLUSION

Staff recommends the Board consider reappointing/appointing the following to the Community Advisory Committee (CAC) for a three (3) year term to expire 2025:

a. City of Winters – David Springer
b. City of Woodland – Mark Aulman
c. County of Yolo – Cynthia Rodriquez
d. City of Davis - Rahul Athalye

Attachments:

1. City of Davis applications:
    a. Mark Braly
    b. Maris Samsel
    c. Eugen Dunlap
    d. Rahul Athalye

Return to:

Valley Clean Energy
604 Second Street
Davis, CA 95616

VALLEY CLEAN ENERGY

VALLEY CLEAN ENERGY COMMUNITY ADVISORY COMMITTEE APPLICATION

Received on: 6/29/2021 AWL

PERSONAL DATA SHEET

Name: Braly Mark
Last First Middle

Are you at least 18 years old? yes

Home Address: [redacted]
Number/Street

DAVIS, CA [redacted]
City/State/Zip

Email Address: [redacted]

[redacted] [redacted]
Daytime Phone Evening/Weekend Phone

Business Title or Occupation: retired

Company/Organization: retired from federal government

Address: _____
Street Address City, State and Zip

Which Valley Clean Energy jurisdiction do you reside in?

- [x] City of Davis
- [ ] City of Woodland
- [ ] County of Yolo (Unincorporated)
- [ ] City of Winters

If you do not reside in Valley Clean Energy's jurisdictions, please include a separate statement to address why you are applying for this committee.

Background Information:

Why do you wish to serve as a member of the VCE Community Advisory Committee?

I am interested in VCE pursuing a goal of 100% renewable energy and efficiency sited within the VCE service territory partly for economic reasons.

What experience/perspective would you bring to the committee?

I was founding president, Valley Climate Action Center, Davis, CA. This is a non-profit whose mission is to support the City of Davis in implementing its climate action plan.

Founding president of State Assistance Fund for Energy, California Business and Industrial Development Corporation (SAFE-BIDCO). SAFE-BIDCO was a state-sponsored and funded non-profit corporation which made loans to small businesses in the renewable energy and energy efficiency industries.

Director, Mayor ' s Energy Office, City of Los Angeles. Energy advisor to Mayor Tom Bradley and City Council. Coordinator of the city ' s internal energy conservation program. Principal investigator for the " Energy LA Action Plan, " a comprehensive energy element for the city ' s general plan which won the American Planning Association ' s award for best urban plan of the year.

Administrator and researcher, Environmental Quality Laboratory, California Institute of Technology. EQL was a think-tank devoted to energy efficiency and renewable energy. It focused initially on the implementation of the federal Clean Air Act in the Los Angeles Basin. Co-author of: " Smog: A Report to the People. "

Please list your previous and present governmental and civic experience. Indicate when, position and duties:

Past chair of the City of Davis Planning Commission, past chair of board of directors of Community Housing Opportunities Corporation (CHOC); past vice chair of City of Davis Business and Economic Development Commission; former member, City of Davis Natural Resources Commission, member City of Davis Climate Action Team, which submitted a climate action plan to City Council; member, City of Davis Community Energy Choice Advisory Committee

List any special training or experience you have that you feel would benefit your committee service:

I was founding president, Valley Climate Action Center, Davis, CA. This is a non-profit whose mission is to support the City of Davis in implementing its climate action plan.

Founding president of State Assistance Fund for Energy, California Business and Industrial Development Corporation (SAFE-BIDCO). SAFE-BIDCO was a state-sponsored and funded non-profit corporation which made loans to small businesses in the renewable energy and energy efficiency industries.

Director, Mayor ' s Energy Office, City of Los Angeles. Energy advisor to Mayor Tom Bradley and City Council. Coordinator of the city ' s internal energy conservation program. Principal investigator for the " Energy LA Action Plan, " a comprehensive energy element for the city ' s general plan which won the American Planning Association ' s award for best urban plan of the year.

Administrator and researcher, Environmental Quality Laboratory, California Institute of Technology. EQL was a think-tank devoted to energy efficiency and renewable energy. It focused initially on the implementation of the federal Clean Air Act in the Los Angeles Basin. Co-author of: " Smog: A Report to the People. "

Do you have any interests or associations which might present a conflict of interest?
If yes, please explain:

no

What do you feel are your most important qualifications?

Familiarity with market and technology of renewable energy and efficiency

What do you see as some of the significant issues facing the community in the next few years that might pertain to Valley Clean Energy's Community Advisory Committee?

impact of PG&E bankruptcy, possible purchase of distribution assets, growth of service territory

What do you hope to accomplish as a committee member?

VCE emphasis on locally sourced clean energy

I am aware of the obligations and responsibilities of this committee and am willing and able to fulfill this commitment should I be appointed: (Initial here: [redacted])

Please attach your resume or any additional information or statements which you feel would be helpful to the Valley Clean Energy Board of Directors in reviewing your qualifications.

AUTHORIZATION AND RELEASE

I understand that in connection with this application for appointment, the information contained herein will be made available to the general public upon request. I further understand that if appointed, I may be required to take the oath of office and may be subject to requirements for filing financial disclosure statements.

[redacted] 23 June 2021

Please Sign Here Date

NOTE: This document is a public record and may be disclosed/released pursuant to the California Public Records Act.

FOR OFFICIAL USE ONLY

Applications will be kept on file for two years. This application will expire on: 6/29/2023

Date of appointment by the Valley Clean Energy Board: _____

Length of term: _____

Is this is re-appointment? _____

Return to:

Valley Clean Energy
604 Second Street
Davis, CA 95616

VALLEY CLEAN ENERGY
COMMUNITY ADVISORY COMMITTEE
APPLICATION

Received on:

3/6/2022 AML

PERSONAL DATA SHEET

Name: Samsel (Last) Maris (First) Kay (Middle)

Are you at least 18 years old? Yes

Home Address: [redacted] (Number/Street) [redacted] (City/State/Zip)

Email Address: [redacted] [redacted] (Daytime Phone) same (Evening/Weekend Phone)

Business Title or Occupation: Environmental Services Intern

Company/Organization: City of Woodland

Address: [redacted] (Street Address) [redacted] (City, State and Zip)

Which Valley Clean Energy jurisdiction do you reside in?

- [x] City of Davis
- [ ] City of Woodland
- [ ] County of Yolo (Unincorporated)
- [ ] City of Winters

If you do not reside in Valley Clean Energy's jurisdictions, please include a separate statement to address why you are applying for this committee.

Are you seeking to fill an At-Large Seat? [ ] Yes [x] No

Background Information:

Why do you wish to serve as a member of the VCE Community Advisory Committee?

I am deeply passionate about clean energy as a means to combat the effects of climate change. I am a steadfast advocate for the environment, and believe the duty of repairing the planet has fallen to my generation. I believe serving on the advisory board would provide me with excellent experience in understanding the implementation of environmental technology, while allowing me to participate in governmental action.

What experience/perspective would you bring to the committee? Please reference the professional sector and related professional experience below for At-Large member applications in this section.

I have experience working in local government, through the lens of environmental services. I am highly involved with policy implementation and logistics. As an intern, I work with a variety of government departments, and oversee my own projects. I believe I have a unique perspective as a student, and as a parent. I am a member of the Davis community, and have a vested interest in its future, as it is where I am raising my family, and getting my education. As a college student, I will be party to the latest scientific information the university system has to offer, and would use that knowledge to supplement my stance on issues presented to me.

Please list your previous and present governmental and civic experience. Indicate when, position and duties:

I am currently an intern for the City of Woodland Environmental Services, and have been since July of 2021. I have participated in the compilation of the new building project sustainability guide, which was used to create a set of guidelines for the upcoming Tech Park project. I have overseen the implementation of SB 1383, a food waste bill, at the Leisureville senior living association, where I devised a logistical plan to help the residents and staff comply with the new waste bill. I often represent Environmental Services at City events, such as National Night Out and the Honey Festival. I am also the Director of Sustainability at Woodland Community College, where I am part of the New Building Committee as a sustainability advisor, and help to implement new campus sustainability projects. I plan events, such as campaigns and recruitment efforts, for the Associated Students of Woodland Community College, and the WCC Earth Day activities. I speak at district-wide events, such as the Yuba Community College Convoation, alongside WCC President Art Pimentel, and Congressman John Garamendi.

List any special training or experience you have that you feel would benefit your committee service:

I have participated in theatre and performing arts as an actor, singer, dancer, and director for most of my life. I use this experience to aid in public speaking, and interpersonal skills. I feel that theatre is one of the most cooperative activities one may choose to parttake in, and requires the equal effort and trust of everyone involved. I also participate in a coding and drone flying class at my college, where I assembled my own drone remote, and am learning how to code in Python script, which signals commands to my drone. I believe this experience will help me in the environmental field, as technology progresses, and is relied upon heavily.

Do you have any interests or associations which might present a conflict of interest?
If yes, please explain:

I have no interest in conflicting associations.

What do you feel are your most important qualifications?

I believe I have an intuitive ability to empathize with many points of view. I have come from very humble origins, and understand the lives of many, because I have lived in so many ways. I believe my youth gives me the best voice to advocate for what is urgently needed, as Iunderstand there is no allowance for hesitation in the face of climate danger.

What do you see as some of the significant issues facing the community in the next few years that might pertain to Valley Clean Energy's Community Advisory Committee?

I believe one large concern for Davis residents are the blackouts that many people have experienced due to corporate negligence in wildfire territories. Citizens should not have to suffer due to the blatant greed and incompetence of popular energy companies. I also believe that, as the weather in Northern California grows hotter every year, residents will rely exponentially on energy to provide safety and comfort. Above all, I believe that residents of our community crave transparency. People want to be able to trust who they give their money to, and large, for-profit corporations have taken advantage of the pandemic in a wholly unsurprising way.

What do you hope to accomplish as a committee member?

I hope to gain experience in advising policymakers, and improve the quality of life for myself and my community.

I am aware of the obligations and responsibilities of this committee and am willing and able to fulfill this commitment should I be appointed: (Initial here: MS)

Please attach your resume or any additional information or statements which you feel would be helpful to the Valley Clean Energy Board of Directors in reviewing your qualifications.

AUTHORIZATION AND RELEASE

I understand that in connection with this application for appointment, the information contained herein will be made available to the general public upon request. I further understand that if appointed, I may be required to take the oath of office and may be subject to requirements for filing financial disclosure statements.

[redacted]
Please Sign Here

3/11/22
Date

NOTE: This document is a public record and may be disclosed/released pursuant to the California Public Records Act.

FOR OFFICIAL USE ONLY

Applications will be kept on file for two years. This application will expire on: 3/6/2024

Date of appointment by the Valley Clean Energy Board: _____

Length of term: _____

Is this a re-appointment? _____

Return to:

Valley Clean Energy
604 Second Street
Davis, CA 95616

VALLEY CLEAN ENERGY

VALLEY CLEAN ENERGY COMMUNITY ADVISORY COMMITTEE APPLICATION

Received on: 5/20/2022 AML

PERSONAL DATA SHEET

Name: Dunlap, Eugen (Last / First / Middle)

Are you at least 18 years old? Yes

Home Address: [redacted] (Number/Street)

Davis, CA [redacted] (City/State/Zip)

Email Address: [redacted]

[redacted] (Daytime Phone)

(Evening/Weekend Phone)

Business Title or Occupation: retired

Company/Organization:

Address: (Street Address) (City, State and Zip)

Which Valley Clean Energy jurisdiction do you reside in?

- [x] City of Davis
- [ ] City of Woodland
- [ ] County of Yolo (Unincorporated)
- [ ] City of Winters

If you do not reside in Valley Clean Energy's jurisdictions, please include a separate statement to address why you are applying for this committee.

Are you seeking to fill an At-Large Seat? [x] Yes [ ] No

Background Information:

Why do you wish to serve as a member of the VCE Community Advisory Committee?

Valley Clean Energy needs someone with electric vehicle in community knowledge. Also strong solar support.

What experience/perspective would you bring to the committee? Please reference the professional sector and related professional experience below for At-Large member applications in this section.

Promoting electric vehicles over 20 years
Advisory infrastructure member for SacEVA.org, one of the largest ev user groups in the country

Please list your previous and present governmental and civic experience. Indicate when, position and duties:

worked for American Red Cross in Europe for US Army
Had my own environmental building material business
Worked for UCDavis as computer specialist

Volunteering for years with evs and solar

List any special training or experience you have that you feel would benefit your committee service:

in the Mid - 1990s took electric vehicle conversion classes at Sacramento City College
basic training as solar installer, certified

Do you have any interests or associations which might present a conflict of interest?
If yes, please explain:

That VCE doesn't do enough for electric vehicles and solar.

What do you feel are your most important qualifications?

specialized experience in field of electric vehicles and solar.

What do you see as some of the significant issues facing the community in the next few years that might pertain to Valley Clean Energy's Community Advisory Committee?

VCE has no decent plan for workplace and public ev charging rates (see city of Winters);
I think the whole dilemma with solar was shocking when VCE started out; still has issues for decentralized solar production.
Support for electrifying homes is so so.

What do you hope to accomplish as a committee member?

have a competitive electric vehicle charging rate (that encourages use) for public chargers. Have solar and support for local micro-grids.
Have more local wind production.

I am aware of the obligations and responsibilities of this committee and am willing and able to fulfill this commitment should I be appointed: (Initial here: ERD)

Please attach your resume or any additional information or statements which you feel would be helpful to the Valley Clean Energy Board of Directors in reviewing your qualifications.

AUTHORIZATION AND RELEASE

I understand that in connection with this application for appointment, the information contained herein will be made available to the general public upon request. I further understand that if appointed, I may be required to take the oath of office and may be subject to requirements for filing financial disclosure statements.

[redacted]
Please Sign Here

5/13/2022
Date

NOTE: This document is a public record and may be disclosed/released pursuant to the California Public Records Act.

FOR OFFICIAL USE ONLY

Applications will be kept on file for two years. This application will expire on: 5/20/2024 AMR

Date of appointment by the Valley Clean Energy Board: _____

Length of term: _____

Is this a re-appointment? _____

Return to:

Valley Clean Energy
604 Second Street
Davis, CA 95616

VALLEY CLEAN ENERGY

VALLEY CLEAN ENERGY
COMMUNITY ADVISORY COMMITTEE
APPLICATION

Received on:

5/31/22 AML

PERSONAL DATA SHEET

Name: Athalye Rahul A
Last First Middle

Are you at least 18 years old? Yes

Home Address: [redacted]
Number/Street

Davis, CA [redacted]
City/State/Zip

Email Address: [redacted]

[redacted]
Daytime Phone

Evening/Weekend Phone

Business Title or Occupation: Program Director

Company/Organization: NORESCO

Address: [redacted]
Street Address

[redacted]
City, State and Zip

Which Valley Clean Energy jurisdiction do you reside in?

☑ City of Davis ☐ City of Woodland ☐ County of Yolo (Unincorporated) ☐ City of Winters

If you do not reside in Valley Clean Energy's jurisdictions, please include a separate statement to address why you are applying for this committee.

Are you seeking to fill an At-Large Seat? ☐ Yes ☑ No

Background Information:

Why do you wish to serve as a member of the VCE Community Advisory Committee?

I am interested in serving on the CAC as a Davis representative (I live in Davis). I am looking for opportunities to participate and contribute locally to sustainability and environmental efforts and this position would be a good fit given my background and experience. I am currently a Program Director for Codes and Standards at NORESCO and have worked in codes and standards for over 15 years, performing analytical work for the state of California and other jurisdictions around the country.

I believe in contributing to my local community. There is a strong culture of sustainability in Davis and I want to support it by devoting my time to causes that best align with my expertise. Participating and supporting my local CCA is an ideal match for my skills and background. I am interested in how we can best provide renewable energy to households of all incomes in our community, anticipate future uncertainties related to drought, fires, the changing climate, and the impact of electrifying the transportation sector on utility prices, and achieve the goal of delivering

What experience/perspective would you bring to the committee? Please reference the professional sector and related professional experience below for At-Large member applications in this section.

I am the technical lead and project manager for the CEC contract tasked with developing the 2022 Building Standards and we were just awarded the contract for the 2025 Building Standards. We are also working with New York and Washington state on developing their energy codes. In the past few years, I have worked extensively on electrification and decarbonization of the building stock in various jurisdictions, including California. I am the lead author of the PV/battery report that supported the nonresidential PV and battery requirements in the 2022 Title 24 Building Standards.

I have more than a decade of experience working on committees. I am a voting member of the ASHRAE Standard 90.1 (SSPC 90.1) Envelope Subcommittee and a past Board member of IBPSA-USA. I also worked for eight years at PNNL on codes and standards and have a Master's degree in mechanical engineering.

I am also a homeowner in Davis, who just replaced their furnace with a high-efficiency heat pump. I would bring a technical and analytical perspective to the CAC and also a local perspective. I would like to review reports, study options, and offer my technical perspective to the committee.

Please list your previous and present governmental and civic experience. Indicate when, position and duties:

I have not held a governmental or civic position, but I want to get started by contributing to my local community.

I did work at PNNL for many years, directly working for US DOE and represented their interests on national committees, such as ASHRAE SSPC 90.1.

List any special training or experience you have that you feel would benefit your committee service:

I have a deep expertise in whole building energy modeling and simulation, building science, understanding, interpreting, and implementing various metrics, such as TDV, source energy, and energy costs, including blended and TOU rates.

In particular, I would be able to review and advise the VCE Board of Directors and VCE's staff on particular policy and strategy issues, options and choices surrounding the generation mix and rate implications, and in general, on choosing pathways that best align with VCE's overarching objectives and mission.

Do you have any interests or associations which might present a conflict of interest?
If yes, please explain:

None that I can think of.

What do you feel are your most important qualifications?

1. My technical background as a mechanical engineer who has worked in codes and standards, analyzing energy policy for California and the US as a whole.
2. My experience working in a committee environment.
3. My desire to contribute and make my community a better place to live for everyone.

What do you see as some of the significant issues facing the community in the next few years that might pertain to Valley Clean Energy's Community Advisory Committee?

1. Managing risk and uncertainty introduced by severe drought conditions.
2. Ensuring low-income customers can access affordable clean energy.
3. Managing impact of building electrification and larger amounts of EVs on the future load, TOU and peak demand, generation mix, and rates.

What do you hope to accomplish as a committee member?

1. Support and advise the Board in adopting policies, rates, and financial choices that support the long-term health of VCE.
2. Increase customer participation and the renewable mix delivered to VCE customers as a whole.
3. Understand issues related to rates or demand that might hinder building electrification and support VCE in resolving those issues, where possible.

I am aware of the obligations and responsibilities of this committee and am willing and able to fulfill this commitment should I be appointed: (Initial here: RAA)

Please attach your resume or any additional information or statements which you feel would be helpful to the Valley Clean Energy Board of Directors in reviewing your qualifications.

AUTHORIZATION AND RELEASE

I understand that in connection with this application for appointment, the information contained herein will be made available to the general public upon request. I further understand that if appointed, I may be required to take the oath of office and may be subject to requirements for filing financial disclosure statements.

[redacted] 5/31/2022

Please Sign Here Date

NOTE: This document is a public record and may be disclosed/released pursuant to the California Public Records Act.

FOR OFFICIAL USE ONLY

Applications will be kept on file for two years. This application will expire on: 5/31/2024

Date of appointment by the Valley Clean Energy Board: _____

Length of term: _____

Is this a re-appointment? _____

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 19

TO: Board of Directors

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

SUBJECT: Approve Amendment 1 to Resurgence Solar I, LLC Power Purchase Agreement

DATE: July 14, 2022

RECOMMENDATION

Adopt a resolution authorizing the Executive Officer to (1) execute Amendment 1 to the Resurgence Solar 1 Power Purchase Agreement (PPA) substantially in the form attached and (2) authorizes the Executive Officer, in consultation with General Counsel, to make minor changes to the PPA Amendment 1 so long as the term and price are not changed.

BACKGROUND

In January 2021, the VCE Board approved the Resurgence Solar I PPA which is a 90 MW PV field combined with a 75 MW (300 MWhs) lithium-ion battery storage system project located in San Bernadino County, California. The project has received all necessary permits and commenced construction in March 2022.

In May 2022, the counterparty approached VCE identifying numerous challenges facing the project and the broader renewable industry. Unprecedented global cost pressures, the U.S. Department of Commerce's investigation into circumvention of Anti-Dumping/Countervailing Duties of photovoltaic modules ("Circumvention Investigation"), Uyghur Forced Labor Prevention Act, etc. have put undo schedule and cost pressures on the project.

Based on anecdotal evidence, staff has confirmed that these factors are present and effecting PPA's of a similar vintage across the renewable energy landscape.

VCE agreed to consider the request of the counterparty to amend the PPA and staff has been working on an amendment that is amenable to both parties.

COUNTERPARTY

NextEra Energy Inc. subsidiary, NextEra Energy Resources is the world's largest developer of renewable energy from wind and solar. NextEra has a proven record of success and extensive experience in developing, constructing and operating wind, solar, and battery storage projects across North America. The company has been generating clean energy for more than 35 years and is the largest generator of wind and solar power in North America. Through its subsidiaries,

NextEra owns and operates 124 wind facilities with a total generating capacity of 16,280 MW, as well as 34 utility-scale solar facilities with a generating capacity of 3,156 MW. NextEra has constructed dozens of renewable projects as big or larger than the Resurgence Solar I project and has developed and constructed some of the largest storage projects in the industry. NextEra is a large scale generator of renewable energy and is a major developer in energy storage. In the U.S. and Canada, NextEra has approximately 164 MW of energy storage projects in operation and over 2 GW of energy storage projects with signed long-term contracts currently under development.

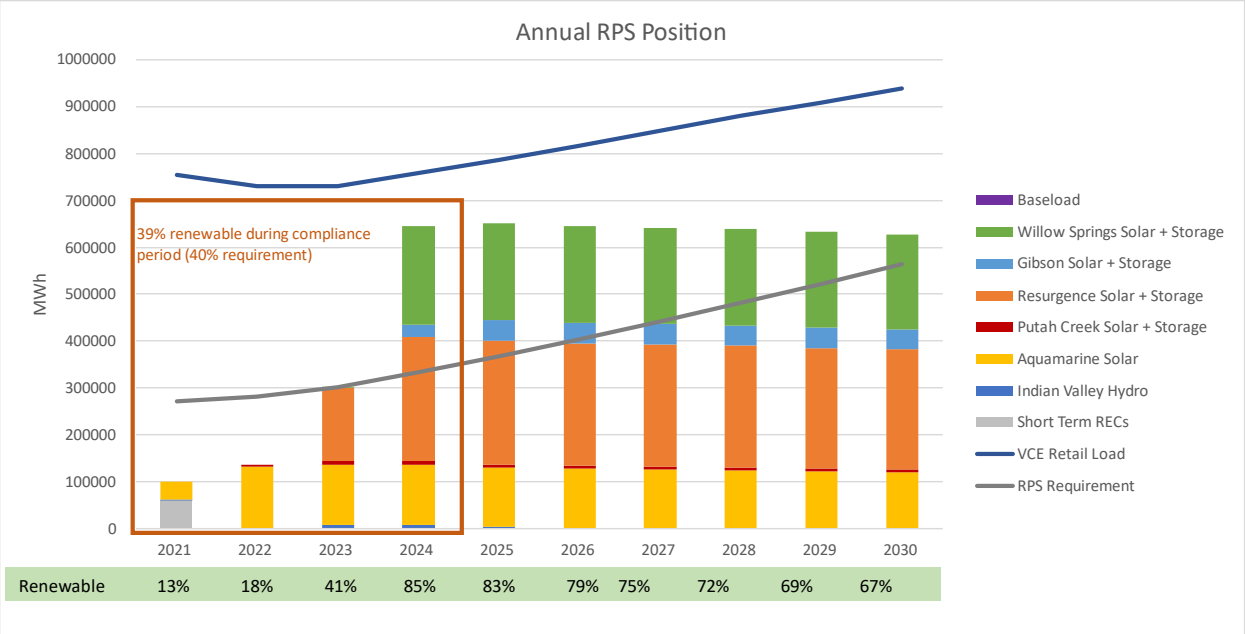
In the state of California, NextEra owns and operates wind, solar, battery energy storage facilities and transmission assets in 20 counties. NextEra has executed long-term contracts for renewable energy supply with several California Community Choice Aggregators (CCAs) including Silicon Valley Clean Energy, Marin Clean Energy, CleanPowerSF, Sonoma Clean Power Authority, Clean Power Alliance of Southern California, and Central Coast Community Energy for solar, storage, and wind.

NextEra will develop, own and operate the Resurgence Solar I project.

PROJECT DESCRIPTION / PORTFOLIO

The Resurgence Solar I project will consist of a 90 MW PV field combined with a 75 MW (300 MWhs) lithium-ion battery storage system. The project will be part of a larger project that could be up to a 138 MWs. The existing "brownfield" site is the home of the SEGS project which was one of the original solar thermal sites built in the 1980's. The legacy project ceased operation in 2019. NextEra plans to repurpose the site and decommission the SEGS assets and replace with PV + storage. The development plan required a conditional use permit from San Bernadino County as well as an approved decommissioning plan from the California Energy Commission (CEC), both of which have been received. Environmentally, the site is disturbed land with no wetlands, biological or cultural issues. NextEra is using the existing transmission infrastructure.

VCE will receive approximately 1/3rd of its annual needs from the renewable facility for 20 years. The competitively priced energy and capacity will allow VCE to secure stable pricing for both energy and resource adequacy. As illustrated in the below chart, the Resurgence project plays a critical role in VCE's portfolio. The project provides a large portion of renewable energy which supports the Renewable Portfolio Standard (RPS) mandate, has a significant storage component supplying valuable resource adequacy (RA), and has operational flexibility allowing VCE's customers to benefit economically.



AMENDMENT

The amendment addresses adjustments to the PPA pricing, schedule, development security as well as an increase to the workforce development and local sustainability funds. As shown in the attached Amendment, the project continues to provide a large portion of renewable energy which supports VCE's strategic goals and helps satisfy the RPS and other regulatory mandates. The amended agreement also continues to provide a significant storage component which supplies valuable resource RA. Overall, based on staff's assessment of market conditions, the amended agreement continues to supply economic power and RA to VCE and its customers.

CONCLUSION

Staff believes the terms of the amendment supports VCE's policy objectives, help meet regulatory requirements, and are competitively priced. Staff recognizes the unique energy market conditions and has developed an amendment that is in the best interest of VCE's customers for the near and long term.

Attachments

1. Amendment 1 to Resurgence Solar I LLC Power Purchase Agreement (redacted)
2. Resurgence Solar I LLC Power Purchase Agreement (redacted)
3. Resolution 2022-XXX – Amendment 1 to Resurgence Solar I LLC Power Purchase Agreement

AMENDMENT NO. 1 TO RENEWABLE POWER PURCHASE AGREEMENT

This Amendment No. 1 (the "**Amendment**") to the Agreement (as defined below), is dated as of July __, 2022 (the "**Amendment Effective Date**"), between Valley Clean Energy Alliance, a California joint powers authority ("**Buyer**"), and Resurgence Solar I, LLC, a Delaware limited liability company ("**Seller**"). Seller and Buyer are each a "**Party**" and together the "**Parties**".

RECITALS

A. The Parties entered into that certain Renewable Power Purchase Agreement, dated as of January 21, 2021 (the "**Agreement**").

B. Seller has claimed significant cost increases and associated delays in achieving Commercial Operation on or before the Guaranteed Commercial Operation Date.

C. The Parties intend to resolve all matters with respect to Seller's cost increases and Commercial Operation delays on the terms set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Agreement.

2. Amendments to the Agreement.

(a) The date set forth for the Milestone for "Expected Commercial Operation Date" of "12/31/2022" on the Cover Sheet of the Agreement shall be deleted and replaced with "5/15/2023".

(b) The date set forth for the Milestone for "Guaranteed Commercial Operation Date" of "12/31/2022" on the Cover Sheet of the Agreement shall be deleted and replaced with "5/15/2023".

(c) The date set forth for the "RA Guarantee Date" on the Cover Sheet shall be deleted and replaced with "the later of (i) July 1, 2023 or (ii) the first day of the first Showing Month that commences at least thirty (30) days after the Commercial Operation Date".

(d) The "Renewable Rate" portion of the "Contract Price" on the Cover Sheet of the Agreement shall be deleted and replaced with the following table:

Contract Year	Renewable Rate
1 – 20	[redacted]

(e) The "Development Security" portion of "Security" on the Cover Sheet of the Agreement, [redacted] Development Security required hereby pursuant to Section 3 of this Amendment.

(f) A new Section 4.10(h) is added to the Agreement as follows:

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. 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.

(g) Section 11.6 of the Agreement, regarding "Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date", shall be amended by replacing [redacted].

(h) Section 11.9 of the Agreement, regarding "Seller Pre-COD Termination", shall be deleted in its entirety and replaced with the following:

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 [redacted]

(i) Section 13.4 of the Agreement, regarding "Workforce Development", shall be amended by (i) replacing "twenty thousand dollars ($20,000)" with "thirty thousand dollars ($30,000), and (ii) replacing "two hundred thousand dollars ($200,000)" with "three hundred thousand dollars ($300,000)".

(j) Section 13.5 of the Agreement, regarding "Local Sustainability", shall be amended by (i) replacing "ten thousand dollars ($10,000)" with "fifteen thousand dollars ($15,000), and (ii) replacing "one hundred thousand dollars ($100,000)" with "one hundred fifty thousand dollars ($150,000)".

(k) Section 2(b) of Exhibit B of the Agreement shall be deleted in its entirety and replaced with the following:

Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date. 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 Seller wishes to extend the Guaranteed Commercial Operation Date. If Seller extends the Guaranteed Commercial Operation Date through the payment of Commercial Operation Delay Damages and Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of such Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day that 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). To the extent a Development Cure Period overlaps with any days for which Seller has paid to Buyer Commercial Operation Delay Damages to extend the Guaranteed Commercial Operation Date, then Buyer shall refund to Seller the Commercial Operation Delay Damages for each day that is covered by such Development Cure Period, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b). For avoidance of doubt, this Section 2(b) does not limit Seller's right to claim a Development Cure Period pursuant to Section 4 of this Exhibit B that would extend the Guaranteed Commercial Operation Date past the period of time for which Seller previously paid Commercial Operation Delay Damages to extend the Guaranteed Commercial Operation Date; nor does this Section 2(b) limit Seller's right to pay additional Commercial Operation Delay Damages to further extend the Guaranteed Commercial Operation Date past the date on which a Development Cure Period has concluded.

(l) Section 4(a) of Exhibit B of the Agreement, regarding "Extension of the Guaranteed Dates", shall be deleted in its entirety and replaced with the following: "Reserved".

(m) Section 4(b) of Exhibit B of the Agreement, regarding "Extension of the Guaranteed Dates", shall be deleted in its entirety and replaced with the following:

a Force Majeure Event occurs, provided, however, that Seller may not claim a Force Majeure Event due to any circumstance known by Seller at the time of the Amendment Effective Date, including any of the circumstances identified in

Attachment 1 to the Amendment, which is incorporated into the Agreement by this reference; or

(n) Section I.(C.) of Exhibit Q of the Agreement, regarding "Charge and Discharge Rates", shall be amended by replacing each of the listed "75 MW/s" amounts under the "Ramp Rate (MW/s) Description" with "16 MW/s".

3. [redacted] To secure its obligations under the Agreement, as amended hereby, Seller shall deliver to Buyer the [redacted] Development Security required hereunder within ten (10) days after the Amendment Effective Date. [redacted]

4. Limited Effect. Except as expressly provided in this Amendment, all of the terms and provisions of the Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date of this Amendment, each reference in the Agreement to "this Agreement," "the Agreement," "hereunder," "hereof," "herein" or words of like import will mean and be a reference to the Agreement as amended by this Amendment.

5. Miscellaneous.

(a) This Amendment is governed by and construed in accordance with, the laws of the State of California, without regard to the conflict of laws provisions of such State.

(b) This Amendment shall inure to the benefit of and be binding upon each of the Parties and each of their respective successors and permitted assigns.

(c) The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.

(d) This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement. Delivery of an executed counterpart of this Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Amendment.

(e) This Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

(f) Each Party shall pay its own costs and expenses in connection with this Amendment (including the fees and expenses of its advisors, accounts and legal counsel).

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment effective as of the date first written above.

"SELLER:"

RESURGENCE SOLAR I, LLC

By:_____

Printed Name:

Title:

"BUYER:"

VALLEY CLEAN ENERGY ALLIANCE

By:_____

Printed Name:

Title:

ATTACHMENT 1

CIRCUMSTANCES FOR WHICH FORCE MAJEURE NOT ALLOWED

Seller's inability to obtain sufficient equipment, materials or other resources to build or operate the Facility resulting in delays and/or inability to timely achieve the Guaranteed Commercial Operation Date arising from the decision of the U.S. Department of Commerce issued on March 28, 2022, to initiate an anti-circumvention investigation in Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China, Petition filed February 8, 2022 by Auxin Solar, Inc. in four separate DOC dockets: A-570-979 Malaysia; Thailand; Cambodia; and Vietnam.

Seller is aware of (i) rulemaking in connection with the Uyghur Forced Labor Prevention Act enacted on December 23, 2021, or (ii) the Hoshine Silicon Industry Withhold Release Order, which could ultimately have a negative impact on Seller and the Facility/project.

RENEWABLE POWER PURCHASE AGREEMENT
COVER SHEET

Seller: Resurgence Solar I, LLC

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

Description of Facility: A solar photovoltaic electric generating facility with a net nameplate capacity of 90 MW AC coupled with a lithium ion (Li-Ion) battery storage facility with a net nameplate capacity of 75 MW AC / 300 MWh located near the City of Boron within San Bernardino County, California, as described further in Exhibit A.

Milestones:

Milestone	Expected Date for Completion
Execute Interconnection Agreement	[redacted]
Procure major equipment	[redacted]
Obtain federal and state discretionary permits	[redacted]
Expected Construction Start Date	[redacted]
Guaranteed Construction Start Date	[redacted]
Expected Commercial Operation Date	[redacted]
Guaranteed Commercial Operation Date	12/31/2022

Delivery Term: Twenty (20) Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1	[redacted]
2	[redacted]
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]

Guaranteed Capacity: 165 MW of total Facility capacity

Guaranteed Storage Capacity: 75 MW of Installed Storage Capacity at four (4) hours of continuous discharge

Guaranteed PV Capacity: 90 MW of Installed PV Capacity

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	[redacted]
2	[redacted]

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]

Performance Security: [redacted]

Guarantor: [redacted]

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Exhibits:

RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("**Agreement**") is entered into as of January 21, 2021 (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).

[redacted]

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

[redacted]

"**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. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include NextEra Energy Operating Partners, LP and NextEra Energy Partners, LP, and their respective direct or indirect Affiliate subsidiaries.

"**After-Tax Basis**" means, with respect to any payment received, or deemed to have been received, by any Person, the amount of such payment (the "Base Payment"), supplemented by a further payment (the "Additional Payment") to such Person so that the sum of the Base Payment plus the Additional Payment will be equal to the Base Payment, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment). Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the statutory rate applicable to corporations under subchapter C of the Internal Revenue Code of 1986, as amended, and subject to the highest state and local income tax rate then in effect for corporations in the states in which the Person is subject to taxation during the applicable fiscal year, and shall take into account the deductibility, if applicable (for Federal income tax purposes), of state and local income taxes.

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

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

"**Approved Forecast Vendor**" means (x) any of 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(d).

"**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 Notice**" means Seller's availability forecasts issued pursuant to Section 4.3 with respect to the available Effective Storage Capacity and available Storage Capability.

"**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), the notice referenced in (a) results from Buyer or the SC for the Generating Facility:

(i) not having submitted a Self-Schedule or Energy Supply Bid for the MW subject to the reduction;

(ii) having submitted an Energy Supply Bid and the MW subject to the reduction were not awarded a schedule in connection with such Energy Supply Bid; or

(iii) having submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated by or delivered from the Facility.

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.

[redacted]

"**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) [redacted]

"**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 or financed 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.

[redacted]

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

"**Credit Notice**" has the meaning set forth in Section 8.10.

"**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, Fitch, or Moody's. If ratings by S&P, Fitch, 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 Order**" means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, 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.

To the extent permitted by CAISO, Buyer shall use commercially reasonable efforts to deliver Charging Energy to the Storage Facility during such Curtailment Order.

"**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) [redacted]

"**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(c).

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

"**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(d) 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).

[redacted]

"**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) 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 Intermittent Resource Protocol" or **"EIRP"** has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

"**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 Charging Notice) measured at the Storage Facility Metering Point by the Storage Facility Meter.

"**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.

[redacted]

"**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 the sum of PV Energy and 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.

"**Fitch**" means Fitch Ratings Ltd., or its successor.

"**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(f).

"**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., SP-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; (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 by Buyer after delivery by Seller of such Green Attributes to Buyer.

"**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) [redacted], (b) has a Credit Rating of [redacted] from S&P or Fitch, or a Credit Rating of Baa3 or better from Moody's, (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) 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 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) PMAX, 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 in the amount of 90 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- S&P or A3 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., SP-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.

"**Monthly Forecast**" has the meaning set forth in Section 4.3(b).

"**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.

"**NEER**" means NextEra Energy Resources, LLC.

"**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).

"**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, (b) a Letter of Credit or (c) a Guaranty in the amount set forth on the Cover Sheet.

"**Permitted Transfer**" means any of the following:

(a) transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or any of its Affiliates; *provided*, that (i) Ultimate Parent retains the authority, directly or indirectly, to control such Party, or (ii) a wholly-owned, indirect subsidiary of Ultimate Parent operates the Facility;

(b) (i) the direct or indirect transfer of shares of, or equity interests in, Seller to a Lender, (ii) any exercise by a Lender of its rights and remedies under the Financing Documents, and (iii) any change of economic and voting rights triggered in Seller's organization documents arising from the financing of the Facility which does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;

(c) a Change of Control of Ultimate Parent;

(d) the direct or indirect transfer of shares of, or equity interests in, Seller to a Person; provided, following the transfer (i) an Affiliate of NEER continues to hold an economic interest

in the Facility, (ii) the entity that operates the Facility is, or contracts with, a Permitted Transferee, and (iii) Seller, or such Person, maintains the applicable performance assurance requirements; or

(f) a transfer of the Facility to a Person pursuant to any of the following (i) all or substantially all of the assets of Ultimate Parent, (ii) all or substantially all of Ultimate Parent's renewable energy generation portfolio, or (iii) all or substantially all of Ultimate Parent's solar generation portfolio; provided, that in the case of each of (i), (ii) and (iii), following such transfer the entity that operates the Facility is, or contracts with, a Permitted Transferee and Seller, or such Person, maintains the applicable performance assurance requirements.

"**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 [redacted] 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 tax equity or debt transaction entered into 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.

"**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 **Error! Reference source not found.**(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 **Error! Reference source not found.**(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(d).

"**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 SP 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.

"**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.

"**SP-15**" means the Existing Zone Generation Trading Hub for Existing Zone region SP-15 as set forth in the CAISO Tariff.

"**Station Use**" means the Energy produced or discharged by the Facility (and not otherwise included in the Efficiency Rate) that is used within the Facility to power the information technology, telecommunications, lights, motors, facility 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 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 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 NextEra Energy, Inc., a Delaware corporation.

"**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;

(g) 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);

(h) 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;

(i) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(j) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages.

2.3 **Development; Construction; Progress Reports**.

Within fifteen (15) days after the close of (i) each 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 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 [redacted] 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 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 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.

[redacted]

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 [redacted] *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 Storage Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Storage 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 [redacted] 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, and Buyer shall take delivery of the Product at the Delivery Point 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 for every subsequent Contract 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-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of PV Energy and Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) 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**"), for each day of the following month in a form substantially similar to Exhibits F-1, F-2, F-3 and F-4, as applicable ("**Monthly Forecast**").

(c) 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 with a non-binding forecast of the

hourly expected 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 immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the hourly expected Forecasted Product. Such Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller 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 Monthly Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall 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**"), that directly result from a Forced Facility Outage, Force Majeure Event or other cause that has not been communicated or is not reasonably available to Buyer or Buyer's SC, 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 Buyer as soon as reasonably possible. Such Real-Time Forecasts of PV Energy shall be provided by an Approved Forecast Vendor and 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 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(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) 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.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility 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 Monthly Forecast, and (ii) the actual PV Energy (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.

(g) 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 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 then-current methodology 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 then-current methodologies, 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.

(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, including the Operating Restrictions. 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 consistent with the Operating Restrictions.

(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 4.9(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 Facility 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 [redacted] 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 SP 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 Operating Restrictions and 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 [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, and subject to the Operating Restrictions, 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. Any such representative(s) of Buyer shall adhere to the safety and security procedures of Seller, which shall be provided by Seller to Buyer in writing. Buyer shall indemnify and hold Seller harmless for any losses or claims for personal injury, death or property damage to the Facility or Site to the extent caused by Buyer, its authorized agents, employees, and inspectors, during any such access.

(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 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 (10^{th}) 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 2preceding 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 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 by the later of (a) ten (10) Business Days after Buyer's receipt of the invoice from Seller, and (b) the thirtieth (30^{th}) day of the month after the operational month for which such invoice was rendered; *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; provided that the Development Security shall not be replenishable. 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); *provided*, however, that in no event shall Seller have any obligation to replenish the Performance Security to the extent that the aggregate amount of such replenishment of the Performance Security during the Delivery Term exceeds one (1) times the Performance Security requirement. 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.

[redacted]

[redacted]

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**.

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 either 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 **Error! Reference source not found.**, (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 [redacted] 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 [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 one hundred eighty (180) 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;

(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 Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash or (2) 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;

(vii) 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 Fitch 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.

(c) with respect to Buyer as the Defaulting Party, the failure of Buyer to provide the Buyer Credit Support in accordance with Section 8.10(e), and such failure is not remedied within twenty (20) Business Days after Notice thereof.

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; *provided*, in no event shall the sum of the Damage Payment and any Delay Damages paid to date exceed an amount equal to [redacted] 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.

11.9 **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; *provided*, in no event shall the sum of (A) and (B) exceed an amount equal to [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.

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 **Error! Reference source not found.**, 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, on December 1st of each of the first ten (10) years in the Delivery Term, Seller shall cause twenty thousand dollars ($20,000) to be deposited, for a total of two hundred thousand dollars ($200,000), into a "Workforce Development Fund" maintained by Buyer. The investment plan for utilizing such funds shall be developed by Buyer at the discretion of Buyer's board. 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. If requested by Buyer, Seller shall complete a "Supplier Diversity and Labor Practices" questionnaire, and Seller agrees to comply with similar regular reporting requirements related to diversity and labor practices.

13.5 **Local Sustainability**.

The Parties acknowledge that in connection with Buyer's renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to supporting local sustainability efforts. Accordingly, on December 1st of each of the first ten (10) years in the

Delivery Term, Seller shall cause ten thousand dollars ($10,000) to be deposited, for a total of one hundred thousand dollars ($100,000), into a "Local Sustainability Fund" maintained by Buyer. The investment plan for utilizing such funds shall be developed by Buyer at the discretion of Buyer's board.

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 or if it is a Permitted Transfer. 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 in substantially the form attached as Exhibit S ("**Collateral Assignment Agreement**").

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 **Permitted Transfer by Seller**.

Seller may make a Permitted Transfer, without the prior written consent of Buyer, provided that Seller gives at least thirty (30) days' prior written notice to Buyer.

14.5 **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 [redacted] 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 or excess insurance policy in a minimum limit of liability of [redacted] 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 [redacted] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [redacted] 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 a combined single limit of [redacted] 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) Builder's All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, builder's 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) commercial general liability insurance with a combined single limit of coverage [redacted] (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 [redacted] per occurrence. All subcontractors shall include 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 self-insure in accordance with the terms and conditions above. With respect to the required general liability, umbrella or excess liability and business 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.

RESURGENCE SOLAR I, LLC		VALLEY CLEAN ENERGY ALLIANCE	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Resurgence Solar I

Site includes all or some of the following APNs: 0491-101-16-0000, 0491-101-17-0000, 0491-101-18-0000, 0491-101-19-000, 0491-151-38-0000, 0491-151-39-0000, 0491-151-40-0000, 0498-171-05-0000, 0498-171-06-0000

City: Boron

County: San Bernardino, CA

Zip Code: 93516

Latitude and Longitude: 35.0131, -117.5487

Facility Description: A solar photovoltaic electric generating facility with a net nameplate capacity of 90 MW AC coupled with a lithium ion (Li-Ion) battery storage facility with a net nameplate capacity of 75 MW AC / 300 MWh located near the City of Boron within San Bernardino County, California. The Facility is a portion of a larger 138 – 150 MW solar + storage project. Seller may install additional inverter capacity to account for production and delivery losses.

Site Diagram: Attached

Delivery Point: P-node

Generating Facility Metering Points: See Exhibit R

Storage Facility Metering Points: See Exhibit R

P-node: To be established prior to the Commercial Operation Date at the Kramer Junction 115kV bus. Seller shall promptly notify Buyer following the establishment of the P-node.

Transmission Provider: Southern California Edison

Additional Information: None

Site Diagram:

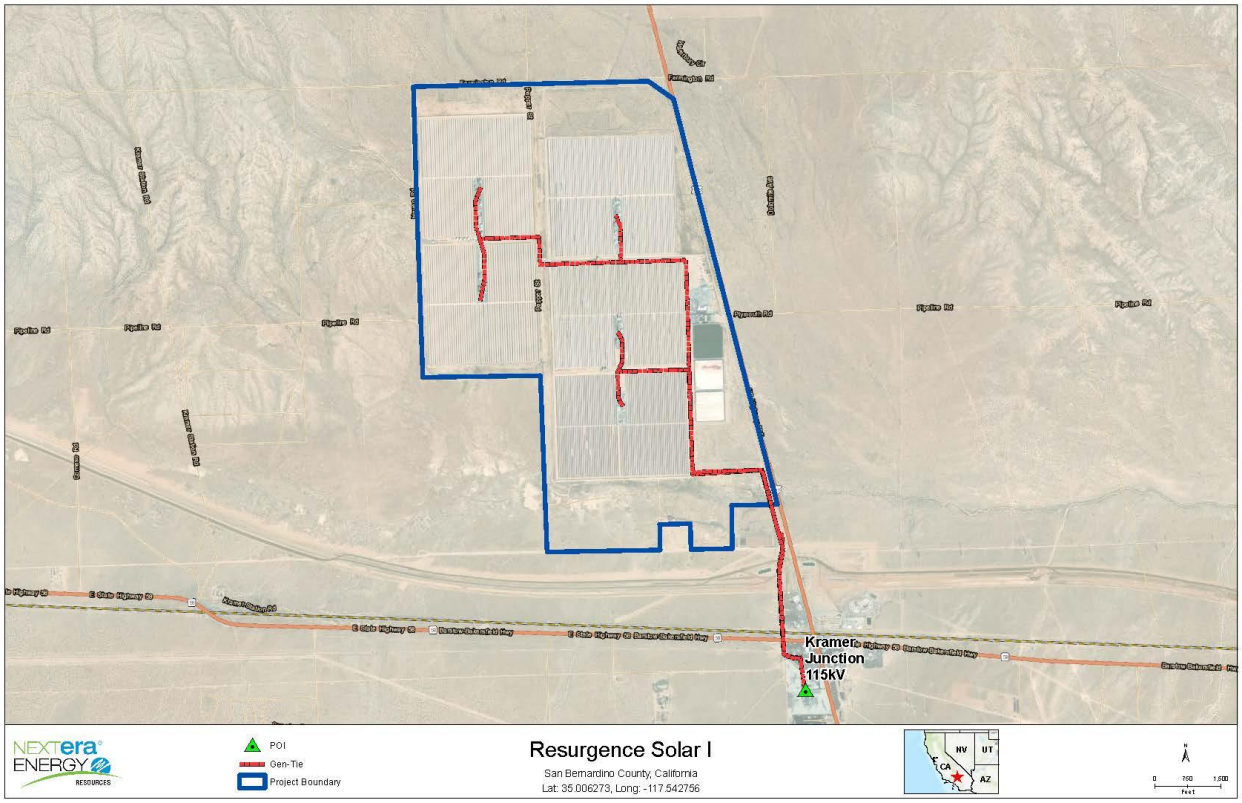

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EXHIBIT B

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 primary contractors and ordered all major 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] of extensions by such payment of Daily Delay Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. 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, and 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] by such payment of Commercial Operation Delay

Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. Notwithstanding anything in this Agreement to the contrary, the aggregate Delay Damages shall not exceed the amount of the Development Security.

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 [redacted] for any reason, including a Force Majeure Event; *provided*, however, that Seller shall be allowed additional day-for-day extensions beyond the [redacted] not to exceed a total of cumulative extensions granted under Sections 4(a), 4(b) and 4(c) under the Development Cure Period of [redacted] solely to the extent due to a Force Majeure Event related to COVID-19. 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] (if the maximum Commercial Operation Delay Damages are paid), which may be extended up to [redacted] if the Development Cure Period is extended up to [redacted] due to a Force Majeure Event related to COVID-19. 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, and the applicable portions of the Agreement shall be adjusted accordingly consistent with 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, and the applicable portions of the Agreement shall be adjusted accordingly consistent with 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, if any, up to [redacted] of the Expected Energy for such Contract Year.

(b) Excess Contract Year Deliveries. Notwithstanding the foregoing, if at any point in any Contract Year, the amount of PV Energy plus Deemed Delivered Energy exceeds [redacted] of the Expected Energy for such Contract Year, the price to be paid for additional PV Energy and/or Deemed Delivered Energy shall be [redacted]

(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. 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 x 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 withheld 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:

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 [redacted] of the Installed Storage Capacity, then:

Capacity Availability Factor = Guaranteed Storage Availability – YTD Annual Storage Capacity Availability

(C) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than [redacted] of the Installed Storage Capacity, then:

Capacity Availability Factor = [redacted]

provided that, if the result of any of the calculations in clauses (A) through (C) above is greater than 1.0, then the Capacity Availability Factor shall be deemed to be equal to 1.0.

(e) Test Energy. Test Energy is compensated in accordance with Section 3.6.

[redacted] Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. [redacted]

(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) telephonically 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 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 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-1

MONTHLY EXPECTED AVAILABLE GENERATING FACILITY CAPACITY

[MW Per Hour] – [*Insert Month*]

	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
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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-2

MONTHLY EXPECTED PV ENERGY

[MWh Per Hour] – [*Insert Month*]

	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
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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-3

MONTHLY EXPECTED AVAILABLE EFFECTIVE STORAGE CAPACITY

[MW Per Hour] – [*Insert Month*]

	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
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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-4

MONTHLY AVAILABLE STORAGE CAPABILITY

[MWh Per Hour] – [*Insert Month*]

	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
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

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 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 = [redacted]

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 O 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 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 [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. [XXXXXXX]

Date:

Bank Ref.:

Amount: US$[XXXXXXXX]

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. [XXXXXXX] (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. $[XXXXXX] (United States Dollars [XXXXX] 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 [XXXXXX] 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. [XXXXXXX] ("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 [XXXXXX] or [XXXXXX] 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. [XXXXXXX]. 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. [XXXXXXX] (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**"), dated as of _____, ____ (the "**Effective Date**"), is made by [redacted] ("**Guarantor**"), in favor of [_____] ("**Counterparty**").

RECITALS:

A. WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary [_____] ("**Obligor**") have entered into, or concurrently herewith are entering into, that certain ***[Insert Name of Agreement]*** [dated/made/entered into/effective as of] _____, 20__ (the "**Agreement**"); and

B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

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 on or after the Effective Date (the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be 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 _____ *[spell out the dollar amount]* U.S. Dollars (U.S. $_____) (the "**Maximum Recovery Amount**").

(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 attorney's fees) to the extent reasonably and actually incurred by the Counterparty (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). 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, unless such damages are owed by Obligor to Counterparty pursuant to the Agreement.

2. **DEMANDS AND PAYMENT.**

(a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**").

(b) Guarantor's obligation hereunder to pay any particular Overdue 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 Overdue Obligation(s) covered by such demand, the specific date(s) upon which such Overdue Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Overdue 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 Overdue 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 Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) 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 Florida or the State of New York.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of Florida 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. RESERVATION OF CERTAIN DEFENSES. Without limiting Guarantor's own defenses and rights hereunder, 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 or any lack of power or authority of Obligor to enter into and/or perform the Agreement.

5. **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. **WAIVERS AND CONSENTS.** Subject to and in accordance with the terms and provisions of this Guaranty:

(a) Except as required in *Section 2* above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) 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.

(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 any person (other than Obligor or 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 and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement or (ii) 11:59:59 Eastern Prevailing Time [_____, _____]; *provided*, *however*, that no such termination shall affect Guarantor's liability with respect to any Obligation incurred prior to the time the termination is effective, which Obligation shall remain subject to this Guaranty.

9. **NOTICE.** 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:*
[redacted] *Attn:* Treasurer	_____ _____ _____ *Attn:* _____
[Tel: [redacted] -- for use in connection with courier deliveries]	*[Tel: (___) ___-___ -- for use in connection with courier deliveries]*

* *(NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to ATTN: Contracts Group, Legal, Fax No. [redacted] and ATTN: Credit Department, Fax No. [redacted]. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)*

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 law of the State of New York, without regard to principles of conflicts of laws thereunder (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).

(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.

(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) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of the Supreme Court of the State of New York, New York County (without prejudice to the right of any party to remove to the United States District Court for the Southern District of New York) for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH 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.

[redacted]

By:_____

Name:_____

Title:_____

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 Information[1]

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

[SELLER'S NAME] ("Seller")	**VALLEY CLEAN ENERGY ALLIANCE** ("Buyer")
All Notices: Street: 700 Universe Blvd. City: Juno Beach, FL 33408 Attn: Business Management Phone: [redacted] Email: [redacted]	**All Notices:** Street: 604 2Nd Street City: Davis, CA 95616 Attn: [redacted] Phone: [redacted] Email: [redacted]
Reference Numbers: Duns: Federal Tax ID Number:	**Reference Numbers:** Duns: [redacted] Federal Tax ID Number: [redacted]
Invoices: Attn: Business Management Phone: [redacted] E-mail: [redacted]	**Invoices:** Attn: [redacted] Phone: [redacted] E-mail: [redacted]
Scheduling: Attn: Phone: Email:	**Scheduling:** Attn: Day Ahead Trading, Real Time Trading Phone: [redacted] Email: [redacted]
Confirmations: Attn: Phone: Email:	**Confirmations:** Attn: [redacted] Phone: [redacted] Email: [redacted]
Payments: Attn: Business Management Phone: [redacted] E-mail: [redacted]	**Payments:** Attn: [redacted] Phone: [redacted] E-mail: [redacted]
Wire Transfer: Seller shall provide to Buyer the information below at least 60 days prior to the Commercial Operation Date. BNK: ABA: ACCT:	**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 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.

(1) 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).

(2) 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 Buyer'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 Buyer'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 Test 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 75 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 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:

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I. x } \left(1 - \text{the lesser of: } \frac{A}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity x 4 hrs}} \right)$$

"**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 assuming normal operating conditions pursuant to the manufacturer's guidelines.

(b) "**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. 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) Seller's most recent Availability Notice (as updated pursuant to Section 4.3). 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) In the first and second Contract Year, for the final year-end Storage Capacity Availability Payment True-Up Amount, the YTD Annual Storage Capacity Availability shall be increased by an amount equal to the ratio of Planned Outage hours as defined in Section 4.6 divided by 8760 hours, not to exceed [redacted]. For the purposes of this calculation, if the Planned Outage is for less than a full hour, the Planned Outage will be counted as an equivalent percentage of the applicable hour. If, during any applicable hour, the Planned Outage is for less than the Effective Storage Capacity, the Planned Outage shall be counted as an equivalent percentage of such hour.

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

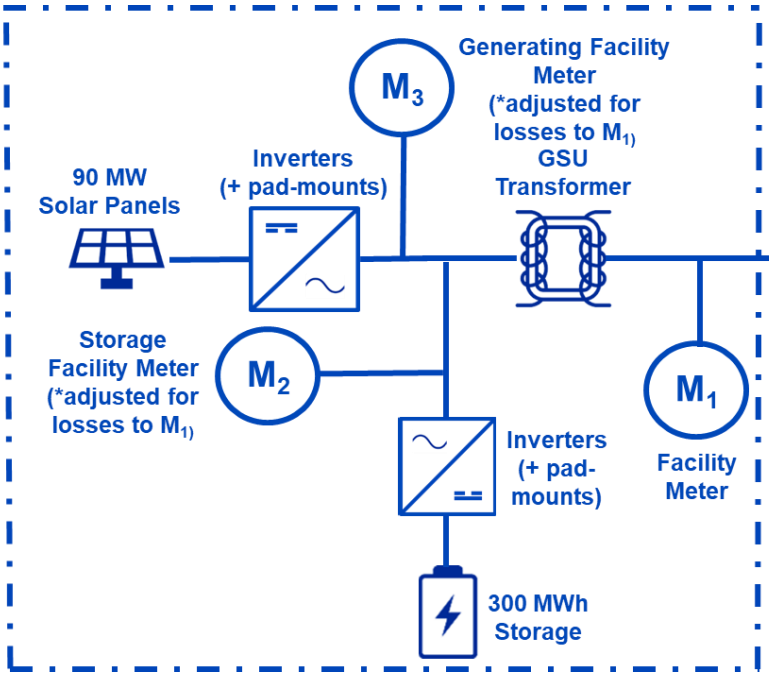
File Update Date:	**[XX/XX/20XX]**	
Technology:	**Lithium Ion Batteries**	
Storage Unit Name:	**[Unit Name and Number]**	
A. Contract Capacity		
Guaranteed Storage Capacity (MW):	75	
Effective Storage Capacity (MW):	75	
B. Total Unit Dispatchable Range Information		
Interconnect Voltage (kV)	115	
Maximum Storage Level (MWh):	300	
Minimum Storage Level (MWh):	0	
Stored energy capability (MWh):	300	
Maximum Discharge (MW):	75	
Maximum Charge (MW):	75	
Guaranteed Efficiency Rate:	See Cover Sheet	
Maximum energy throughput (BET) (MWh/year):	[redacted]	
C. Charge and Discharge Rates		
Mode	**Maximum (MW)**	**Ramp Rate (MW/s) Description**
Energy (Charge)	75	75 MW/s
Energy (Discharge)	75	75 MW/s
D. Ancillary Services		
Frequency regulation is included:	Yes	
Spin is included:	Yes	

II. GENERATING FACILITY OPERATING RESTRICTIONS

1. Maximum energy throughput of [redacted] MWh/year
2. Maximum annual average State of Charge (SOC) of less than [redacted]

EXHIBIT R

METERING DIAGRAM



The metering diagram is illustrative and subject to final metering arrangement with CAISO. A more precise metering diagram will be developed by Seller during detailed project design and shared with Buyer at least 90 Days prior to the Guaranteed Commercial Operation Date.

EXHIBIT S

FORM OF COLLATERAL ASSIGNMENT AGREEMENT

This CONSENT AND AGREEMENT (this "Consent"), dated as of _____, 20[ ], is executed by and among [BUYER], a [legal form of Contracting Party] organized under the laws of the State of California (the "Contracting Party"), [_____], a [_____] (the "Project Owner"), and [_____], as collateral agent (in such capacity, together with its successors and permitted assigns, the "Collateral Agent") for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the "Secured Parties").

A. The Project Owner owns, operates and maintains [_____] (the "Project").

B. The Contracting Party and the Project Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "Assigned Agreement").

C. The Borrower, the Project Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders, [_____], as the Administrative Agent and Collateral Agent, have entered into a Credit Agreement, dated as of [_____](as amended, modified or supplemented from time to time, the "Credit Agreement"), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Project Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Project Owner has assigned all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of [_____]between the Project Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Security Agreement", and, together with the Credit Agreement and any other financing documents relating to the issuance of the Notes, the "Financing Documents").

E. It is a requirement under the Credit Agreement that the Project Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. Consent to Assignment. The Contracting Party hereby acknowledges and consents to the pledge and assignment of all right, title and interest of the Project Owner in, to and under (but not its obligations, liabilities or duties with respect to) the Assigned Agreement by the Project Owner to the Collateral Agent pursuant to the Security Agreement.

2. Representations and Warranties. The Contracting Party represents and warrants as follows:

(a) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(b) No Previous Assignments. The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.

(c) No Termination Event: No Disputes. After giving effect to the pledge and assignment referred to in Section 1, and after giving effect to the consent to such pledge and assignment by the Contracting Party, there exists no event or condition (a "Termination Event") that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] there are no unresolved disputes between the parties under the Assigned Agreement. All amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. Right to Cure.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an "event of default" or "default" (or any other similar event however defined) by the Project Owner under the Assigned Agreement, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; provided, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(b) The Contracting Party agrees that it will not (i) terminate the Assigned Agreement or (ii) suspend the performance of any of its obligations under the Assigned Agreement without first giving the Collateral Agent notice and opportunity to cure as provided below. The Contracting Party further agrees that it will not assign any obligation under the Assigned Agreement without the prior consent of the Collateral Agent, which consent shall not be unreasonably withheld, delayed or conditioned, except to the extent the Contracting Party may subcontract such obligations to other parties.

(c) If a Termination Event shall occur, and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. Collateral Agent will have the right, but not the obligation, to cure a Termination Event on behalf of Project Owner, only if Collateral Agent sends a written notice to Contracting Party before the later of (i) the expiration of any cure period under this Agreement, and (ii) fifteen (15) Business Days after Collateral Agent's receipt of notice of such Termination Event from Contracting Party, indicating Collateral Agent's intention to cure. If the Collateral Agent elects to exercise its right to cure as herein provided by providing a written notice to the Contracting Party, it shall have a period of (1) thirty (30) days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or (2) if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a "Non-monetary Event"), the Collateral Agent shall have sixty (60) days to cure such Termination Event so long as the Collateral Agent has commenced and is diligently pursuing appropriate action to cure such Termination Event; provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition; provided, further, that in the event of items (i) or (ii) above, such time period shall not exceed one hundred eighty (180) days. Any cure period for the Collateral Agent shall not commence until the later of (i) the end of the cure period of the Project Owner under the Assigned Agreement and (ii) written notice from the Contracting Party to the Collateral Agent of a Termination Event.

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(e) Following a Termination Event by the Project Entity under the Assigned Agreement, the Contracting Party may require the Collateral Agent, if the Collateral Agent has provided the notice set forth in subsection (c) above, to provide to Contracting Party a report concerning:

(i) The status of efforts by Collateral Agent to develop a plan to cure the Termination Event;

(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 Contracting Party may reasonably require related to the development, implementation and timetable of the cure plan.

Collateral Agent must provide the report to Contracting Party within twenty (20) Business Days after Notice from Contracting Party requesting the report. Contracting Party will have no further right to require the report with respect to a particular Termination Event after that Termination Event has been cured.

4. Replacement Agreements. Notwithstanding any provision in the Assigned Agreement to the contrary, in the event (i) the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy, insolvency, reorganization or similar proceedings affecting the Project Owner, at the Collateral Agent's request within forty-five (45) days after such rejection or termination, the Contracting Party will enter into a new agreement with the Collateral Agent or the Collateral Agent's designee for the remainder of the originally scheduled term of the Assigned Agreement, effective as of the date of such rejection, with the same covenants, agreements, terms, provisions and limitations as are contained in the Assigned Agreement, or (ii) if the Collateral Agent or its designee, directly or indirectly, takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of the Assigned Agreement, promptly after the Contracting Party's written request, the Collateral Agent must itself or must cause its designee to promptly enter into a new agreement with the Contracting Party having substantially the same terms as the Assigned Agreement for the remaining term thereof, provided that in the event a designee of the Collateral Agent, directly or indirectly, takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by the Contracting Party, not to be unreasonably withheld.

5. Substitute Owner. If the Collateral Agent elects to sell or transfer the Project (after the Collateral Agent directly or indirectly, takes possession of, or title to the Project), or sale of the Project occurs through the actions of the Collateral Agent (for example, a foreclosure sale where a third party is the buyer, or otherwise), then the Collateral Agent must cause the transferee or buyer to assume all of the Project Entity's obligations arising under the Assigned 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 (i) meets the definition of "Permitted Transferee" as defined in the Assigned Agreement and (ii) is an entity that the Contracting Party is permitted to contract with under applicable law.

6. Payments. The Contracting Party shall make all payments due to the Project Owner under the Assigned Agreement directly into the account specified on Schedule II hereto, or to such other person or account as shall be specified from time to time by the Collateral Agent to the Contracting Party in writing. All parties hereto agree that each payment by the Contracting Party as specified in the preceding sentence of amounts due to the Project Owner from the Contracting Party under the Assigned Agreement shall satisfy the Contracting Party's corresponding payment obligation under the Assigned Agreement.

7. No Amendments. The Contracting Party acknowledges that the Financing Documents restrict the right of the Project Owner to amend or modify the Assigned Agreement, or to waive or provide consents with respect to certain provisions of the Assigned Agreement, unless certain conditions specified in the Financing Documents are met. The Contracting Party shall not, without the prior written consent of the Collateral Agent which consent shall not be unreasonably withheld, delayed or conditioned, amend or modify the Assigned Agreement in any material respect, or accept any waiver or consent with respect to certain provisions of the Assigned Agreement. The Collateral Agent shall have the right to consent before any termination of the Assigned Agreement which does not arise out of a Termination Event.

8. Notices. Notice to any party hereto shall be in writing and shall be deemed to be delivered on the earlier of: (a) the date of personal delivery, (b) postage prepaid, registered or certified mail, return receipt requested, or sent by express courier, in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, or (c) if transmitted by facsimile, the date when sent and facsimile confirmation is received; provided that any facsimile communication shall be followed promptly by a hard copy original thereof by express courier:

The Collateral Agent: [_____]
[ ]
Attn: [ ]
Telephone No.: [ ]
Facsimile No.: [ ]

The Project Owner: _____
_____
_____
_____

The Contracting Party: _____
_____
_____
_____

9. Successors and Assigns. This Consent shall be binding upon and shall inure to the benefit of the successors and assigns of the Contracting Party, and shall inure to the benefit of the Collateral Agent, the other Secured Parties, the Project Owner and their respective successors, transferees and assigns.

10. Counterparts. This Consent may be executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

11. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the State of [_____].

[*Signature page follows on next page*.]

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

By: _____
Name:
Title:

[_____]
as Collateral Agent

By: _____
Name:
Title:

Acknowledged and Agreed:
[_____]

By: _____
Name:
Title:

Schedule I

Assigned Agreement

Schedule II

Payment Instructions
(Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Schedule III]

[Amounts Due and Unpaid under the Assigned Agreement
(Section 2(c))]

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2022-___

RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE (VCE) APPROVING A POWER PURCHASE AGREEMENT (PPA) AMENDMENT 1 WITH RESURGENCE SOLAR I, LLC AND AUTHORIZING THE EXECUTIVE OFFICER IN CONSULTATION WITH LEGAL COUNSEL TO FINALIZE AND EXECUTE THE POWER PURCHASE AGREEMENT AMENDMENT

WHEREAS, the Valley Clean Energy Alliance ("VCE") was formed as a community choice aggregation agency ("CCA") on November 16, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions. The City of Winters, located in Yolo County, was added as a member of VCE and a party to the JPA in December of 2019; and,

WHEREAS, on January 21, 2021, VCE and Resurgence Solar 1 LLC entered into a PPA for the output from the Resurgence renewable resource for a term of 20 years; and

WHEREAS, NextEra Energy Resources is developing and constructing the Resurgence project consisting of a 90-MW AC solar photovoltaic facility coupled with a 75-MW/300MWh (4-hour) lithium-ion battery energy storage system, near the city of Boron in San Bernardino County, California; and

WHEREAS, Resurgence Solar I, LLC is a wholly owned subsidiary of NextEra Energy Resources; and

WHEREAS, NextEra Energy Resources has claimed significant cost increases and associated delays due to events outside of the developer's control; and

WHEREAS, VCE and Resurgence Solar 1 LLC resolved the matters related to cost increases and associated delays as outlined in the terms of Amendment 1.

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

1. The Executive Officer is authorized to execute the PPA Amendment 1 substantially in the form attached hereto as Attachment A on behalf of VCE, and, in consultation with legal counsel, is authorized to approve minor changes to the PPA Amendment 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 _____ 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Jesse Loren, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

Attachment A: Amendment 1 to Resurgence Solar I LLC Power Purchase Agreement (redacted)

Attachment B: Resurgence Solar I LLC Power Purchase Agreement (redacted)

ATTACHMENT A

AMENDMENT 1 TO RESURGENCE SOLAR I, LLC POWER PURCHASE AGREEMENT (REDACTED)

ATTACHMENT B

RESURGENCE SOLAR I, LLC POWER PURCHASE AGREEMENT (REDACTED)

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 20

TO: Board of Directors

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

SUBJECT: CC Power participation in geothermal projects from Ormat Nevada Inc. and Open Mountain Energy, LLC

DATE: July 14, 2022

Recommendation

Authorize the Executive Officer to execute on behalf of Valley Clean Energy as a member of CC Power the following agreements and any necessary ancillary documents for the geothermal projects with a delivery term of 20 years:

a. Ormat Nevada Inc. (Ormat) Portfolio of Geothermal Projects
b. Open Mountain Energy LLC., Fish Lake Geothermal (OME)

Background

Through the 2020 Integrated Resource Planning (IRP) proceeding, the California Public Utilities Commission (CPUC) had identified the need for additional clean energy resources and capacity including firm and/or baseload clean resources and storage resources. These additional resources are designed to enable grid integration of a larger fleet of intermittent resources (e.g. solar, wind) to meet California's greenhouse gas emission reduction goals. These clean resources would replace several methane gas once-through-cooling (OTC) power plants that are scheduled to be shut down and the Diablo Canyon Nuclear Power Plant (DCNPP) slated to retire between in 2024 and 2025.

Subsequently, in June 2021, as part of the 2020 IRP the CPUC issued the Mid-term Reliability Procurement Order ("MTR Order" D.21-06-035), requiring jurisdictional load serving entities (LSEs), such as VCE, to procure and/or develop a collective 11,500 MW of new capacity by 2026. VCE's share of the MTR Order is 44 MW which is determined based on VCE's load ratio to the CPUC's jurisdictional load.

Included within the MTR Order is an identified need of 1,000 MW of new incremental capacity from firm clean resources (FCR) delivered from geothermal and/or biomass resources with an on-line date by August 2026. VCE's share of the FCR requirement is approximately 4 MW.

In October 2021, CC Power, which VCE joined in early 2021, issued the Firm Clean Energy Resources RFO for resources that meet the CPUC's requirements set forth in (D.21-06-035). In summary, the CPUC Order required procurement of new resources by 2026 with at least 80% capacity factor that must not be subject to use limitations or be weather dependent. Offers were due December 13, 2021, and CC Power received bids from 6 bidders and 16 projects (5 of the

projects were located in California). Two bidders were shortlisted: (1) one project from OME and (2) a portfolio of projects from Ormat. On May 31, 2022 CC Power board of directors ("Board") unanimously approved participation in these projects and authorized the CC Power General Manager to execute PPAs with Ormat and OME. Finally, staff presented the geothermal projects to the Community Advisory Committee (CAC) in June and the CAC unanimously supports VCE's participation in these projects.

Analysis and Discussion

The two proposed CC Power FCR projects will continue to bridge the gap towards VCE meeting CPUC MTR compliance while also providing RPS eligible long-term renewable energy, delivered with a high capacity factor in support of state mandated and board directed RPS goals. Further, because of the firm nature of geothermal resources, both projects are expected to provide a reliable source of RA. The recommended projects are located outside of the California Independent System Operator (CAISO) balancing authority, as such VCE (along with other CC Power Member CCA's), will need to retain import capability from the CAISO to enable the resources to meet CPUC RA requirements and therefore count towards VCE's MTR obligations.

Following is a summary of the two projects recommended for approval.

1. Ormat Geothermal Portfolio

Ormat will provide the project participants a portfolio of up to eight new geothermal projects located in California (3) and Nevada (5). The projects are still under development and the precise capacity per project and availability to CC Power is not yet known. At a minimum the portfolio will provide 64 MW and will not exceed 125 MW. As projects materialize, CC Power and the participants will be given the opportunity to elect projects into the portfolio of resources. All projects included in the portfolio will need to meet RPS PCC1 and RA eligibility requirements satisfied by obtaining the necessary import capability rights. In the event VCE and/or the other participants are unable to obtain import capacity rights for a specific geothermal project, the participants can elect not to include the resource in the portfolio. VCE's expected share of the Ormat portfolio is 4.63 megawatts (MW) of capacity and approximately 35,380 megawatt hours (MWh) of energy annually or approximately 4.8% of retail sales.

Ormat is a leading geothermal company, which owns, operates, designs, manufactures and sells geothermal power plants primarily based on the Ormat Energy Converter – a power generation unit that converts low-, medium- and high-temperature heat into electricity. Ormat has engineered, manufactured, and constructed power plants totaling over 3,000 MW of gross capacity and currently owns a generating portfolio of 1,100 MW (net), spread globally in the United States (California, Nevada, Oregon, Idaho and Hawaii), Guatemala, Guadeloupe, Kenya and Indonesia. Note: VCE currently contracts with Ormat for 2.5MW of the Tierra Buena 4 hr battery storage facility in Sutter County.

Project Overview

Project Name	**Ormat Geothermal Portfolio (ORGP LLC)**
Technology	Binary Geothermal
Portfolio Capacity & Expected Annual Energy	64 to 125 MW; VCE's expected share 4.63 MW and 35,380 MWhs
Expected Commercial Operation Date & Term	Varies with project, as early as 2024; 20 yrs
Developer	Ormat Nevada Inc.
Location	Nevada and Imperial Valley, CA
Price	Fixed price $/MWh, no escalation

2. Open Mountain Energy

Open Mountain Energy's (OME) Fish Lake Geothermal project is 13 MW of new capacity located in Esmeralda County, Nevada. The project will meet RPS PCC1 eligibility requirements and RA, provided VCE obtains the import capability rights. Once the agreements are fully executed, VCE is obligated to take its allocation regardless of whether it is able to obtain import capability. VCE's expected share from Fish Lake Geothermal is 0.42 MW of capacity and approximately 3,460 MWh of energy annually or 0.5% of retail sales.

Open Mountain Energy combines its geothermal and project development expertise with Kaishan Group's power plant technologies and manufacturing to form a vertically integrated geothermal energy company.

Project Overview

Project Name	**Fish Lake Geothermal**
Technology	Geothermal
Portfolio Capacity & Expected Annual Energy	13 MW; VCE's expected share 0.42 MW and 3,460 MWhs
Expected Commercial Operation Date & Term	June 2024; 20 yrs
Developer	Open Mountain Energy
Location	Esmeralda County, Nevada
Price	Fixed price $/MWh, no escalation

Contract Structure

The contract structures utilized for both Ormat and OME, involves CC Power signing a Power Purchase Agreement (PPA) with the project seller and each of the participating community choice aggregators (CCAs) signing a Project Participation Share Agreement (PPSA) with CC Power. The structure is similar to the two long duration storage contracts VCE's board approved for execution with CC Power. VCE will be one of many CC Power members sharing in the output, benefits, costs and obligations of the two geothermal projects. Under the contracts, CC Power will pay the PPA rate and in return will be entitled to all product attributes from the facility, including energy arbitrage, ancillary services, and resource adequacy. The eight participating CCAs will receive an entitlement share of the obligations and benefits associated with its capacity share. The table below identifies the expected megawatts (MW) per participating CC Power member.

CCA Participation

The eight participating CCAs will receive an entitlement share of the obligations and benefits associated with its capacity share. The table below shows the expected entitlement share percentage and megawatts (MW) per participating CC Power member. The agreements have a step-up provision capped at 125% of the original entitlement share. The step-up provision is necessary to ensure the PPA between CC Power and the project seller will continue in the event that one or more project participants default. In such case, rather than allowing the PPA to terminate, the remaining participants will increase their entitlement share.

CCA	OME Nameplate	OME Step-up	Ormat Nameplate	Ormat Step-up	Total Nameplate	Total Step-up
3CE	2.42	0.60	22.38	5.59	24.79	6.20
CPSF	1.89	0.47	17.38	4.34	19.26	4.82
PCE	2.31	0.58	21.38	5.34	23.69	5.92
RCEA	0.36	0.09	4.00	1.00	4.36	1.09
SJCE	2.26	0.57	24.50	6.13	26.76	6.69
SVCE	1.82	0.46	16.75	4.19	18.57	4.64
SCPA	1.52	0.38	14.00	3.50	15.52	3.88
VCE	0.42	0.10	4.63	1.16	5.04	1.26
TOTAL	**13.00**	**3.25**	**125.00**	**31.25**	**138.00**	**34.50**

Workforce Development

Consistent with the CC Power Board direction for enhanced contracting conditions, the developer will construct the project under a project labor agreement, thus assuring payment of prevailing wages and use of apprenticeship programs. For projects built in Nevada, both developers will adhere to the Nevada prevailing wage requirement with audit, or project labor agreement. Alternatively, developers may apply for and receive Nevada's Renewable Energy Tax Abatement

(RETA) benefits which require construction workforce is paid no less than 175% of the statewide average annual wage and provide adequate health insurance. The projects will also adhere to CC Power environmental and environmental justice conditions.

VCE Strategic Plan

The geothermal projects support the following objectives in VCE's strategic plan:

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.

2.3 Objective: Deploy storage and other strategies to achieve renewable, carbon neutral, resource adequacy, and resiliency objectives.

Conclusion

Staff is recommending Board approval of VCE's participation in these geothermal projects. In addition, each participating CCA is asking its Board for cushion to allow them to proceed with these projects in case there are changes in share allocation due to any CCA not receiving their Board's approval (note: VCE will seek approval for a maximum of 6.3MW under these two PPA's). This will also cover situations where there is a step-up event. Staff anticipates that all CCA's will receive approval to participate, but in the event one or more do not, this buffer will help avoid the need to go back to each of the CCA Boards for re-approval.

The geothermal projects are the third and fourth projects for CCAs to procure together through CC Power, and all will provide a valuable mix of resources for VCE's customers and will help meet the MTR procurement mandate.

Attachments

1) Power Purchase Agreement (PPA) between ORGP LLC and California Community Power (Redacted)
2) ORGP LLC Geothermal Portfolio, Participating CCA members, and CC Power Project Participation Share Agreement
3) Resolution 2022-XXX
4) Power Purchase Agreement (PPA) between Fish Lake Geothermal LLC and California Community Power (Redacted)
5) Fish Lake Geothermal, Participating CCA members, and CC Power Project Participation Share Agreement
6) Resolution 2022-XXX

Execution Version

RENEWABLE POWER PURCHASE AGREEMENT

COVERSHEET

Seller: ORGP LLC, a Delaware limited liability company

Buyer: California Community Power, a California joint powers authority

Description of Project: A portfolio of geothermal powered electric generating plants located in the States of California and Nevada with a maximum generating capacity of 125 MW.

Delivery Term: See Section 2.2.

Guaranteed Generation and Maximum Generation: See Appendix J.

Contract Price: [redacted]

Product:

- ☒ Delivered Energy
- ☒ Green Attributes (Portfolio Content Category 1) associated with the Delivered Energy
- ☒ Capacity Attributes (Resource Specific Import RA)
- ☒ Ancillary Services

Scheduling Coordinator: Seller

Security:

Project Development Security: [redacted]

Delivery Term Security: [redacted]

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RENEWABLE POWER PURCHASE AGREEMENT

PARTIES

THIS RENEWABLE POWER PURCHASE AGREEMENT (this "***Agreement***") is dated as of the 31st day of May, 2022 ("***Effective Date***"), and entered into by and between CALIFORNIA COMMUNITY POWER, a California joint powers authority ("***Buyer***"), and ORGP LLC, a limited liability company organized and existing under the laws of the State of Delaware ("***Seller***"). Each of Buyer and Seller is referred to individually in this Agreement as a "***Party***" and together they are referred to as the "***Parties***."

RECITALS

WHEREAS, the California Public Utilities Commission directed Buyer's members to procure Firm Clean Resources that meet the requirements of CPUC Decision 21-06-035; and

WHEREAS, Buyer issued a "Request for Offers Seeking Firm Clean Resources" ("***RFO***"); and

WHEREAS, Seller's parent company on behalf of Seller responded to the RFO and following negotiations, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase from Seller, certain renewable energy and associated environmental attributes; and

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which such sales and purchases shall be made.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, and the mutual covenants and agreements herein set forth, the Parties agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. The following terms in this Agreement and the appendices hereto shall have the following meanings when used with initial capitalized letters:

"**Accepted Compliance Costs**" has the meaning set forth in Section 8.6(c).

"**Affiliate**" means, as to any Person, any other Person that, directly or indirectly, is in Control of, is under Control by, or is under common Control with such Person. Subject to transfers as may be permitted under this Agreement, each Project Company, Upstream Equity Owner and Downstream Equity Owner shall be an Affiliate of Seller.

"**Agreement**" has the meaning set forth in the preamble of this Agreement and includes the Cover Sheet and any Appendices and Schedules and any written supplements hereto.

"**Agreement Term**" has the meaning set forth in Section 2.1.

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"**Alternate Points of Delivery**" means any of the following points of delivery: (a) Gonder.IPP, (b) Eldorado 230/Mead, (c) Imperial Valley 230, or (d) such other points of delivery as may be agreed between Buyer and Seller.

"**Ancillary Documents**" means the Buyer Ancillary Documents and the Seller Ancillary Documents.

"**Ancillary Services**" means all ancillary services, power products and other power attributes, if any, associated with the installed capacity of the Facility, in each case solely to the extent the same can be provided to Buyer without making any change to the applicable Facility or its operation.

"**ASME**" means American Society of Mechanical Engineers.

"**Assumed Daily Deliveries**" has the meaning set forth in Section 13.3(c).

"**ASTM**" means American Society for Testing and Materials.

"**Authorized Auditors**" means representatives of Buyer who are authorized to conduct audits on behalf of Buyer.

"**Authorized Representative**" means, with respect to each Party, the Person designated as such Party's authorized representative pursuant to Section 14.1.

"**AWS**" means American Welding Society.

"**Bankruptcy**" means any case, action, or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency, or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action, or proceeding is not commenced by such Person, such case or proceeding shall be consented to or acquiesced in by such Person or shall result in an order for relief or shall remain undismissed for ninety (90) days.

"**Business Day**" means any day that is not a Saturday, a Sunday, or a day on which commercial banks are authorized or required to be closed in New York, New York.

"**Buyer**" has the meaning set forth in the preamble of this Agreement.

"**Buyer Ancillary Documents**" all instruments, agreements, certificates, and documents executed by Buyer pursuant to this Agreement.

"**Buyer Liability Pass Through Agreement**" means an agreement by and between Seller, Buyer and the applicable Project Participant, in the form set forth in Appendix L.

"**Buyer's Member**" means any member of Buyer that has entered into the Joint Powers Agreement.

"**CAISO**" means the California Independent System Operator Corporation.

"**California Prevailing Wage Requirement**" has the meaning set forth in Section 12.2(o).

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"**California Public Utilities Code**" means the Public Utilities Code of the State of California, as may be amended from time to time.

"**California Renewables Portfolio Standard**" or "**RPS**" means the renewables portfolio standard 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, and as administered by the CEC as set forth in CEC RPS Eligibility Guidebook (9th Ed.), as may be subsequently modified by the CEC, and the CPUC as set forth in CPUC Decision ("D.") 08-08-028, D.08-04-009, D.10-03-021, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038, D.13-11-024, D.14-12-023, D.17-06-026, and D.19-02-007, and as may be modified by subsequent decisions of the CPUC or by subsequent legislation and regulations promulgated with respect thereto.

"**Capacity Buydown Damages**" has the meaning set forth in Section 3.7(a).

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

"**Capacity Rights**" means the rights, whether in existence as of the Effective Date or arising thereafter during the Agreement Term, to Capacity Attributes, Resource Adequacy Benefits, or reserves associated with the electric generating capability of each Facility, including the right to resell such rights.

"**CEC**" means California's State Energy Resources Conservation and Development Commission, also known as the California Energy Commission, and any successor agency thereto.

"**CEC Certification Deadline**" means for each Facility, the date that is either (a) one hundred eighty (180) days following the Commercial Operation Date for such Facility if failure to be CEC Certified at such time is the result of Seller's fault or negligence (including any failure to submit timely required documentation to the CEC) or (b) three hundred sixty (360) days following the Commercial Operation Date for such Facility if failure to be CEC Certified at such time is not the result of Seller's fault or negligence.

"**CEC Certified**" means that the CEC has certified that the Facility is an Eligible Renewable Energy Resource in accordance with California Public Utilities Code Section 399.12(e) and the guidelines adopted by the CEC, as amended from time to time, and any successor statute.

"CEC Pre-certified" 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 the Facility to be CEC Certified.

"**CEQA**" means the California Environmental Quality Act, Public Resources Code §§ 21000, *et seq.*, as amended from time to time, and any successor statute.

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"**Change in Control**" means the occurrence, whether in a single transaction or in a series of related transactions at any time during the Agreement Term of any one or more of the following: (a) a merger or consolidation of Seller, any Project Company or any Upstream Equity Owner or Downstream Equity Owner, with or into any other Person, or any other reorganization, as a result of which the members or shareholders, as applicable, of Seller or any Project Company or the members or shareholders, as applicable, of any Upstream Equity Owner or Downstream Equity Owner immediately prior to such consolidation, merger, or reorganization, (i) own less than fifty percent (50%) of the equity ownership of the surviving entity or any Project Company or (ii) cease to have the power to Control the management and policies of the surviving entity immediately after such consolidation, merger, or reorganization, (b) any transaction or series of related transactions in which in excess of fifty percent (50%) of the equity ownership of Seller or any Project Company, or any Upstream Equity Owner or Downstream Equity Owner, or the power to Control the management and policies of Seller or any Project Company, or any Upstream Equity Owner or any Downstream Equity Owner, is transferred to another Person, (c) a sale, lease, or other disposition of all or substantially all of the assets of Seller, any Project Company, or any Upstream Equity Owner or Downstream Equity Owner, (d) the dissolution or liquidation of Seller, any Project Company or any Upstream Equity Owner or any Downstream Equity Owner, or (e) any transaction or series of related transactions that has the substantial effect of any one or more of the foregoing, provided, however, that a Change in Control shall not include (1) any transaction or series of transactions in which the membership or other equity interests in or assets of Seller, any Project Company, or any Upstream Equity Owner or any Downstream Equity Owner, are issued or transferred to another Person solely for the purpose of a Tax Equity Financing; (2) any transaction or series of transactions in which the membership interests in or assets of Seller, any Project Company or any Upstream Equity Owner or Downstream Equity Owner are issued or transferred to any other Person that is directly or indirectly at least 50% owned and whose management and policies are controlled by Ormat Nevada Inc.; or (3) any transaction or series of transactions in which the membership or other equity interests in or assets of Seller, any Project Company, any Upstream Equity Owner or any Downstream Equity Owner are transferred to a Permitted Transferee.

"**Change in Law**" means a change in any federal, state, local, or other law (including any environmental laws), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority (other than Buyer) which is applicable to either Party or any Facility or any of the products sold therefrom.

"**CIRA Tool**" means the CAISO Customer Interface for Resource Adequacy.

"**Commercial Operation**" means, for each Facility, the date on which all of the following have occurred:

(a) Seller has delivered to Buyer a completion certificate from a Licensed Professional Engineer substantially in the form of Appendix K;

(b) All Permits for the operation of the Facility have been obtained and shall be in full force and effect, and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied, provided, that, Seller may demonstrate

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satisfaction of this clause (b) by delivery to Buyer of a copy of a temporary or final certificate of occupancy (or equivalent) for the Facility;

(c) The Facility has been CEC Pre-certified, and Seller reasonably expects the Facility to be CEC Certified in no more than one hundred eighty (180) days from the Commercial Operation Date;

(d) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being complete prior to the Commercial Operation Date under WREGIS rules, 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, 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;

(e) Buyer shall have received the Delivery Term Security required pursuant to Section 5.9, which includes the portion corresponding to such Facility;

(f) Seller or its Affiliate shall have entered into interconnection agreements with Transmission Providers pursuant to which it has obtained Facility Interconnection Rights and Interests as necessary for the delivery of Facility Energy to the Point of Interconnection;

(g) Seller shall have entered into, or been assigned, transmission agreements with Transmission Providers pursuant to which it has obtained Firm Transmission Rights as necessary for the delivery of Facility Energy from the Point of Interconnection to the Points of Delivery, in the case of Facilities located in Nevada, using NV Energy's Transmission Services and Transmission System;

(h) If Seller has elected to designate such Facility as a Pseudo-Tie Resource: (i) a Meter Service Agreement (as defined in the CAISO Tariff) between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of such agreement delivered to Buyer; (ii) a Pseudo-tie Participating Generator Agreement (as defined in the CAISO Tariff) between Seller and CAISO shall have been executed and delivered and be in full force, and a copy of such agreement delivered to Buyer; and (iii) Seller shall have provided Buyer a CAISO Resource ID (as defined in the CAISO Tariff) and PMAX (as defined in the CAISO Tariff) for the Facility; and

(i) If Seller has elected to designate such Facility as a Dynamically Scheduled Resource, a Dynamic Scheduling Agreement, Dynamic Imports Operating Agreement, and, if applicable, a Meter Service Agreement between Seller, Seller's Scheduling Coordinator or the balancing authority for the Facility and CAISO.

"**Commercial Operation Date**" means, for a Facility, the date on which Commercial Operation of such Facility occurs, as determined pursuant to Section 3.5.

"**Compliance Actions**" has the meaning set forth in Section 8.6(c).

"**Compliance Costs**" has the meaning set forth in Section 8.6(c).

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"**Compliance Expenditure Cap**" has the meaning set forth in Section 8.6(c).

"**Compliance Obligations**" has the meaning set forth in Section 8.6(c).

"**Confidential Information**" has the meaning set forth in Section 14.21(a).

"**Construction Start**" means the date on which Seller has (a) executed an engineering, procurement, and construction contract, (b) issued thereunder a final Notice to Proceed to begin physical construction at the Site, and (c) commenced physical movement of soil at the Site.

"**Contract Year**" means (a) the period beginning on the Commercial Operation Date of the first Facility to achieve Commercial Operation, as determined pursuant to Section 3.5, and ending on December 31st of that year, and (b) each succeeding period of twelve (12) consecutive months following the period described in the preceding clause (a) until the end of the Delivery Term; provided that, unless the Commercial Operation Date for the last Facility to achieve Commercial Operation occurs on January 1st of any Contract Year, the last Contract Year will be shorter than twelve (12) months.

"**Contract Price**" has the meaning set forth on the Cover Sheet.

"**Control**" means (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.

"**Costs**" has the meaning set forth in Section 13.3(f).

"**CPM Soft Offer Cap**" has the meaning set forth in the CAISO Tariff.

"**CPUC**" means the California Public Utilities Commission and any successor thereto.

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

"**Deemed Delivered RA**" means the amount of Net Qualifying Capacity expressed in MW that the Facility would have delivered, but for the failure of Project Participants to obtain Import Capability sufficient to allow for the importation of such capacity into the CAISO.

"**Default**" has the meaning set forth in Section 13.1.

"**Defaulting Party**" has the meaning set forth in Section 13.1.

"**Delay Damages**" has the meaning set forth in Section 3.7(a).

"**Delivered Energy**" means, in any Settlement Interval or Settlement Period, the lesser of (a) the aggregate amount of Energy, measured in MWh, delivered by Seller for receipt by Buyer at the Primary Point of Delivery for each Facility, or, if applicable in accordance with Section 7.5, the applicable Alternate Point of Delivery, net of Parastic Load and Electrical Losses, as

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measured by the Electric Metering Devices for each Facility, and (b) the amount of Energy specified in the E-Tags associated with the Delivered Energy.

"**Delivery Term**" has the meaning set forth in Section 2.2.

"**Delivery Term Security**" has the meaning set forth in Section 5.9(b).

"**Development Period**" means the period beginning on the Effective Date and ending on the Final COD Deadline; provided that if the Project Net Capacity is less than the Minimum Capacity on such date, then the Development Period shall be extended to the earliest of (a) the date that the Project Net Capacity becomes equal to or greater than the Minimum Capacity and (b) the Minimum Capacity Cure Date.

"**Dispute**" has the meaning set forth in Section 14.3(a).

"**Dispute Notice**" has the meaning set forth in Section 14.3(a).

"**Downgrade Event**" shall mean any event that results in a Person failing to meet the credit requirements of a Qualified Issuer or a Qualified Guarantor, as applicable, or the commencement of involuntary or voluntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar proceeding (whether under any present or future statute, law, or regulation) with respect to such Person. In the case of Ormat Technologies, Inc., a Downgrade Event would mean a material adverse change in such entity's financial condition after the time of a Delivery Term Security posting.

"**Downstream Equity Owner**" means a Person that owns or Controls at least fifty percent (50%) of the equity of a Project Company at any level below Seller.

"**Dynamically Scheduled Resource**" means a generating facility that executes a a Dynamic Scheduling Agreement, Dynamic Imports Operating Agreement, and, if applicable, a Meter Service Agreement between Seller, Seller's Scheduling Coordinator or the balancing authority for the Facility and CAISO and that complies with all CAISO Tariff requirements applicable to a Dynamic Resource-Specific System Resource, including Appendix M to the Tariff.

"**Dynamic Imports Operating Agreement**" means an agreement between the CAISO and the host balancing authority for the Facility that enables Dynamic Schedules from the host balancing authority to the CAISO balancing authority, which may be in the form of the agreement referred to in the CAISO Tariff as the "Dynamic Scheduling Host Balancing Authority Operating Agreement" or (b) an alternative agreement, reasonably acceptable to the CAISO and consistent with the CAISO Tariff, governing the terms of dynamic transfers between CAISO and the host balancing authority for the Facility and enabling Dynamic Schedules pursuant to this Agreement.

"**Dynamic Schedule**" has the meaning set forth in the CAISO Tariff.

"**Dynamic Resource-Specific System Resource**" has the meaning in the CAISO Tariff.

"**Dynamic Scheduling Agreement**" has the same meaning as that set forth in the CAISO Tariff for "Dynamic Scheduling Agreement for Scheduling Coordinators".

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"**Early Termination Date**" has the meaning set forth in Section 13.3(a).

"**Effective Date**" has the meaning set forth in the preamble of this Agreement.

"**Electric Metering Devices**" means the CAISO-approved, revenue-grade meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to Facility Energy. Electric Metering Devices include the metering current transformers and the metering voltage transformers. Subject to meeting any applicable CAISO requirements, the Electric Metering Devices shall be programmed to adjust for Electrical Losses to the Primary Point of Delivery or, if applicable in accordance with Section 7.5, the applicable Alternate Point of Delivery, in accordance with CAISO's rules for Pseudo-Tie Resources or Dynamically Scheduled Resources, as applicable, and in a manner subject to Buyer's prior written approval, not to be unreasonably withheld.

"**Electrical Losses**" means all transmission or transformation losses or gains for a Facility associated with delivery of Facility Energy to the Primary Point of Delivery for such Facility or, if applicable in accordance with Section 7.5, the applicable Alternate Point of Delivery, in accordance with CAISO's rules for Pseudo-Tie Resources or Dynamically Scheduled Resources, as applicable.

"**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.

"**EPA**" means the Environmental Protection Agency and any successor agency.

"**EPC Contractor**" means Seller's or its Affiliate's contractor primarily responsible for the construction of the applicable Facility's power block.

"**Event of Default**" has the same meaning as Default.

"**Excluded Facility**" has the meaning set forth in Section 3.1.

"**Facility**" means each of the geothermal powered electric generating plants designated by Seller for inclusion in the Project in accordance with Section 3.1, whose Facility Energy, Green Attributes and Capacity Attributes Seller commits to sell to Buyer under the terms and conditions of this Agreement and as to which the provisions of this Agreement apply.

"**Facility Credit Agreement**" has the meaning set forth in Section 14.7(f).

"**Facility Energy**" means, for each Facility, Energy generated by such Facility, less its Parasitic Load, which Parasitic Load may be served by solar generating capacity as provided in Section 8.7, and adjusted for Electrical Losses to the Primary Point of Delivery for such Facility or, if applicable in accordance with Section 7.5, to the applicable Alternate Point of Delivery.

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"**Facility Interconnection Rights and Interests**" means the rights and interests of Seller or its Affiliate to use the capacity of and Schedule Facility Energy over the Transmission System providing Transmission Services to the Point of Interconnection and including such Facility Interconnection Rights and Interests as provided in the Facility Specifications for the applicable Facility.

"**Facility Lender**" means any lender providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of a Facility or Portfolio or for the performance by Seller of its obligations under this Agreement pursuant to a Seller Financing or Security Document or Facility Credit Agreement, including any equity and tax investor providing financing or refinancing for a Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations. Facility Lender includes any lender providing Performance Security under this Agreement.

"**Facility Net Capacity**" means, for each Facility, the electric generating capacity of such Facility (expressed in MW), net of its Parasitic Load and transmission and transformation losses to the Points of Delivery, as specified in the notice provided by Seller pursuant to Section 3.8, and as it may be further revised pursuant to Section 3.9.

"**Facility Specifications**" means, for each Facility, the information to be provided by Seller in accordance with and substantially in the form of Appendix B and delivered to Buyer in accordance with Section 3.1.

"**Facility Transmission Rights and Interests**" means the rights and interests of Seller to use the capacity of and Schedule Facility Energy over the Transmission System providing Transmission Services to each of the respective Points of Delivery and including such Facility Transmission Rights and Interests as provided in the Facility Specifications for the applicable Facility.

"**FERC**" means the Federal Energy Regulatory Commission.

"**Final COD Deadline**" means December 31, 2026, which date (i) may be extended upon mutual agreement of the Parties; (ii) shall be extended automatically on a day-for-day if the Firm Clean Resource procurement deadline of December 31, 2026 established by the CPUC in Decision 21-06-035, issued June 30, 2021, is extended to a later date without such extension resulting in any penalties to the Project Participants, (iii) shall be extended in accordance with Section 3.1, and (iv) shall be extended on a day-for-day basis for up to one hundred eighty (180) days in the aggregate for the duration of one or more Force Majeure Events that prevent or delay Seller from causing the Project Net Capacity to be equal to or greater than the Minimum Capacity by the Final COD Deadline then-in-effect; provided that such Force Majeure Event or Force Majeure Events impact a Facility that had been previously added to the Project in accordance with Section 3.1.

"**Firm Clean Resource**" means a resource that meets the requirements of CPUC Decision 21-06-035, including that such resource (i) has at least an eighty percent (80%) capacity factor, (ii) has zero on-site emissions or otherwise qualifies as RPS Compliant, (iii) is incremental to the

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CPUC's baseline list established pursuant to CPUC Decision 21-06-035, (iv) has a Commercial Operation Date later than June 24, 2021, (v) is a Resource Adequacy Resource that is eligible to provide Resource Adequacy Benefits as set forth in the Resource Adequacy Rulings, (vi) is able to deliver Energy every day, year-round during the Delivery Term (subject to Forced Outages), (vii) is not subject to use limitations, and (viii) has a capability to generate Energy that is not weather dependent.

"**Firm Transmission**" means Transmission Services to or from the Point of Delivery that cannot be curtailed within an operating hour for economic reasons or for higher priority transmission; provided that if Seller or Buyer, as applicable, uses commercially reasonable efforts to obtain Transmission Services meeting the foregoing criterion but is unable to obtain such Transmission Services notwithstanding such efforts, Firm Transmission shall be the most reliable Transmission Services available to Seller or Buyer, as applicable, for the transmission of Energy from the applicable Facility to or from such Point of Delivery at the time.

"**Force Majeure**" has the meaning set forth in Section 14.6(b).

"**Force Majeure Cure Period**" means a specified number of months following the end of a Force Majeure Trigger Period, calculated as follows:

Force Majeure Cure Period (in months) = [1 – (A/B)] x C

Where:

A = the reduced aggregate capacity net of Parasitic Load of the Facilities that have achieved Commercial Operation, as applicable, resulting from the Force Majeure event(s) associated with the Force Majeure Trigger Period, adjusted to reflect the difference between the actual ambient temperatures and the annual average temperature;

B = fifty percent (50%) of the Project Net Capacity immediately prior to the Force Majeure event(s) associated with the Force Majeure Trigger Period; and

C = twelve (12) months.

"**Force Majeure Notice**" has the meaning set forth in Section 14.6(a).

"**Force Majeure Trigger Period**" has the meaning set forth in Section 14.6(d).

"**Forced Labor**" has the meaning set forth in Section 12.2(q).

"**Forced Outage**" means the removal of service availability of a Facility, or any portion of a Facility, for emergency reasons or conditions in which a Facility, or any portion thereof, is unavailable due to unanticipated failure, including as a result of Force Majeure.

"**Forward Certificate Transfer**" has the meaning set forth in the WREGIS Operating Rules.

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"**GAAP**" means generally accepted accounting principles set forth in opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, in each case as the same are applicable to the circumstances as of the date of determination.

"**Gains**" has the meaning set forth in Section 13.3(f).

"**Governmental Authority**" means any federal, state, regional, city, or local government, any intergovernmental association or political subdivision thereof, or other governmental, regulatory, or administrative agency, court, commission, administration, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority, or any Person acting as a delegate or agent of any Governmental Authority. The term "Governmental Authority" shall not include Buyer or any Buyer's Member.

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from each Facility, or, as applicable, from any facility that generates Replacement Energy, and, in each case, 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; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Delivered Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from each Facility, (ii) production tax credits associated with the construction or operation of each Facility and other financial incentives in the form of credits, reductions, or allowances associated with each Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, (iv) emission reduction credits encumbered or used by each Facility for compliance with local, state, or federal operating or air quality permits, or (v) "portfolio energy credits" as defined in Nevada Revised Statutes Section 704.7803 associated with the Parasitic Load of any Facility.

"**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.

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"**Guaranteed Amount**" has the meaning set forth in each Project Participant's Buyer Liability Pass Through Agreement, which amount may be different for each Project Participant given each Project Participant's Liability Share.

"**Guaranteed Generation**" has the meaning set forth in Appendix J.

"**Guaranteed Net Qualifying Capacity**" means, at any point in time, the maximum quantity of Net Qualifying Capacity (in MWs) that may be delivered in any given Showing Month pursuant to the then current law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff, from a hypothetical geothermal facility that (a) for the first three (3) Contract Years (i) has a PMAX equal to the Project Net Capacity, and (ii) is subject to the Technology Factors, and (b) for each Contract Year after the first three (3), achieves or exceeds the Operational Characteristics in Appendix D.

"**IEEE**" means the Institute of Electrical and Electronics Engineers.

"**Imbalance Energy**" means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval (as each is defined in the CAISO Tariff), by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

"**Import Capability**" means that portion of the Maximum Import Capability allocated to Project Participants by the CAISO that is necessary to support the importation of the Capacity Attributes from each Facility into the CAISO market in an amount equal to the Guaranteed Net Qualifying Capacity.

"**Included Facility**" has the meaning set forth in Section 3.1.

"**Insurance**" means the policies of insurance as set forth in Appendix F.

"**Interest Rate**" has the meaning set forth in Section 11.3.

"**Investment-Grade Credit Rating**" means a credit rating on a Person's senior long-term debt, unsecured and unenhanced, that is at least A- by S&P or A3 by Moody's.

"**ISA**" means Instrument Society of America.

"**Joint Powers Agreement**" means that certain Joint Powers Agreement dated January 29, 2021, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"**Leases**" means, for each Facility, the geothermal resource leases and the other leases, easements, rights-of-way, or other contractual rights to use real property that are listed in Section 6 of the Facility Specifications for such Facility.

"**Liability Share**" means the percentage amount set forth for each Project Participant in Appendix M.

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"**Licensed Professional Engineer**" means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the state of location of the Facility for which such Person delivers a completion certificate in the form of Appendix K.

"**Lien**" means any mortgage, deed of trust, lien, security interest, retention of title, or lease for security purposes, pledge, charge, encumbrance, equity, attachment, claim, easement, right of way, covenant, condition, or restriction, leasehold interest, purchase right, or other right of any kind, including an option, of any other Person in or with respect to any real or personal property.

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

"**Losses**" has the meaning set forth in Section 13.3(f).

"**Major Maintenance**" means (a) any planned maintenance for the purpose of achieving a major overhaul or (b) planned material maintenance that impacts the output of a Facility for seven (7) or more consecutive days.

"**Major Maintenance Blockout**" has the meaning set forth in Section 4.4.

"**Market Curtailment Period**" means the period-of-time, as measured using current Settlement Intervals, during which Seller reduces generation from a Facility during a Settlement Period or Settlement Interval in which there is a Negative LMP that is equal to or below the Negative LMP Strike Price; provided, that the duration of any Market Curtailment Period shall be inclusive of the time required for a Facility to ramp down and ramp up.

"**Maximum Capacity**" means Project Net Capacity of one hundred twenty-five (125) MW, as may be reduced in accordance with this Agreement.

"**Maximum Generation**" has the meaning set forth in Appendix J.

"**Maximum Import Capability**" has the meaning set forth in the CAISO Tariff, and includes any replacement or successor method implemented by the CAISO with respect to the ability of generating units that are external to the CAISO balancing authority area to provide Resource Adequacy Benefits.

"**Milestone**" means each deadline for the development of a Facility through the Commercial Operation Date for such Facility, as set forth in the Milestone Schedule for such Facility.

"**Milestone Date**" means, with respect to a Milestone, the date for achieving such Milestone as set forth in the Milestone Schedule for the applicable Facility, including, if and to the extent that the date specified for such Milestone in the Milestone Schedule shall be extended as provided in Section 3.6, such extended date.

"**Milestone Schedule**" means, for each Facility, the schedule for achieving the Milestones substantially in the form of Appendix I and delivered to Buyer in accordance with Section 3.1.

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"**Minimum Capacity**" means Project Net Capacity of sixty-four (64) MW, as may be reduced in accordance with this Agreement.

"**Minimum Capacity Cure Date**" has the meaning set forth in Section 3.7(a).

"**Moody's**" means Moody's Investors Service, Inc., or its successors.

"**MW**" means megawatt.

"**MWh**" means megawatt-hours.

"**Negative LMP**" means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Settlement Point is less than zero dollars ($0).

"**Negative LMP Strike Price**" means zero dollars per MWh ($0/MWh), as such price may be revised by Buyer by providing notice to Seller in accordance with Appendix A; *provided*, in no event shall the Negative LMP Strike Price be greater than zero dollars per MWh ($0/MWh).

"**NEPA**" means the National Environmental Policy Act, 42 USC §§4321 to 4370c, as amended from time to time.

"**NERC**" means the North American Electric Reliability Corporation.

"**Net Qualifying Capacity**" or "**NQC**" means the net capacity of a resource that can be counted towards system Resource Adequacy Requirements, as identified from time to time by the CAISO Tariff, the Resource Adequacy Rulings, or by another Governmental Authority having jurisdiction.

"**Nevada Prevailing Wage Requirement**" has the meaning set forth in Section 12.2(n).

"**Non-Defaulting Party**" has the meaning set forth in Section 13.3(a).

"**Notice to Proceed**" means the notice from Seller, or one of its subsidiaries, to the EPC Contractor instructing such contractor to commence Site preparation and other construction activities at the applicable Site for the construction of the applicable Facility's power block.

"**Notification Deadline**" for a given Showing Month shall mean twenty (20) Business Days before the submission of the CAISO Supply Plan filings applicable to that Showing Month.

"**Notifying Party**" has the meaning set forth in Section 14.3(a).

"**OEM**" has the meaning set forth in Section 12.2(p).

"**Operational Characteristics**" means the minimum performance requirements for the Project set forth on Appendix D.

"**OSHA**" means Occupational Safety & Health Administration.

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"**Pacific Prevailing Time**" means the then-prevailing local time in Sacramento, California.

"**Parasitic Load**" means the Energy produced by a Facility (or under the circumstances set forth in Section 8.7 Energy from another source) that is used to power the lights, motors, pumps, auxiliary facilities of the well field, control systems, cooling systems, ancillary equipment, and other electrical loads that are necessary for the operation of the power systems and related facilities for the production of Facility Energy.

"**Party**" or "**Parties**" has the meaning set forth in the preamble of this Agreement.

"**Payment Demand**" has the meaning set forth in Appendix L.

"**Performance Security**" means the Project Development Security or the Delivery Term Security, as applicable, that is required to be provided by Seller to Buyer to secure Seller's performance under this Agreement.

"**Performance Testing Conditions Criteria**" has the meaning set forth in Section 3.3.

"**Permits**" means, for each Facility, all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements, and similar requirements of whatever kind and however described that are required to be obtained from a Governmental Authority with respect to the development, siting, drilling, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation, or maintenance, as applicable, of such Facility, the production and delivery of Facility Energy, Capacity Rights, and Green Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental, and occupational safety and health requirements), including the NEPA Environmental Assessment, as applicable, and the Permits described in the Facility Specifications for such Facility.

"**Permitted Encumbrances**" means (a) any Lien approved by Buyer in a writing separate from this Agreement that expressly identifies the Lien as a Permitted Encumbrance, (b) Liens for Taxes not yet due or for taxes being contested in good faith by appropriate proceedings, so long as such proceedings do not involve a material risk of the sale, forfeiture, loss or restriction on the use of a Facility or any part thereof, provided that such proceedings are reasonably expected to end by the expiration of the Agreement Term, (c) subject to compliance under Section 14.7, any Lien arising under a financing arrangement associated with a Facility or constituting a Permitted Lien under, and as defined in, any Facility Credit Agreement or Seller Financing or Security Document, (d) suppliers', vendors', mechanics', workman's, repairman's, employees', or other like Liens arising in the ordinary course of business for work or service performed or materials furnished in connection with a Facility for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings so long as such proceedings do not involve a risk of the sale, forfeiture, loss or restriction on use of the applicable Facility or any part thereof, and (e) easements, rights of way, use rights, exceptions, encroachments, reservations, restrictions, conditions or limitations, provided that in each case the same do not interfere with or impair the operation or use of the applicable Facility as contemplated by the Agreement, or have a material adverse effect on the useful life or utility of the applicable

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Facility, or shall impair or materially adversely affect the rights or interests of Buyer under this Agreement.

"**Permitted Transferee**" means 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); and (b) at least two (2) years of experience in the ownership and operations of power generation facilities similar to the Facility with a generating capacity of at least one hundred (100) MW or has retained a third-party with such experience to operate the Project or relevant Facility (as applicable).

"**Person**" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government, or other political subdivision.

"**Planned Outage**" means, subject to and as further described in the CAISO Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Facility that is conducted for the purposes of carrying out routine repair or maintenance of such Facility, or for the purposes of new construction work for such Facility.

"**Planned Outage Projection**" has the meaning set forth in Section 4.4(a).

"**Point of Interconnection**" means, for each Facility, the point of interconnection specified for such Facility in the Facility Specifications for such Facility.

"**Points of Delivery**" means the Primary Point of Delivery and, in the event of the curtailment or other interruption of Transmission Services as provided in Section 7.5, the Alternate Points of Delivery, and/or such other point(s) as mutually agreed by the Parties.

"**Portfolio**" means a portfolio of electrical energy generating assets that is (a) comprised solely of Facilities hereunder, and (b) pledged as collateral security in connection with a Portfolio Financing.

"**Portfolio Financing**" means a financing or refinancing in accordance with Section 14.7(f) where the debt is secured by a Portfolio.

"**Primary Point of Delivery**" means for each Facility, (a) one or more of the following points of delivery, as shall be designated with specificity for each Facility by written notice from Seller to Buyer in accordance with Section 3.1, and as may be adjusted in accordance with Section 3.8: (i) Gonder.IPP, (ii) Eldorado 230/Mead, (iii) Imperial Valley 230, or (iv) such other points of delivery as may be agreed between Buyer and Seller, or (b) after the Commercial Operation Date for a Facility, any point of delivery as may be agreed between Buyer and Seller and thereafter designated as the Primary Point of Delivery for a Facility.

"**Progress Report**" means a progress report including the items set forth in Appendix O.

"**Project**" means all of the Included Facilities.

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"**Project Company**" means with respect to each Facility, the limited liability company or partnership, as applicable, designated as the owner of the Facility as set forth in the Facility Specifications for such Facility. Subject to transfers as may be permitted under this Agreement, each Project Company shall be an Affiliate of Seller.

"**Project Development Security**" has the meaning set forth in Section 5.9(a).

"**Project Energy**" means the total Energy generated by all of the Facilities that have achieved Commercial Operation as of such time, less Parasitic Load associated with such Facilities, which Parasitic Load may be served by solar generating capacity as provided in Section 8.7.

"**Project Labor Agreement**" has the meaning set forth in Section 12.2(n).

"**Project Net Capacity**" means, for a given date, the sum of the Facility Net Capacity for each of the Facilities that has achieved Commercial Operation as of such date.

"**Project Participant**" means each Person identified in Appendix M that shall execute a Buyer Liability Pass Through Agreement in the form set forth in Appendix L.

"**Project Participant Approval**" means each Project Participant has obtained all necessary approvals from its board or governing authority necessary to execute a Buyer Liability Pass Through Agreement and the Project Participation Share Agreement, and that Buyer has delivered to Seller Buyer Liability Pass Through Agreements and the Project Participation Share Agreement executed by each Project Participant and countersigned by Buyer.

"**Project Participation Share Agreement**" means that certain ORGP LLP Geothermal Portfolio Project Participation Share Agreement executed by and among Buyer and all of the Project Participants relating to their allocation among themselves of Buyer's responsibilities and liabilities under this Agreement, and any successor agreement.

"**Proposed Facility**" has the meaning set forth in Section 3.1.

"**Proposed Facility Notice**" has the meaning set forth in Section 3.1.

"**Prudent Utility Practices**" means those practices, methods, and acts, that are commonly used by a significant portion of the geothermal powered electric generation industry in prudent engineering and operations to design and operate electric equipment (including geothermal powered facilities) lawfully and with safety, dependability, reliability, efficiency, and economy, including any applicable practices, methods, acts, guidelines, standards and criteria of FERC, NERC, WECC, each as may be amended from time to time, and all applicable Requirements of Law.

"**Pseudo-Tie Resource**" means a generating facility that is party to a FERC-approved Pseudo-Tie Participating Generator Agreement (as defined in the CAISO Tariff) with the CAISO which allows for Capacity Attributes from the generating facility to be imported into the CAISO as "unit-specific" or "resource specific" import pursuant to the Resource Adequacy Rulings.

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"**Qualified Guarantor**" means (i) Ormat Technologies, Inc., if reasonably acceptable to Buyer based on a review of such entity's financial condition at the time of a Delivery Term Security posting, or (ii) a guarantor, reasonably acceptable to Buyer, that has a current long-term credit rating (corporate or long term senior unsecured debt) of at least A- by S&P and A3 by Moody's and is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction.

"**Qualified Issuer**" means a Person, reasonably acceptable to Buyer, that has a current long-term credit rating (corporate or long-term senior unsecured debt) of (1) A3 or higher by Moody's and (2) A- or higher by S&P.

"**Quality Assurance Program**" has the meaning set forth in Section 5.7.

"**RA Compliance Showing**" means the RAR compliance or advisory showings (or similar or successor showings) that 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 10.3(b).

"**RA Penalties**" means the RA penalties assessed against load serving entities by the CPUC for RA deficiencies that are not replaced or cured, as established by the CPUC in the Resource Adequacy Rulings and subsequently incorporated into the annual Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings that is issued by the CPUC Energy Division, or any replacement or successor documentation established by the CPUC Energy Division to reflect RA penalties that are established by the CPUC and assessed against load serving entities for RA deficiencies.

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 10.3(b), any Showing Month, commencing with the Showing Month that contains the Commercial Operation Date of the first Facility to reach Commercial Operation, during which the Net Qualifying Capacity that was able to be included in the Supply Plans for the Project Participants for such Showing Month was less than the then applicable Guaranteed Net Qualifying Capacity for such Showing Month *minus* any Deemed Delivered RA.

"**REC**" or "**Renewable Energy Credit**" means a certificate of proof associated with the generation of electricity from an Eligible Renewable Energy Resource, which certificate is issued through the accounting system established by the CEC pursuant to California Public Utilities Code Section 399.25 and satisfies the requirements of California Public Utilities Code Section 399.12(h), evidencing that one (1) MWh of energy was generated and delivered from such Eligible Renewable Energy Resource. Such certificate is a tradable environmental commodity (also known as a "green tag") for which the owner of the REC can prove that it has purchased renewable energy.

"**Recipient Party**" has the meaning set forth in Section 14.3(a).

"**Remaining Term**" means, at any date, the remaining portion of the Agreement Term at that date without regard to any early termination of this Agreement.

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"**Replacement Energy**" has the meaning set forth in Section 9.2.

"**Replacement Price**" means [redacted]

"**Replacement RA**" means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Project with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within NP 15 or SP 15.

"**Replacement Unit**" means a resource that (a) has been pre-approved by Buyer in Buyer's sole discretion, and (b) is a Firm Clean Resource.

"**Requirements**" means, collectively, Prudent Utility Practices, all applicable Requirements of Law, Seller's Quality Assurance Program, and all other requirements of this Agreement.

"**Requirement of Law**" means laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

"**Resource Adequacy Benefits**" means the rights and privileges attached to a Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes local, zonal or otherwise locational attributes associated with a Facility (if any).

"**Resource Adequacy Plan**" has the meaning specified in the Tariff.

"**Resource Adequacy Requirements**" or "**RAR**" means the resource adequacy requirements applicable to a load serving 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, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy law, however described, as such decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time.

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"**Resource Specific Import RA**" means a resource that is listed on the CPUC's Net Qualifying Capacity list and is either Pseudo-Tied or Dynamic Resource-Specific System Resource into the Day-Ahead Market and Real-Time Market, and which satisfies all other applicable requirements under the Resource Adequacy Rulings, including CPUC Decisions 05-10-042 and 20-06-028.

"**RETA**" has the meaning set forth in Section 12.2(n).

"**RETA Regulations**" has the meaning set forth in Section 12.2(n).

"**Revised Net Capacity**" has the meaning set forth in Section 3.9.

"**RFO**" has the meaning set forth in the recitals to this Agreement.

"**RPS Compliant**" means, when used with respect to a Facility or any other facility at any time, that all Energy generated by the Facility and delivered to the Points of Delivery, or by such other facility, together with all of the associated Green Attributes, delivered to the Points of Delivery qualify as "portfolio content category 1" eligible renewable resource under the RPS and meet the requirements of California Public Utilities Code Section 399.16(b)(1), as amended from time to time and any successor statute.

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

"**Sales Price**" means the price at which Seller, acting in a commercially reasonable manner, resells the Energy and Green Attributes or, absent a resale, the market price for the quantity of Energy and Green Attributes not received by the Buyer (adjusted for transmission difference, if any).

"**SCADA**" has the meaning set forth in Section 7.2(h).

"**Schedule**" or "**Scheduling**" has the meaning set forth in the CAISO Tariff, and "**Scheduled**" has a corollary meaning.

"**Scheduled Energy**" means the Delivered Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for a Facility for a given period-of-time implemented in accordance with the CAISO Tariff.

"**Scheduling Coordinator**" 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. The contact information for Seller's Scheduler as of the Effective Date is set forth in item 3, Appendix C.

"**Seller**" has the meaning set forth in the preamble of this Agreement.

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"**Seller Ancillary Documents**" means all instruments, agreements, certificates, and documents executed by Seller or any of its Affiliates, including any Seller Party, pursuant to this Agreement and shall include the documents constituting part of the Performance Security.

"**Seller Financing or Security Documents**" means any credit, financing or security agreements heretofore or hereafter entered into by or otherwise affecting Seller and providing for any Lien or other security interest or rights enforceable by any lender, trustee, collateral agent or other party in respect of any of the Facilities or any assets thereof or rights or other interests therein.

"**Seller Party(ies)**" means Seller and any Affiliate of Seller that executes a Seller Ancillary Document and shall include each Project Company and each Upstream Equity Owner and Downstream Equity Owner.

"**Settlement Interval**" has the meaning set forth in the CAISO Tariff.

"**Settlement Period**" has the meaning set forth in the CAISO Tariff.

"**Settlement Point**" shall mean, for each Facility, the node pricing at the Point of Delivery for the Delivered Energy from such Facility.

"**Shortfall Energy**" has the meaning set forth in Section 9.1.

"**Shortfall Liquidated Damages**" has the meaning set forth in Section 9.3.

"**Showing Month**" shall be the calendar month of the Delivery Term, commencing with the Showing Month that contains the Commercial Operation Date of the first Facility to achieve Commercial Operation, that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff.

"**Site**" means, for each Facility, the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in the Facility Specifications for such Facility as owned or leased by Seller, or its Affiliates, or over which Seller, or its Affiliates, has leasehold improvements, has a right-of-way or other right to use the property where such Facility is located or will be located, and including the well fields and the Leases (if applicable), easements, rights-of-way, geothermal wells and resources, well drilling rights and interests, and contractual rights including capacity rights held or to be held by Seller, or its Affiliates, with respect to the transmission lines or rights of roadways servicing such Site or such Facility and located (or to be located) thereon.

"**Supply Plan**" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing Resource Adequacy Resources submits to the CAISO.

"**System Emergency**" means an emergency condition or abnormal interconnection situation, or an operational adjustment to comply with NERC or other regulatory requirements, that prevents Buyer's Transmission Provider from receiving Energy at the applicable Points of Delivery.

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"**Tangible Net Worth**" means the tangible assets (for example, not including intangibles such as goodwill and rights to patents or royalties) that remain after deducting liabilities as determined in accordance with GAAP.

"**Tax**" or "**Taxes**" means each federal, state, county, local and other (a) net income, gross income, gross receipts, sales, use, ad valorem, business or occupation, transfer, franchise, profits, withholding, payroll, employment, excise, property or leasehold tax and (b) customs, duty or other fee, assessment or charge of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amount with respect thereto. Requirements of Buyer or Buyer's Members are not Taxes.

"**Tax Equity Financing**" means a transaction or a series of transactions in which a Person or Persons (i) invests in Seller or in a Project Company or any Upstream Equity Owner or Downstream Equity Owner, (ii) purchases a Facility and leases it back to Seller (or an Affiliate of Seller) or (iii) leases a Facility from Seller or an Affiliate of Seller or invests in a direct or indirect lessee of a Facility, in each case seeking to earn its economic return, in whole or in part, through tax benefits related to the ownership or operation of such Facility.

"**Tax Equity Investor**" means, with respect to a Tax Equity Financing, one or more tax equity investors that (i) invests in Seller or in a Project Company or any Upstream Equity Owner or Downstream Equity Owner, (ii) purchases a Facility and leases it back to Seller (or an Affiliate of Seller) or (iii) leases a Facility from Seller or an Affiliate of Seller or invests in a direct or indirect lessee of the Facility.

"**Technology Factor**" means the then-applicable monthly percentage published by the CPUC and used to establish Qualifying Capacity (as defined in the CAISO Tariff) for non-dispatchable geothermal resources that have less than three (3) years of historical production and bidding data. The Parties acknowledge and agree that the Technology Factors vary from year to year and month to month.

"**Termination Notice**" has the meaning set forth in Section 13.3(a).

"**Termination Payment**" means a payment in an amount equal to the Non-Defaulting Party's (a) Losses, *plus* (b) Costs, *minus* (c) Gains; provided, however that if such amount is a negative number, the Termination Payment shall be equal to zero.

"**Transmission Providers**" means the Persons operating the Transmission Systems providing Transmission Services to or from the Points of Delivery.

"**Transmission Services**" means the transmission and other services required to transmit Facility Energy to or from the Points of Delivery.

"**Transmission System**" means the facilities utilized to provide Transmission Services.

"**Unexcused Cause**" has the meaning set forth in Section 14.6(b).

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"**Upstream Equity Owner**" means Ormat Nevada Inc. and any Person that owns or Controls at least fifty percent (50%) or more of the equity of Seller at any level below Ormat Nevada Inc.

"**WECC**" means the Western Electricity Coordinating Council.

"**WREGIS**" means Western Renewable Energy Generation Information System, or any successor renewable energy tracking program designated by the CPUC for determining compliance by load serving entities with the RPS.

"**WREGIS Certificates**" has the meaning set forth in Section 8.4(a).

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 8.4(d).

"**WREGIS Operating Rules**" means the rules describing the operations of the Western Renewable Energy Generation Information System, as published by WREGIS.

Other terms defined herein have the meanings so given when used in this Agreement with initial-capitalized letters.

Section 1.2 Interpretation. In this Agreement, unless a clear contrary intention appears:

(a) the singular number includes the plural number and vice versa;

(b) reference to any Person includes such Person's successors and assigns but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(c) reference to any gender includes the other;

(d) reference to any agreement (including this Agreement), document, instrument, tariff, or Requirement means such agreement, document, instrument, or tariff, or Requirement, as amended, modified, replaced, or superseded and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;

(e) reference to any Article, Section, or Appendix means such Article of this Agreement, Section of this Agreement, or such Appendix to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;

(f) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or Section or other provision hereof or thereof;

(g) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

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(h) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including";

(i) reference to time shall always refer to Pacific Prevailing Time; and reference to any "day" or "month" shall mean a calendar day or calendar month, as applicable, unless otherwise indicated; and

(j) the term "or" is not exclusive.

ARTICLE II
EFFECTIVE DATE, TERM, AND EARLY TERMINATION

Section 2.1 Effective Date and Agreement Term. This Agreement shall be effective beginning on the Effective Date and shall end on the last day of the Delivery Term or upon the expiration or earlier termination of this Agreement in accordance with the terms hereof (the "***Agreement Term***").

Section 2.2 Delivery Term. This Agreement shall have a delivery term that commences at the beginning of the first (1st) Contract Year and ends at the end of the day that is twenty (20) years after the Commercial Operation Date for the first Facility to achieve Commercial Operation, unless the Agreement is sooner terminated in accordance with the terms of this Agreement (the "***Delivery Term***"); provided, in no event shall the Commercial Operation Date for the first Facility to achieve such Milestone occur earlier than June 1, 2024.

Section 2.3 Survivability. 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 provisions of this Article II, Article XII, Article XIII, Section 14.19, and Section 14.21 shall survive for a period of one (1) year following the termination of this Agreement. The provisions of Article XI shall survive for a period of one (1) year following final payment made by the Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of Article V, Article VI, Article VIII, and Article IX shall continue in effect after termination to the extent necessary to provide for final billing, refunds or other adjustments, and deliveries related to the period prior to termination of this Agreement.

Section 2.4 Early Termination Rights.

(a) Notwithstanding anything to the contrary in this Agreement, if Project Participant Approval of this Agreement is not obtained within one hundred twenty (120) days following the Effective Date, then either Party may terminate this Agreement upon written notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.3. Seller and Buyer shall cooperate reasonably with each other to accomplish Project Participant Approval in a timely manner. Notwithstanding anything in this Agreement to the contrary, Buyer shall have a one-time right, but not an obligation, to lower the Maximum Capacity to an amount no less than sixty-four (64) MW by delivering to Seller notice of such adjustment no later than the earlier of (i) the date that the Project Participant Approval is obtained and (ii) the date that is one hundred twenty (120) days after the Effective Date. Any such reduction of the Maximum Capacity shall proportionally reduce

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the Minimum Capacity. For illustrative purposes only, if the Maximum Capacity is reduced by 10% (from 125 MW to 112.5 MW), then the Minimum Capacity shall be reduced by 10% (from 64 MW to 57.6 MW).

(b) Notwithstanding anything to the contrary in this Agreement, if (i) by September 30, 2024, Seller has provided Proposed Facility Notices to Buyer for Proposed Facilities with Facility Net Capacities that in the aggregate are no lower than the Minimum Capacity for the Project and (ii) by September 30, 2027, no Proposed Facility has been included as an Included Facility in accordance with Section 3.1, then at any time thereafter until the date that Buyer notifies Seller that the Project Participants (A) have obtained Import Capability for Proposed Facilities with Facility Net Capacities that in the aggregate are no lower than the Minimum Capacity for the Project or (B) have elected to include Proposed Facilities with Facility Net Capacities that in the aggregate are no lower than the Minimum Capacity for the Project as Included Facilities, notwithstanding that the Project Participants have not obtained Import Capability for some or all of such Proposed Facilities, Seller may, but is not obligated to, terminate this Agreement upon written 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 2.3, and Buyer shall return the Project Development Security to Seller in accordance with Section 5.9(c).

ARTICLE III
DEVELOPMENT OF THE FACILITIES

Section 3.1 Project Design and Facility Specifications. Subject to limitations on Project Participants' Import Capability, as set forth below, Seller shall use commercially reasonable efforts to deliver to Buyer, on or before the Final COD Deadline, Project Net Capacity equal to the Maximum Capacity. Seller shall determine the location, design, configuration, and Facility Net Capacity of each Facility, subject to the Requirements and to any conditions which are imposed by any Governmental Authority as part of the environmental review of each Facility required under applicable Federal and Nevada or California Requirements of Law, as applicable; provided, each Facility shall be a Firm Clean Resource and shall have a Commercial Operation Date that occurs no later than the Final COD Deadline. Promptly after Seller determines a Facility should be included in the Project (a "***Proposed Facility***"), Seller shall deliver to Buyer a notice (a "***Proposed Facility Notice***") that (a) includes the Facility Specifications for such Proposed Facility, which shall include the Facility Net Capacity and Primary Point of Delivery for such Proposed Facility, (b) includes the Milestone Schedule for such Proposed Facility, and (c) identifies whether Seller has elected to designate the Proposed Facility as a Pseudo-Tie Resource or a Dynamically Scheduled Resource. Each Proposed Facility shall have an expected Commercial Operation Date that is at least twenty-seven (27) months later than the date on which Seller delivers a Proposed Facility Notice, and Seller shall not deliver a Proposed Facility Notice to Buyer after the date that is twenty-seven (27) months prior to the Final COD Deadline without Buyer's prior written consent, which Buyer may withhold in Buyer's absolute discretion; provided, however, that Seller shall have the right to declare the Commercial Operation Date prior to the date that is twenty-seven (27) months after the date that Seller delivers a Proposed Facility Notice so long as such Commercial Operation Date is no less than twelve (12) months after the date that Seller delivers a Proposed Facility Notice. Buyer shall cause the Project Participants to use commercially reasonable efforts to obtain Import Capability necessary to import the Facility Net Capacity of each Proposed Facility into the CAISO at the Primary Point of Delivery for such

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Proposed Facility, and Buyer shall notify Seller as soon as reasonably practicable after receipt of the Proposed Facility Notice either (A) that the Project Participants have been able to obtain such Import Capability or have elected to include the Proposed Facility in the Project without obtaining Import Capability such that the Proposed Facility will be included in the Project ("***Included Facility***"), or (b) that the Project Participants have been unable to obtain such Import Capability such that the Proposed Facility will not be added to the Project ("***Excluded Facility***"), and both the Maximum Capacity of the Project and the Minimum Capacity of the Project will be reduced by the Facility Net Capacity of the Excluded Facility(ies). If Buyer fails to notify Seller that the Proposed Facility is an Included Facility or an Excluded Facility by the date that is twenty-four (24) months prior to the Final COD Deadline, then the Final COD Deadline shall be extended on a day-for-day basis for each day until the date that Buyer provides such notice to Seller or Seller withdraws the Proposed Facility Notice due to Buyer's failure to notify Seller that the Proposed Facility is an Included Facility or an Excluded Facility, which withdrawal shall become effective ten (10) Business Days after Seller's delivery to Buyer of written notice of the withdrawal, unless Buyer notifies Seller that the Proposed Facility shall be an Included Facility within such ten (10) Business Day period. An illustrative list of potential Facilities is included in Appendix N; provided, however, that Appendix N is for illustrative purposes only, and no Facility shall be added to the Project unless and until such Facility is added pursuant to the process set forth in this Section 3.1.

Section 3.2 Permitting and CEQA Exemption.

(a) Seller, at its expense, shall timely take, or cause its Affiliates to take, all steps necessary to obtain all Permits required to construct, maintain, or operate each Facility, including drilling of the geothermal wells of the Facility, in accordance with the Requirements, including the timely preparation of all environmental documents required to have the applicable Facility reviewed under applicable Federal and Nevada law to the extent required under such law.

(b) The Parties acknowledge and agree that (a) each Facility will be subject to environmental review pursuant to NEPA in connection with the procurement of rights-of-way from the U.S. Department of the Interior, Bureau of Land Management for the construction and installation of certain electrical facilities, (b) pursuant to that law, Seller will, or will cause its Affiliates to, submit to and complete the NEPA Environmental Assessment with respect to each Facility, and (c) each Facility that will be located in Nevada is statutorily exempt from CEQA pursuant to Title 14, California Code of Regulations, Section 15277.

Section 3.3 Performance Testing Conditions Criteria. For each Facility, no later than Construction Start for such Facility, Seller shall deliver to Buyer ambient conditions criteria and a cooling water correction curve applicable to the performance testing that will be performed to demonstrate the peak electrical output of such Facility (collectively, the "***Performance Testing Conditions Criteria***").

Section 3.4 Site Confirmation. For each Facility for which Seller has delivered the Facility Specifications to Buyer, Seller represents and warrants that (a) Seller's agents and representatives have visited, inspected, and are familiar with each Site and its surface physical condition relevant to the obligations of Seller pursuant to this Agreement, including surface conditions, normal and usual soil conditions, roads, utilities, and topographical, solar radiation,

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air, and water quality conditions, (b) to its knowledge, Seller is familiar with all local and other conditions that may be material to Seller's performance of its obligations under this Agreement (including transportation, seasons and climate, access, weather, handling and storage of materials and equipment, and availability and quality of labor and utilities), and (c) Seller has determined that the Site constitutes an acceptable and suitable site for the construction (if applicable) and operation of such Facility in accordance herewith. Any failure by Seller to have taken or to take the actions described in this Section 3.4 shall not relieve Seller from any responsibility for estimating properly the difficulty and cost of successfully constructing (if applicable), maintaining or operating a Facility in accordance with this Agreement or from proceeding to construct (if applicable), maintain, and operate such Facility successfully without any additional expense to Buyer. At all times after delivery to Buyer of the Facility Specifications for a Facility, Seller shall have "Site Control" for such Facility, which means that Seller or its Affiliates shall own the Site, have a right-of-way with respect to the Site, or be the lessee of the Site under a lease which permits Seller to perform its obligations under the Agreement and the Seller Ancillary Documents. Seller shall provide Buyer with prompt notice of any change in the status of Seller's Site Control. Seller shall not take any action or permit any action to be taken at or with respect to the Site that has a material adverse effect upon the applicable Facility or the geothermal resource, or the generating capability of the applicable Facility.

Section 3.5 Certification of Commercial Operation Dates. When Seller has determined that all requirements under this Agreement for achieving Commercial Operation of a Facility have been satisfied, Seller shall provide Buyer with a certificate from the Licensed Professional Engineer substantially in the form of Appendix K, together with notice that the other conditions precedent specified in the definition of "Commercial Operation" in Section 1.1 have been satisfied in respect of such Facility. Buyer shall either accept or reject the notice in its reasonable discretion by delivering a notice to Seller in writing within thirty (30) Business Days. If Buyer fails to respond within thirty (30) Business Days, it shall be deemed to have accepted the notice. If Buyer rejects the notice, Buyer shall state in detail the reasons for its rejection and the Parties shall immediately meet and confer to address Buyer's concerns. Commercial Operation of the Facility shall be deemed to have occurred on the date that the requirements for Commercial Operation are satisfied, which date may be earlier than the date on which Buyer accepts Seller's notice that Commercial Operation has occurred and/or the date on which any concerns that Buyer expresses in connection with Seller's notice are resolved; provided the Parties acknowledge or are deemed to have acknowledged, or it is determined through dispute resolution, that all such requirements for Commercial Operation, as applicable, for such Facility have been satisfied on such earlier date.

Section 3.6 Milestone Schedule. For each Facility that is added to the Project pursuant to the process set forth in Section 3.1, within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the date on which such Facility is added to the Project until the Construction Start for such Facility, and (ii) each calendar month from the first calendar month following Construction Start until the Commercial Operation Date for such Facility, Seller shall provide to Buyer a Progress Report and agrees 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 Appendix O. 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

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receipt of such request by Seller. Seller shall achieve each Milestone by the Milestone Date specified therefor in the Milestone Schedule for such Facility, provided that such Milestone Date may be extended by Seller by providing to Buyer notice of such extension at least fifteen (15) days (or, in the event of a Force Majeure concerning which fifteen (15) days advance notice is not practicable, as soon as practicable) prior to such Milestone Date, including the cause of the delay, if known, (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor) and Seller's description of its proposed course of action to achieve the missed Milestone by the extended Milestone Date. The date specified for each Milestone shall be the Milestone Date for achieving such Milestone, provided that, if and to the extent such date shall be extended as provided in this Section 3.6, the extended date shall be the new Milestone Date for purposes of this Agreement. Notwithstanding anything herein to the contrary, Seller shall not be in default or otherwise have any liability under this Agreement for failing to meet a Milestone Date, other than to the extent provided in Section 3.7 of this Agreement. To the extent that Seller determines that, due to Seller's inability to satisfy one or more Milestones timely, a Facility is unlikely to achieve Commercial Operation by the Final COD Deadline, Seller shall be entitled to deliver to Buyer a notice that removes such Facility from the Project; provided, however, that if Buyer has notified Seller that the Project Participants have secured Import Capability sufficient to import Capacity Attributes from such Facility into the CAISO Market, then within thirty (30) days after the notice of removal, Seller shall deliver to buyer a Proposed Facility Notice that identifies a replacement Proposed Facility that would use but not exceed such Import Capability and that will achieve Commercial Operation by the Final COD Deadline.

Section 3.7 Performance Damages.

(a) **Failure to Achieve Minimum Capacity by the Final COD Deadline**. If the Project Net Capacity as of the Final COD Deadline is less than the Minimum Capacity, then, subject to Section 3.7(d), Seller shall pay liquidated damages to Buyer in an amount equal to [redacted] ("***Delay Damages***") of difference between the Minimum Capacity and the Project Net Capacity per day for each day intervening between the Final COD Deadline and the earliest of (i) the date that the Project Net Capacity becomes equal to or greater than the Minimum Capacity, and (ii) the date that is one hundred eighty (180) days after the Final COD Deadline ("***Minimum Capacity Cure Date***"). If the Project Net Capacity as of the Minimum Capacity Cure Date is less than the Minimum Capacity, then, subject to Section 3.7(d), (A) Seller shall pay to Buyer an amount equal to [redacted] ("***Capacity Buydown Damages***") and (B) the Minimum Capacity shall be revised to equal the Project Net Capacity as of the Minimum Capacity Cure Date. Seller shall provide to Buyer a written notice of such revised Minimum Capacity.

(b) **[Reserved]**.

(c) **Payment of Delay Damages and Capacity Buydown Damages**. For each month during which Delay Damages have accrued, within twenty (20) Business Days after the end of such month, Seller shall deliver to Buyer a written statement of the amount of the applicable liquidated damages that accrued during such month in accordance with Section 3.7(a), together with payment thereof. Within twenty (20) Business Days after the Minimum Capacity Cure Date,

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Seller shall pay Buyer any Capacity Buydown Damages required to be paid to Buyer in accordance with Section 3.7(a).

(d) **Delay Damages and Capacity Buydown Damages Cap**. Notwithstanding anything to the contrary herein, Seller's obligation to pay Delay Damages and Capacity Buydown Damages, in the aggregate, shall not exceed an amount equal to two hundred percent (200%) of the amount of the Project Development Security (as the same may have been recalculated in accordance with Section 5.9(a)).

(e) Damages that Buyer would incur due to (i) Seller's failure to achieve a Project Net Capacity that meets the Minimum Capacity by the Final COD Date, or (ii) Seller's failure to achieve a Project Net Capacity that meets the Minimum Capacity by the Minimum Capacity Cure Date, would be difficult or impossible to predict with certainty, and it is impractical or difficult to assess actual damages in those circumstances, but the Delay Damages and Capacity Buydown Damages set forth in Sections 3.7(a) are fair and reasonable calculations of such damages. Buyer's right to collect liquidated damages pursuant to Sections 3.7(a) is Buyer's sole and exclusive remedy for any failure by Seller to achieve any required level of Project Net Capacity by the Minimum Capacity Cure Date.

Section 3.8 Notice of Facility Net Capacity and Primary Point of Delivery. At least one (1) year prior to the Commercial Operation Date of a Facility, Seller shall provide notice to Buyer confirming (a) the Facility Net Capacity for such Facility, subject to adjustment pursuant to Section 3.9 below, and (b) the Primary Point of Delivery for such Facility. If Seller proposes to increase the Facility Net Capacity of a Facility or to change the Primary Point of Delivery for a Facility, and the Parties do not mutually agree to the proposed increase to the Facility Net Capacity or the proposed change to the Primary Point of Delivery for a Facility, as applicable, (such agreement not to be unreasonably withheld, conditioned or delayed), then, unless Seller withdraws its proposal to increase the Facility Net Capacity or change the Primary Point of Delivery, as applicable, the Proposed Facility will be removed from the Project.

Section 3.9 Revision of Facility Net Capacity. No less than thirty (30) days prior to a Facility's Commercial Operation, Seller has the right, (a) without Buyer's consent, to reduce the Facility Net Capacity for such Facility, or (b) with Buyer's consent, to increase the Facility Net Capacity for such Facility, in either case by providing notice to Buyer stating the reduced or increased Facility Net Capacity ("***Revised Net Capacity***") and evidence reasonably demonstrating (i) the sustained operation of the Facility for at least five (5) consecutive hours at a delivery rate of at least ninety percent (90%) of the Revised Net Capacity (net of providing the full requirements for Parasitic Load and net of transmission losses) as measured by the Electric Metering Devices at the Primary Point of Delivery, as adjusted to reflect nominal resource temperature and flow rates and other environmental conditions in accordance with the Performance Testing Conditions Criteria for such Facility, and (ii) the delivery of Energy equal to at least the product of ninety percent (90%) of the Revised Net Capacity for each of one hundred twenty (120) consecutive hours (net of providing the full requirements for Parasitic Load and net of transmission losses) as measured by the Electric Metering Devices at the Primary Point of Delivery, as adjusted to reflect resource temperature and flow rates and other environmental conditions in accordance with the Performance Testing Conditions Criteria for such Facility. Notwithstanding the prior sentence, no reduction to Facility Net Capacity pursuant to this Section 3.9 shall reduce the Minimum Capacity.

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Buyer shall either accept or reject a notice increasing the Facility Net Capacity in its reasonable discretion by delivering a notice to Seller in writing within thirty (30) days. If Buyer fails to respond within thirty (30) days, it shall be deemed to have accepted the notice. If Buyer rejects the notice, Buyer shall state in detail the reasons for its rejection. The Parties shall immediately meet and confer to address Buyer's concerns. Upon Buyer's acceptance, or deemed acceptance, of the notice, the Facility Net Capacity will be revised to equal the Revised Net Capacity specified in the notice, effective as of the date that Seller provided its notice to Buyer. If Buyer rejects a proposal to increase the Facility Net Capacity, the Facility Net Capacity will remain unchanged. Notwithstanding anything to the contrary in the first sentence of this Section 3.9, if Seller provides a notice revising the Facility Net Capacity of more than one Facility that will deliver Energy to the same Primary Point of Delivery, then if the aggregate Facility Net Capacities of all such Facilities does not increase, then Buyer's consent shall not be required to increase the Facility Net Capacity of any individual Facility.

Section 3.10 Delivery of Energy Prior to Commercial Operation Date. For each Facility, prior to the Commercial Operation Date of such Facility, Seller shall sell and deliver to the Points of Delivery, and Buyer shall purchase and receive at and from the Points of Delivery, the Delivered Energy associated with such Facility for a maximum of thirty (30) days at the price set forth in Section 1 of Appendix A; provided, in no event shall Buyer be obligated to purchase or receive Delivered Energy in excess of the Maximum Generation unless Buyer shall by notice given to Seller elect to purchase any such Energy in excess of Maximum Generation. For avoidance of doubt, Buyer shall have no obligation to purchase and receive Delivered Energy for more than thirty (30) days from any Facility that has not achieved Commercial Operation.

Section 3.11 Facility Removal for Failure to Obtain CEC Certification. Seller shall remove from the Project any Facility or Facilities that have achieved Commercial Operation under this Agreement but have not been CEC Certified by the date that is (a) one hundred eighty (180) days following such Facility's Commercial Operation Date if such failure to be CEC Certified is the result of Seller's fault or negligence (including any failure to submit timely required documentation to the CEC) or (b) three hundred sixty (360) days following such Facility's Commercial Operation Date if such failure to be CEC Certified is not the result of Seller's fault or negligence. Seller shall provide notice to Buyer and remove such Facility from the Project and upon delivery of such notice the Project Net Capacity will be reduced by the amount of the Facility Net Capacity associated with such Facility and the Guaranteed Generation reduced in accordance with the reduced Project Net Capacity. If such Facility removal occurs after the Minimum Capacity Cure Date, Buyer shall calculate in a commercially reasonable manner, and consistent with Section 13.3(b), the positive amount, if any, calculated as its Costs, *plus* Losses, *minus* Gains with respect to such reduction in Project Net Capacity; provided, Costs, Losses and Gains shall all be determined with respect to the reduction in Project Net Capacity rather than with respect to termination of all obligations under this Agreement, and further provided that, if the result of the foregoing calculation is negative, no amount shall be due to Seller. As soon as reasonably practical, Buyer shall provide notice to Seller of such damages along with a demand for payment, which demand shall be provided with a written statement explaining in reasonable detail the calculation of the demanded amount. Within ten (10) Business Days after receipt of such demand and written statement, Seller shall pay the undisputed amount of such demand and provide written notice of any disputed amount (if any), which dispute shall be resolved in accordance with Section 14.3. If Buyer prevails in any such dispute, then Seller shall pay the amount determined to be due to Buyer,

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together with interest on such amount calculated at the Interest Rate from the original due date until the date paid. If, before the dispute is resolved, Buyer draws on the Delivery Term Security for any disputed amount and Seller thereafter prevails in the dispute, then Buyer (i) shall be required to refund the amount of the erroneous draw, together with interest calculated at the Interest Rate from the date of the draw through the date of refund and (ii) shall pay to Seller any documented costs and expenses incurred by Seller due to the erroneous draw on the Delivery Term Security. If Seller fails to pay or dispute the amount of a demand within ten (10) Business Days after receipt of Buyer's demand and supporting written statement, then Buyer shall be entitled to draw from the Delivery Term Security the unpaid amount. Payment of the damages as described in this Section 3.11 are Buyer's sole and exclusive remedies for Seller's failure to obtain CEC Certification for a Facility.

Section 3.12 [Reserved].

Section 3.13 Decommissioning and Other Costs. Buyer shall not be responsible for any cost of decommissioning or demolition of any Facility or any part thereof or any environmental or other liability associated with the decommissioning or demolition without regard to the timing or cause of the decommissioning or demolition.

ARTICLE IV
OPERATION AND MAINTENANCE OF THE FACILITY

Section 4.1 General Operational Requirements. Seller shall, at all times:

(a) At its sole expense, operate and maintain, or cause an Affiliate to operate and maintain, each Facility (i) in accordance with the Requirements, and (ii) in a manner that, to the extent commercially reasonable to do so, is reasonably likely to maximize the output of Energy and Capacity Attributes from the Facility and result in a useful life for the Facility of not less than twenty (20) years;

(b) Employ, or cause an Affiliate to employ, qualified and trained personnel for managing, operating, and maintaining each Facility and for coordinating with Buyer, and ensure that necessary personnel are available on-site or on-call and available to be on Site within four (4) hours, twenty-four (24) hours per day, each day during the Delivery Term;

(c) Operate and maintain, or cause an Affiliate to operate and maintain, each Facility with due regard for the safety, security, and reliability of the interconnected facilities and Transmission System; and

(d) Comply, or cause compliance, to the extent commercially reasonable to do so, with operating and maintenance standards recommended or required by each Facility's equipment suppliers.

Section 4.2 Operation and Maintenance Plan; Operation and Maintenance Reports. Seller shall devise and implement, or cause an Affiliate to devise and implement, a plan of inspection, maintenance, and repair for each Facility and the components thereof in order to maintain such equipment in accordance with Prudent Utility Practices, and shall keep, or cause to be kept, records with respect to inspections, maintenance, and repairs thereto. The aforementioned

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plan and all records of such activities shall be available for inspection by Buyer during Seller's regular business hours upon reasonable notice; provided that Buyer shall at all times comply with Seller's or the contractor's safety and security requirements when present at any Facility.

Section 4.3 Environmental Credits. Seller or its Affiliates shall, if applicable, obtain in its own name and at its own expense all pollution or environmental Permits, credits or offsets necessary to operate each Facility in compliance with the Requirements of Law.

Section 4.4 Planned and Forced Outages.

(a) Seller shall schedule all Planned Outages within the time-period determined by the CAISO for each Facility as a Resource Adequacy Resource that is subject to the Availability Standards (as defined in the CAISO Tariff) to qualify for an "Approved Maintenance Outage" under the CAISO Tariff. Seller shall reimburse Buyer for any documented cost incurred by a Project Participant to provide substitute Capacity Attributes, as required by the CAISO, during any Planned Outages, whether as originally scheduled or as rescheduled in accordance with this Section 4.4(a) (including, to the extent actually incurred and documented by Project Participants, the cost of procuring replacement Capacity Attributes for a full calendar month during any month in which a Planned Outage is planned or scheduled). Notwithstanding the foregoing, Seller shall not be permitted to schedule Planned Outages during the months of June through September each Contract Year (the "***Major Maintenance Blockout***"). No later than sixty (60) days prior to the anticipated commencement of the first (1st) Contract Year and the commencement of each Contract Year thereafter, Seller shall provide Buyer with its non-binding written projection of all Planned Outages for the succeeding three (3) years (the "***Planned Outage Projection***") reflecting no scheduled maintenance during the Major Maintenance Blockout. The Planned Outage Projection shall include information concerning all projected Planned Outages during such period, including (i) the anticipated start and end dates of each Planned Outage; (ii) a description of the maintenance or repair work to be performed during the Planned Outage; and (iii) the MW capacity anticipated to be impacted, if any, during the Planned Outage. Seller shall notify Buyer of any change in the Planned Outage Projection as soon as practicable; provided that Major Maintenance shall not be performed more than one week before or after the scheduled time without Buyer's consent unless (i) for changes that move the date of Major Maintenance to an earlier date, Seller provides notice of the change at least fifty (50) Business Days prior to the first day of the month in which such Major Maintenance is to be rescheduled, and (ii) for changes that move the date of such Major Maintenance to a later date, Seller provides notice of the change prior to the first day of the month in which such Major Maintenance was originally scheduled. Seller will use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to the timing of Planned Outages and Seller will, to the extent consistent with Prudent Utility Practices, coordinate Planned Outages to coincide with planned transmission outages. In the event of a System Emergency, Seller shall make all reasonable efforts to reschedule any Planned Outage previously scheduled to occur during the System Emergency.

(b) In the event of a Forced Outage affecting at least seven and a half (7.5) MW of Project Net Capacity which Seller anticipates shall be of a duration more than one (1) hour, to the extent practicable, Seller shall notify Buyer by email as soon as possible and shall make efforts to provide such notification within the hour of the commencement of the Forced Outage and, within seven (7) days thereafter, provide Buyer detailed information concerning the Forced

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Outage, including (i) the start and anticipated end dates of the Forced Outage; (ii) a description of the cause of the Forced Outage; (iii) a description of the maintenance or repair work to be performed during the Forced Outage; and (iv) the anticipated MW capacity, if any, during the Forced Outage. Seller shall take all reasonable measures and exercise commercially reasonable efforts to avoid Forced Outages and to limit the duration and extent of any such outages.

Section 4.5 Facility Operation. Each Facility shall be operated during the Delivery Term by Seller or an Affiliate of Seller that is under the Control of Seller or such other Person(s) as Seller or the applicable Project Company may contract with from time to time under an agreement for the operation of such Facility; provided that such agreement shall provide Seller with the rights, as a creditor, beneficiary or otherwise, to enforce such agreement so as to ensure compliance with all applicable provisions of this Agreement. The agreement with respect to the operations of such Facility shall require that such Facility be operated in a manner that is in full compliance with the Requirements. Seller shall provide to Buyer a copy of the relevant operations agreement (which may be redacted to remove confidential information of the parties thereto).

ARTICLE V
COMPLIANCE DURING OPERATION PERIOD; GUARANTEES

Section 5.1 Guarantees. Seller warrants and guarantees that (i) it will perform, or cause to be performed, all engineering, design, development, construction, operation and maintenance of each Facility in a good and workmanlike manner and in accordance with the Requirements; and (ii) throughout the Delivery Term (a) each Facility, its engineering, design and construction, its components, and related work, will be free from material defects caused by errors or omissions in design, engineering and construction or repaired as provided below, (b) each Facility will be free and clear of all Liens other than Permitted Encumbrances, and (c) each Facility and all parts thereof will be designed, constructed, tested, operated and maintained in material compliance with the Requirements, all applicable requirements of the latest revision of the ASTM, ASME, AWS, EPA, IEEE, ISA, National Electrical Code, National Electric Safety Code, and OSHA, as applicable, and the Uniform Building Code, Uniform Plumbing Code, and the applicable local County Fire Department Standards of the applicable county. Seller shall promptly repair or replace, or cause to be repaired or replaced, consistent with Prudent Utility Practice, any component of a Facility that does not comply with the foregoing warranties and guarantees. Seller shall at all times exercise commercially reasonable efforts to undertake, or cause to be undertaken, all recommended or required updates or modifications to each Facility, and its equipment and materials, including procedures, programming and software in a timely manner. Seller shall, at its expense, maintain or cause to be maintained throughout the Delivery Term an inventory of spare parts for each Facility in a quantity that is consistent with manufacturers' recommendations and Prudent Utility Practice.

Section 5.2 Buyer's Right to Monitor in General. At Buyer's sole expense and without interfering with Seller's or its Affiliates' activities at the Facility, Buyer shall have the right, and Seller shall permit Buyer and its representatives, advisors, engineers, and consultants, to observe, inspect, and monitor all operations and activities at each Site, including the performance of the contractors under the construction contracts pertaining to such Facility, the design, engineering, procurement, and installation of the equipment, start up and testing, and the achievement of Commercial Operation; provided that Buyer shall at all times comply with Seller's,

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the contractor's or the operator's safety and security requirements when present at the Facility. Notwithstanding the foregoing, Seller shall have the right and Buyer shall permit Seller to withhold any proprietary information, including with respect to proprietary intellectual property of Seller; provided that such information shall be provided by Seller to Buyer to the extent required by Buyer to enforce its rights or to carry out its responsibilities under this Agreement. In addition, Buyer shall hold any information obtained during or in connection with such monitoring in confidence pursuant to Section 14.21.

Section 5.3 Effect of Review by Buyer. Any review by Buyer of the design, construction, engineering, operation or maintenance of a Facility is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review with Seller, nor shall any such review or the results thereof (whether or not the results are shared with Seller) nor any failure to conduct any such review relieve Seller from any of its obligations under this Agreement. By making any such review, Buyer makes no representation as to the economic and technical feasibility, operational capability or reliability of a Facility. Seller shall in no way represent to any third party that any such review by Buyer of a Facility, including, but not limited to, any review of the design, construction, operation or maintenance of the Facility by Buyer, is a representation by Buyer as to the economic and technical feasibility, operational capability, or reliability of the Facility. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability thereof.

Section 5.4 Reporting and Information; Administration and Periodic Reporting.

(a) Seller shall provide to Buyer such other information regarding the permitting, engineering, construction, or operation of each Facility by Seller or its subcontractors and other data concerning Seller, its subcontractors and the Facilities as Buyer may, from time to time, reasonably requested in order to enforce its rights or discharge its responsibilities under this Agreement. Notwithstanding the foregoing, Seller shall have the right and Buyer shall permit Seller to withhold any proprietary information, including with respect to the intellectual property of Seller; provided that such information shall be provided by Seller to Buyer to the extent required by Buyer to enforce its rights or to carry out its responsibilities under this Agreement. In addition, Buyer shall hold any Confidential Information obtained during or in connection with such monitoring in confidence pursuant to Section 14.21.

(b) Seller shall perform administrative and periodic reporting to Buyer which shall include the following:

(i) Safety matters including monthly reports, including OSHA recordable and non-recordable incidents and site safety information;

(ii) Monthly operational reports with respect to Facility activities, including plant performance, capacity factor, availability, weather and generation data, and in each case confirming that applicable contractual requirements have been met;

(iii) Any notice of non-compliance with NERC and FERC rules or regulations;

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(iv) Any environmental contamination that Seller or its Affiliates, and any of their contractors, become aware of at any Site; and

(v) Any information that is requested by the CPUC with respect to a Facility, this Agreement, or the Project.

Section 5.5 Initial Performance Test. Prior to the Commercial Operation Date for each Facility, Seller shall provide to Buyer the opportunity, at Buyer's sole expense and without interfering with Seller's or its Affiliates' activities at the Facility, to:

(a) review and monitor the contractors' performance and achievement of all initial performance tests and all other tests required under the Facility construction contracts performed to achieve the Commercial Operation Date, and Seller shall, or shall cause its contractor, to provide at least ten (10) Business Days prior notice to Buyer before any such test begins; provided that Buyer shall at all times comply with Seller's or the contractor's safety and security requirements when present at the Facility;

(b) be present to witness such initial performance tests and review the results thereof; provided that Buyer shall at all times comply with Seller's or the contractor's safety and security requirements when present at the Facility; and

(c) perform such detailed examinations, inspections, quality surveillance, and tests as are appropriate and advisable to determine that the Facility equipment and all ancillary components of the Facility have been installed in accordance with the Facility construction contracts and the Requirements.

Section 5.6 Contract Provisions. For each Facility, Seller shall cause to be included in the Facility construction contracts provisions whereby the contractors and Seller:

(a) grant to Buyer, at Buyer's sole expense and without interfering with Seller's or the construction contractors' activities at the Facility, rights of access to the Facility at all reasonable times (but subject to reasonable safety precautions) and the right to inspect, make notes about, and copy all documents, drawings, plans, specifications, permits, test results, and information as Buyer may reasonably request; provided that Buyer shall at all times comply with Seller's or the contractor's safety and security requirements when present at the Facility. Notwithstanding the foregoing, Seller shall have the right and Buyer shall permit Seller to withhold any proprietary information, including with respect to intellectual property of Seller; provided that such information shall be provided by Seller to Buyer to the extent required by Buyer to enforce its rights or to carry out its responsibilities under this Agreement. In addition, Buyer shall hold any Confidential Information obtained during or in connection with such monitoring in confidence pursuant to Section 14.21;

(b) make the personnel of, and consultants to, the contractors and Seller available to Buyer and its agents, representatives and consultants for a reasonable number of hours, at reasonable times, and with reasonable prior notice for purpose of discussing any aspect of the Facility or the development, engineering, construction, installation, testing, or performance thereof; and

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(c) otherwise cooperate in all reasonable respects with Buyer and its Authorized Representatives, advisors, engineers and consultants in order to allow Buyer to exercise its rights under this Section 5.6.

Section 5.7 Quality Assurance Program; Routine and Preventive Maintenance Services.

(a) Seller shall develop a written quality assurance policy ("***Quality Assurance Program***") in accordance with the requirements of Appendix H within sixty (60) days prior to commencement of construction on the first Facility, and Seller shall cause all work performed on or in connection with each Facility to comply with said Quality Assurance Program.

(b) Seller shall perform, or cause to be performed, routine and preventive maintenance services in accordance with manufacturers' instructions and Prudent Utility Practices, including:

(i) Conducting regular equipment inspections and recording any noncompliance with applicable standard specifications for the equipment, and reporting any noncompliance that materially and adversely affects a Facility's performance or is likely to materially and adversely affect a Facility's performance and any defective conditions or operational failures with respect to the equipment to Buyer;

(ii) Performing all required preventive maintenance, including meter calibration and testing, and scheduling and arranging for routine maintenance during operations and planned outages, and for maintenance that can be conducted during a Forced Outage;

(iii) Conducting periodic maintenance to equipment in accordance with Prudent Utility Practices, and providing a report thereof to Buyer;

(iv) Conducting monthly quality assurance inspections of Facility plant and equipment and providing a report thereof to Buyer.

Section 5.8 No Liens. Except as otherwise permitted by this Agreement, each Facility shall be owned by Seller or an Affiliate of Seller. Seller shall not, and shall cause its Affiliates not to, other than to another Affiliate, sell, transfer or otherwise dispose of or create, incur, assume or permit to exist any Lien (other than Permitted Encumbrances) on any portion of any Facility without the prior written consent of Buyer.

Section 5.9 Seller Performance Security.

(a) Within thirty (30) days following the date that the Project Participant Approval has been received, Seller shall have furnished to Buyer a letter of credit issued by a Qualified Issuer substantially in the form of Appendix E, as such form may be modified with the consent of Buyer (not to be unreasonably withheld, conditioned or delayed), in an amount equal to [redacted] which shall secure all of Seller's obligations to pay liquidated damages under Section 3.7 ("***Project Development Security***"). Seller shall maintain such Project Development

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Security until Buyer is required to return the Project Development Security under Section 5.9(c) below. Any reduction of the Minimum Capacity pursuant to Section 2.4 or Section 3.1 shall result in the recalculation of the amount of Project Development Security and Seller shall be entitled to reduce the Project Development Security in accordance with such calculation. In the event that Buyer draws on the Project Development Security at any time, Seller shall within ten (10) Business Days thereafter replenish such Project Development Security; provided, however, that in no event shall the aggregate amount of the original posting of Project Development Security plus all such replenishments exceed an amount equal to two hundred percent (200%) of the applicable amount of Project Development Security required to be maintained by Seller at the time of any such replenishment.

(b) As a condition to the achievement of Commercial Operation for each Facility, Seller shall have furnished to Buyer (i) one or more guarantees from a Qualified Guarantor substantially in the form of Appendix G, as such form may be modified with the consent of Buyer (not to be unreasonably withheld, conditioned or delayed), (ii) a letter of credit issued by a Qualified Issuer substantially in the form of Appendix E, as such form may be modified with the consent of Buyer (not to be unreasonably withheld, conditioned or delayed), or (iii) a combination of any of the foregoing, in the aggregate amount equal to [redacted], which shall guarantee Seller's obligations under this Agreement following the Commercial Operation Date ("***Delivery Term Security***"). From and after the Commercial Operation Date for a Facility, Seller shall maintain the corresponding Delivery Term Security until Buyer is required to return the Delivery Term Security to Seller as set forth in Section 5.9(d) below; provided that Seller may, from time to time, replace any portion of the Delivery Term Security with another form of Delivery Term Security meeting the foregoing requirements. In the event that Buyer draws on the Delivery Term Security at any time, Seller shall within ten (10) Business Days thereafter replenish such Delivery Term Security.

(c) Upon the earliest to occur of (i) the Project Net Capacity is increased to an amount that is equal to or greater than the Minimum Capacity, (ii) this Agreement is terminated while the Project Development Security is outstanding, or (iii) Seller's payment of Capacity Buydown Damages in accordance with Section 3.7(a), Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less any and all amounts drawn by Buyer as permitted under the terms of this Agreement. The Project Development Security (or portion thereof) due to Seller after any and all amounts are drawn by Buyer as permitted under the terms of this Agreement shall be returned to Seller within five (5) Business Days after the first event described in clauses (i) through (iii) of this Section 5.9(c) occurs.

(d) Buyer shall return the unused portion of Delivery Term Security, if any, to Seller promptly after both of the following have occurred: (i) the Agreement Term has ended, and (ii) all obligations of Seller arising under this Agreement are paid (whether directly or indirectly such as through set-off or netting) or performed in full.

(e) Seller shall notify Buyer of the occurrence of a Downgrade Event within five (5) Business Days after obtaining knowledge of the occurrence of such event. If at any time there shall occur a Downgrade Event, then Buyer may require that Seller replace the Performance

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Security from the Person that has suffered the Downgrade Event within ten (10) Business Days after notice from Buyer to Seller requesting such replacement Performance Security. In the event that such replacement Performance Security is not so provided by Seller, Buyer shall have the right to demand payment of the full amount of such Performance Security and retain such amount in order to secure Seller's obligations under this Section 5.9 and other applicable provisions of this Agreement. In such case, Buyer shall hold the demanded amount in an escrow account until the earlier of (i) Seller's delivery of replacement Performance Security, upon receipt of which Buyer shall return to Seller the portion of the Performance Security then remaining in the escrow account within ten (10) Business Days and (ii) the date that the applicable Performance Security is required to be returned to Seller in accordance with Section 5.9(c) for the Project Development Security or Section 5.9(d) for the Delivery Term Security.

(f) If any Performance Security is in the form of a letter of credit, then Seller shall either provide, or cause to be provided, a replacement letter of credit or guarantee (from a Qualified Issuer or Qualified Guarantor, as applicable) in the required amount set forth in this Section 5.9 within ten (10) Business Days after the earlier of the date that Seller becomes aware, or Buyer notifies Seller of the occurrence of any one of the following events:

(i) the failure of the issuer of the letter of credit to renew such letter of credit thirty (30) Business Days prior to the expiration of such letter of credit;

(ii) the failure of the issuer of the letter of credit to immediately honor Buyer's properly documented request to draw on such letter of credit; or

(iii) the issuer of the letter of credit suffers a Bankruptcy.

(g) If any Performance Security is in the form of a guarantee, then Seller shall either provide, or cause to be provided, a replacement guarantee or letter of credit (from Qualified Guarantor or Qualified Issuer, as applicable) in the required amount set forth in this Section 5.9 within ten (10) Business Days after the earlier of the date that Seller becomes aware, or Buyer notifies Seller, of the occurrence of any one of the following events:

(i) the failure of the guarantor to make a payment thereunder immediately following Buyer's properly documented claim made pursuant to the guarantee in accordance with its terms;

(ii) 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;

(iii) the guarantor suffers a Bankruptcy;

(iv) the guarantee fails to be in full force and effect in accordance with the terms of this Agreement prior to the satisfaction of all obligations of Seller under this Agreement; or

(v) the guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, its guarantee.

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(h) In the event that a replacement letter of credit or guarantee is not delivered in accordance with Section 5.9(f) or (g), as applicable, Buyer shall have the right to demand payment of the full amount of the letter of credit or the guarantee, as applicable. In such case, Buyer shall hold the demanded amount in an escrow account until the earlier of (i) Seller's delivery of replacement Performance Security, upon receipt of which Buyer shall return to Seller the portion of the Performance Security then remaining in the escrow account within ten (10) Business Days and (ii) the date that the applicable Performance Security is required to be returned to Seller in accordance with Section 5.9(c) for the Project Development Security or Section 5.9(d) for the Delivery Term Security.

(i) 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 Project Development Security and Delivery Term Security, 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 shall, from time to time as requested by Buyer, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments, and other documents as may be necessary or advisable to render fully valid, perfected, and enforceable under all Requirements of Law the Performance Security and the rights, Liens, and priorities of Buyer with respect to such Performance Security.

(j) Except as otherwise provided in this Agreement, the Performance Security: (i) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (ii) shall not be Buyer's exclusive remedy against Seller for Seller's failure to perform in accordance with this Agreement.

Section 5.10 Lease or Permit No Longer in Effect. Seller shall remove from the Project any Facility that is unable to operate because one or more of the Leases or Permits fails to be in effect or has terminated for such Facility; provided, if such failure or termination is due to a decision of a Governmental Authority, such decision must be final and non-appealable. Seller shall provide notice to Buyer and remove such Facility from the Project and upon delivery of such notice the Project Net Capacity will be reduced by the amount of the Facility Net Capacity associated with such Facility and the Guaranteed Generation reduced in accordance with the reduced Project Net Capacity. If such Facility removal occurs after the Minimum Capacity Cure Date, Buyer shall calculate in a commercially reasonable manner, and consistent with Section 13.3(b), the positive amount, if any, calculated as its Costs, *plus* Losses, *minus* Gains with respect to such reduction in Project Net Capacity; provided, Costs, Losses and Gains shall all be determined with respect to the reduction in Project Net Capacity rather than with respect to termination of all obligations under this Agreement, and further provided that, if the result of the foregoing calculation is negative, no amount shall be due to Seller. As soon as reasonably practical, Buyer shall provide notice to Seller of such damages along with a demand for payment, which demand shall be provided with a written statement explaining in reasonable detail the calculation of the demanded amount. Within ten (10) Business Days after receipt of such demand and written statement, Seller shall pay the undisputed amount of such demand and provide written notice of any disputed amount (if any), which dispute shall be resolved in accordance with Section 14.3. If Buyer prevails in any such dispute, then Seller shall pay the amount determined to be due to Buyer, together with interest on such amount calculated at the Interest Rate from the original due date

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until the date paid. If, before the dispute is resolved, Buyer draws on the Delivery Term Security for any disputed amount and Seller thereafter prevails in the dispute, then Buyer (i) shall be required to refund the amount of the erroneous draw, together with interest calculated at the Interest Rate from the date of the draw through the date of refund and (ii) shall pay to Seller any documented costs and expenses incurred by Seller due to the erroneous draw on the Delivery Term Security. If Seller fails to pay or dispute the amount of a demand within ten (10) Business Days after receipt of Buyer's demand and supporting written statement, then Buyer shall be entitled to draw from the Delivery Term Security the unpaid amount. Payment of the damages as described in this Section 5.10 are Buyer's sole and exclusive remedies for Seller's failure to maintain Leases or Permits for a Facility.

Section 5.11 Project Company Bankruptcy. Seller shall remove from the Project any Facility for which the Project Company is subject to a Bankruptcy. Seller shall provide notice to Buyer and remove the Facility of such bankrupt Project Company from the Project and upon delivery of such notice the Project Net Capacity will be reduced by the amount of the Facility Net Capacity associated with such Facility of the bankrupt Project Company and the Guaranteed Generation reduced in accordance with the reduced Project Net Capacity. If such Facility removal occurs after the Minimum Capacity Cure Date, Buyer shall calculate in a commercially reasonable manner, and consistent with Section 13.3(b), the positive amount, if any, calculated as its Costs, *plus* Losses, *minus* Gains with respect to such reduction in Project Net Capacity; provided, Costs, Losses and Gains shall all be determined with respect to the reduction in Project Net Capacity rather than with respect to termination of all obligations under this Agreement, and further provided that, if the result of the foregoing calculation is negative, no amount shall be due to Seller. As soon as reasonably practical, Buyer shall provide notice to Seller of such damages along with a demand for payment, which demand shall be provided with a written statement explaining in reasonable detail the calculation of the demanded amount. Within ten (10) Business Days after receipt of such demand and written statement, Seller shall pay the undisputed amount of such demand and provide written notice of any disputed amount (if any), which dispute shall be resolved in accordance with Section 14.3. If Buyer prevails in any such dispute, then Seller shall pay the amount determined to be due to Buyer, together with interest on such amount calculated at the Interest Rate from the original due date until the date paid. If, before the dispute is resolved, Buyer draws on the Delivery Term Security for any disputed amount and Seller thereafter prevails in the dispute, then Buyer (i) shall be required to refund the amount of the erroneous draw, together with interest calculated at the Interest Rate from the date of the draw through the date of refund and (ii) shall pay to Seller any documented costs and expenses incurred by Seller due to the erroneous draw on the Delivery Term Security. If Seller fails to pay or dispute the amount of a demand within ten (10) Business Days after receipt of Buyer's demand and supporting written statement, then Buyer shall be entitled to draw from the Delivery Term Security the unpaid amount. Payment of the damages as described in this Section 5.11 are Buyer's sole and exclusive remedies for a Bankruptcy of a Project Company.

Section 5.12 Buyer Credit Arrangements.

(a) To secure its obligations under this Agreement, Buyer shall deliver to Seller within one hundred twenty (120) days after the Effective Date, Buyer Liability Pass Through Agreements from Project Participants with Liability Shares as set forth on Appendix M. Seller shall countersign each Buyer Liability Pass Through Agreement within ten (10) days of receipt of

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each such Buyer Liability Pass Through Agreement. Buyer shall maintain such Buyer Liability Pass Through Agreements in full force and effect until both of the following have occurred: (a) the Agreement Term has expired or terminated early; and (b) all payment obligations of Buyer due and payable under this Agreement are paid in full (whether directly or indirectly such as through set-off or netting).

(b) Buyer may amend Appendix M in its sole discretion with respect to the identity of Project Participants and the amount of each Project Participant's Liability Share; and other amendments shall be subject to the consent of Seller (not to be unreasonably withheld, conditioned or delayed). If Buyer amends Appendix M, Buyer shall provide Seller replacement Buyer Liability Pass Through Agreements executed by Buyer and the applicable Project Participants that incorporate Liability Shares as set forth in the amended Appendix M (**"*Replacement BLPTAs*"**). Seller shall countersign each Replacement BLPTA executed by Buyer and the applicable Project Participant within ten (10) Business Days after Buyer's delivery of such Replacement BLPTAs to Seller; *provided* that until the Replacement BLPTAs have been executed by Seller and all applicable Project Participants, the prior agreements will remain in effect.

ARTICLE VI
PURCHASE AND SALE OF POWER

Section 6.1 Purchases by Buyer.

(a) For all Delivered Energy comprised of Facility Energy from a Facility prior to its Commercial Operation Date, Seller shall sell and deliver, and Buyer shall purchase and receive, such Delivered Energy in accordance with Section 3.10.

(b) For all Delivered Energy comprised of Facility Energy from a Facility after its Commercial Operation Date, Seller shall sell and deliver, and Buyer shall purchase and receive, all such Delivered Energy and all Replacement Energy for the price set forth in Section 2 of Appendix A; provided that, in no event shall Buyer be obligated to purchase or receive Delivered Energy in excess of the Maximum Generation unless Buyer shall by notice given to Seller elect to purchase any such Energy in excess of Maximum Generation.

(c) Notwithstanding Section 6.1(b), during the period of time between the day that is one hundred eighty (180) days following the Commercial Operation Date of a Facility and the day that is one (1) day following the date upon which Buyer receives evidence that such Facility is CEC Certified, Buyer may retain a portion of any payment to be made to Seller hereunder associated with the Delivered Energy from such Facility in an amount equal to the positive difference between (1) the price of the Delivered Energy pursuant to Section 6.1(b), and (2) the average of the on-peak and off-peak Energy prices, weighted by the number of hours in the on-peak and off-peak periods, during the month in which the deliveries occurred for Energy that is not from an Eligible Renewable Energy Resource under the RPS, as listed in the Intercontinental Exchange Palo Verde Electricity Price Index or its successor index, or any other index mutually agreed by the Parties. Buyer shall release such retained amount, which shall not be calculated with interest of any kind, within forty-five (45) days following the receipt of evidence satisfactory to Buyer from Seller that the Facility is CEC Certified. Within thirty (30) days after any removal of a Facility under Section 3.11, Seller shall refund to Buyer, for Delivered Energy associated with

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such Facility and purchased by Buyer during the first one hundred eighty (180) days following the Commercial Operation Date of such Facility that has not been CEC Certified at the price set forth in paragraph 2 of Appendix A, the positive difference between (1) the price paid by Buyer and (2) the average of the on-peak and off-peak Energy prices, weighted by the number of hours in the on-peak and off-peak periods, during the month or months in which the deliveries of such Delivered Energy occurred for Energy that is not from an Eligible Renewable Energy Resource under the RPS, as listed in the Intercontinental Exchange Palo Verde Electricity Price Index or its successor index, or any other index mutually agreed by the Parties. Upon such removal, Seller shall have no obligation to transfer any Green Attributes related to the Delivered Energy from the removed Facility.

(d) At its sole discretion, Buyer or Project Participants may re-sell or use for another purpose all or a portion of the Facility Energy, Replacement Energy, Capacity Rights, and associated Green Attributes, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. Buyer shall have exclusive rights to offer, bid, or otherwise submit the Facility Energy, Replacement Energy, Capacity Rights, and associated Green Attributes for resale in the market, and retain and receive any and all related revenues. Buyer has no obligation to purchase from Seller any Facility Energy, Replacement Energy, and associated Green Attributes for which the Facility Energy is not or cannot be delivered to the Points of Delivery as a result of an outage of a Facility, a Force Majeure, curtailments required under a Facility's interconnection agreement, or curtailments required by Buyer due to a System Emergency not resulting from the fault or negligence of Buyer.

Section 6.2 Seller's Failure. Except as provided in Article IX, and except for Energy that is RPS Compliant that is provided by the Transmission Provider pursuant to its tariff in connection with the Transmission Services, in no event shall Seller have the right to procure energy from sources other than the Project for sale and delivery pursuant to this Agreement. Seller shall not sell, deliver or convey any Facility Energy, Capacity Rights, and associated Green Attributes from any Facility to any third-party except as set forth in Section 6.4. If Seller sells any part of any Facility Energy, Capacity Rights, and associated Green Attributes to a third party in violation of Section 6.4 (including in connection with a claimed Force Majeure that does not satisfy the requirements of a Force Majeure in accordance with Section 14.3), Seller shall pay Buyer, within thirty (30) days of such sale all proceeds that Seller receives from such sale.

Section 6.3 Buyer's Failure. Unless excused by Force Majeure or Seller's failure to perform its obligations under this Agreement, if Buyer fails to receive at the Points of Delivery all or any part of any Facility Energy required to be received by Buyer under this Article VI, Article VIII, or Article IX, Buyer shall pay Seller, within thirty (30) days of Seller's written request therefor, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the price per MWh that would have been payable by Buyer for the Energy and Green Attributes not received by Buyer. Seller shall provide Buyer prompt written notice of the Sales Price together with back-up documentation.

Section 6.4 Sales to Third Parties. Seller may sell to Persons other than Buyer (i) any Facility Energy and associated Green Attributes in excess of Maximum Generation not purchased by Buyer in accordance with Section 6.1, and (ii) any Facility Energy, Capacity Rights, and associated Green Attributes that Seller is unable to deliver to Buyer due to Force Majeure declared

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by Buyer or Seller that either prevents Seller from delivering to Buyer the Facility Energy, Capacity Rights, and associated Green Attributes, or that prevents Buyer from receiving the Facility Energy, Capacity Rights, and associated Green Attributes. Except as provided above in this Section 6.4, Seller shall not sell or otherwise transfer any Facility Energy, Capacity Rights, or associated Green Attributes to any Person other than Buyer during the Delivery Term, except for any Facility Energy (excluding any associated RECs or Capacity Rights) that is Imbalance Energy transferred or sold pursuant to the terms of a Transmission Provider's tariff.

Section 6.5 Nature of Remedies. The damages that Buyer would incur as a result of Seller's failure as described in Section 6.2 or that Seller would incur as a result of Buyer's failure as described in Section 6.3 would be difficult or impossible to predict with certainty, and it is impractical and difficult to assess actual damages in those circumstances, but the liquidated damages set forth in Section 6.2 and Section 6.3 are fair and reasonable calculations of such damages. The remedy set forth in Section 6.2 is in addition to, and not in lieu of, any other right or remedy of Buyer under this Agreement for failure of Seller to sell and deliver Energy and Green Attributes as and when required by this Agreement. The remedy set forth in Section 6.3 is in addition to any other right or remedy of Seller for any failure by Buyer to receive Energy as and when required by this Agreement.

ARTICLE VII
TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS

Section 7.1 In General. Seller shall arrange and be responsible for any Transmission Services required to deliver Facility Energy or Replacement Energy to the Point of Delivery and shall Schedule or arrange for Scheduling services with its Transmission Providers to deliver the Facility Energy or Replacement Energy to the Point of Delivery. Seller shall have no obligations or liability in respect of Facility Energy or Replacement Energy after the Point of Delivery (as to Transmission Services or otherwise).

Section 7.2 Scheduling of Energy.

(a) Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Project for the delivery of Delivered Energy to the Point of Delivery, and bid the Delivered Energy into the Day-Ahead Market and the Real-Time Market consistent with Prudent Operating Practice. Seller shall perform or cause to be performed all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement. Seller (as the Project's Scheduling Coordinator) shall ensure that all Delivered Energy and Replacement Energy is electronically tagged (e-tagged) in accordance with Generally Accepted Utility Practice. Seller shall comply with any requirements of the CPUC, CEC, WREGIS and CARB, as applicable, with respect to documenting and reporting E-tags, including, as applicable, requirements to match E-tags to WREGIS Certificate creation. In addition to Seller's requirements under Section 8.4, Seller shall provide additional information as reasonably requested by Buyer on E-tags or as reasonably necessary to facilitate Buyer's members' reporting requirements under the RPS.

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(b) As Scheduling Coordinator for the Project, Seller shall be responsible for all CAISO costs, including without limitation, all penalties, Imbalance Energy charges, and other charges, and shall be entitled to all CAISO revenues, including without limitation, credits, Imbalance Energy payments, and revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade (as defined in the CAISO Tariff) credits, or other credits in respect of the Delivered Energy. 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. 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, the cost of such sanctions or penalties arising from the scheduling, outage reporting, or generator operation of the Facility shall be the Seller's responsibility.

(c) Seller (as the Project's Scheduling Coordinator) shall be responsible for all settlement functions with the CAISO related to the Project. Seller or its Affiliates shall also fulfill the contractual, metering, and interconnection requirements so as to be able to deliver Facility Energy and Replacement Energy to the Points of Delivery.

(d) At least forty-five (45) days before the first anticipated Commercial Operation Date and no later than forty-five (45) days before the beginning of each Contract Year, Seller or Seller's designee shall provide, or cause to be provided, a non-binding forecast of each month's average-day deliveries of Facility Energy and Replacement Energy, by hour, for the following eighteen (18) months.

(e) At least ten (10) days before the first anticipated Commercial Operation Date and no later than ten (10) Business Days before the beginning of each month during the Delivery Term, Seller or Seller's designee shall provide, or cause to be provided, a non-binding forecast of each day's average deliveries of Facility Energy and Replacement Energy, by hour, for the following month to Buyer at the addresses for scheduling notices set forth in Appendix C.

(f) By 4:30 a.m. on the Business Day immediately preceding each day of delivery of Facility Energy during the Delivery Term, Seller or Seller's designee shall cause Seller's Scheduling Coordinator to provide Buyer with a copy of a non-binding hourly forecast of deliveries of Facility Energy and Replacement Energy for each hour of the immediately succeeding day. A forecast provided a day prior to any non-Business Day shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller shall provide Buyer with a copy of any updates to such forecast indicating a change in forecasted Facility Energy and Replacement Energy from the then current forecast at the addresses for scheduling notices set forth in Appendix C.

(g) By 12:00 p.m. on the normal Business Day prior to each pre-scheduling day as identified in the WECC pre-scheduling calendar, Seller shall provide Buyer via email, at the addresses for scheduling notices set forth in Appendix C, day-ahead pre-schedules for each of the succeeding twenty-four (24) hours in the form of an excel spreadsheet. Seller shall notify Buyer

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or Buyer's Agent via telephone of any hourly changes due to a change in unit availability or an outage no later than one-hundred five (105) minutes prior to the start of such Scheduling hour.

(h) Throughout the Delivery Term, Seller shall provide to Buyer and Project Participants, if requested by the applicable Project Participant, access to the supervisory control and data acquisition ("***SCADA***") system of each Facility to the extent necessary to allow Buyer and those Project Participants who have requested access to obtain the following data on a real-time basis: for each Facility that has achieved Commercial Operation, read-only access to megawatt capacity and any other facility availability information; read-only access to energy output information collected by the SCADA system for the Facility; provided that if Buyer is unable to access the Facility's SCADA system, then upon written request from Buyer, Seller shall provide energy output information to Buyer in four (4)-second intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back-up for each flat file submittal; and read-only access to all electricity, production, and consumption data from the Electric Metering Devices.

Section 7.3 Costs. Seller shall be responsible for any costs or charges imposed on or associated with the delivery and scheduling of Facility Energy to the Points of Delivery.

Section 7.4 Curtailment Required by Buyer; Market Curtailment Periods. Seller shall reduce deliveries of Energy for (a) curtailments required under a Facility's interconnection agreement or (b) curtailments required by Buyer due to a System Emergency not resulting from the fault or negligence of Buyer, and Seller may reduce deliveries of Energy in the event of a Market Curtailment Period; provided that, for any curtailed Energy resulting from a Market Curtailment Period, Buyer will pay Seller for such curtailed Energy as set forth in Section 3 of Appendix A. During the Delivery Term, the Parties shall estimate the amount of curtailed Energy for each such curtailment event by multiplying (i) the arithmetic average of the applicable Facility's metered output rate, in MW, immediately before and after such curtailment event, by (ii) the duration of such curtailment event. The Parties shall use the curtailed Energy estimate for the purpose of determining Seller's compliance towards Guaranteed Generation, and, solely with respect to curtailed Energy resulting from a Market Curtailment Period, for purposes of calculating any payments due from Buyer to Seller pursuant to Section 3 of Appendix A. For the avoidance of doubt, Buyer shall be obligated to take delivery of and pay for all Delivered Energy, except that Buyer shall not be obligated to take delivery of and pay for Energy to the extent that such Energy exceeds the Maximum Generation and Buyer has not elected to purchase such Energy as provided in Section 6.1.

Section 7.5 Curtailment of Seller's Transmission Services. In the event of the curtailment or other interruption of the Transmission Services utilized pursuant to the Agreement that prevents Seller from delivering Facility Energy to the Primary Point of Delivery, Seller shall, subject to the last sentence of this Section 7.5, upon furnishing notice as soon as practicable to Buyer obtain alternate Transmission Services complying with the requirements of the Agreement utilizing other Transmission System or Systems for delivery of the Facility Energy to such Primary Point of Delivery or the Alternate Points of Delivery during the period of such curtailment or other interruption of such Transmission Services. Seller shall provide Buyer with advance notice, at the addresses for general notices set forth in Appendix C, of the end of the period of such curtailment or interruption and the restoration of the Transmission Services pursuant to the Agreement for the

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delivery of the Facility Energy to the Primary Point of Delivery. This Section 7.5 shall (i) not obligate Seller to utilize such alternate Transmission Services or Alternate Points of Delivery, as applicable, and (ii) not preclude Seller from claiming Force Majeure under Section 14.6, unless such alternate Transmission Services or Alternate Points of Delivery, as applicable, are available at costs that do not exceed six dollars per MWh ($6/MWh), or such alternate Transmission Services shall be available at costs that exceed six dollars per MWh ($6/MWh) and Buyer agrees to pay the amount of such excess.

Section 7.6 Title; Risk of Loss. As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of Facility Energy prior to a Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of Facility Energy at and from such Point of Delivery. Seller shall deliver all Facility Energy, Capacity Rights, and Green Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Title to and risk of loss as to all Facility Energy, Capacity Rights, and Green Attributes shall pass from Seller to Buyer at the respective Points of Delivery.

ARTICLE VIII
GREEN ATTRIBUTES; RPS COMPLIANCE

Section 8.1 Transfer of Green Attributes. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Facility Energy on the terms and conditions set forth herein, subject to Section 6.4, Seller shall transfer to Project Participants, and Project Participants shall receive from Seller, all right, title, and interest in and to all Green Attributes, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Delivery Term, for all Facility Energy and Replacement Energy. Seller agrees to transfer and make such Green Attributes available to Project Participants immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Green Attributes. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Green Attributes to any Person other than Project Participants or attempt to do any of the foregoing with respect to any of the Green Attributes. The consideration for the transfer of Green Attributes is contained within the relevant prices for Delivered Energy under Articles VI and IX and Appendix A.

Section 8.2 Reporting of Ownership of Green Attributes. During the Delivery Term, Seller shall not report to any Person that the Green Attributes granted hereunder to Project Participants belong to any Person other than Buyer, and Buyer may report under any program that such Green Attributes purchased hereunder belong to it.

Section 8.3 Green Attributes. Upon Buyer's request, Seller shall take all reasonable actions and execute all documents or instruments as are reasonable and necessary under applicable law, bilateral arrangements or other voluntary Green Attribute programs of any kind, as applicable, to maximize the attribution, accrual, realization, generation, production, recognition and validation of Green Attributes throughout the Delivery Term. Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("***Attestation***") for Delivered Energy to the Center for Resource Solutions ("***CRS***") at https://www.tfaforms.com/4652008 or its successor. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted

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within thirty (30) days of Buyer's request or the last day of the month in which the applicable Delivered Energy was generated, whichever is later.

Section 8.4 Use of Accounting System to Transfer Green Attributes.

(a) In furtherance and not in limitation of Section 8.3, Seller shall use WREGIS or any successor system to evidence the transfer of any Green Attributes considered RECs under applicable law or any voluntary program ("***WREGIS Certificates***") associated with Facility Energy or Replacement Energy in accordance with WREGIS reporting protocols. Prior to the Commercial Operation Date for a Facility, Seller shall establish an account with WREGIS and commence registration of such Facility with WREGIS. After each Facility is registered with WREGIS, at Buyer's option, Seller shall transfer WREGIS Certificates using the Forward Certificate Transfer method, as described in WREGIS Operating Rules, from Seller's WREGIS account to up to ten (10) Project Participant WREGIS accounts, as designated by Buyer; provided, however, that Buyer shall have identified such accounts by written notice to Seller delivered no later than ten (10) days prior to the Commercial Operation Date for such Facility.

(b) Seller shall be responsible for the WREGIS expenses associated with registering each Facility, maintaining its account, WREGIS Certificate issuance fees, and transferring WREGIS Certificates to Project Participants, and Project Participants shall be responsible for the WREGIS expenses associated with maintaining their accounts and any subsequent transferring or retiring of WREGIS Certificates.

(c) Forward Certificate Transfers shall occur monthly based on the certificate creation timeline established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Delivered Energy or Replacement Energy, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate. Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy and Replacement Energy for such calendar month, as evidenced by the Facility's or Replacement Unit's metered data, as applicable, and, unless otherwise agreed by Buyer, matching E-Tags. WREGIS Certificates must be matched with E-Tags, unless otherwise agreed by Buyer. Seller shall ensure that no WREGIS Certificates are transferred to a Project Participant's WREGIS Account unless they are the result of Delivered Energy or Replacement Energy and matched with E-Tags. WREGIS Certificates without matching E-Tags will be rejected.

(d) A "***WREGIS Certificate Deficit***" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy and Replacement Energy for the same calendar month caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the aggregate amount of Delivered Energy and Replacement Energy in the month of a WREGIS Certificate Deficit shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article XI and Shortfall Energy for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller resolves the WREGIS Certificate Deficit within ninety (90) days after the month of such WREGIS Certificate Deficit. Without limiting Seller's obligations under this Section 8.4, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate

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in good faith to cause WREGIS to correct its error or omission. Seller shall be responsible for, at its expense, validating and disputing data with WREGIS prior to WREGIS Certificate creation each month. Buyer shall take all necessary actions to facilitate the transfer of Green Attributes as provided above, including accepting any transfer requests made by Seller through WREGIS in accordance with the foregoing. Notwithstanding any other provision of this Section 8.4, in the event that WREGIS is not in operation, Seller shall document the production and transfer of RECs under this Agreement by delivering to Buyer an attestation for the RECs produced by each Facility, or Replacement Energy, measured in whole MWh, or by such other method as Buyer shall designate, in accordance with the form set forth in Appendix P and the Parties shall cooperate to complete the transfer of WREGIS Certificates for the benefit of Buyer or Buyer's designees as soon as reasonably possible. Buyer shall take all necessary actions to facilitate the transfer of Green Attributes as provided above, including accepting any transfer requests made by Seller through WREGIS in accordance with the foregoing.

Section 8.5 Further Assurances. At Buyer's request, the Parties shall execute all such documents and instruments and take such other action in order to effect the transfer of the Green Attributes specified in this Agreement to Buyer's designees and to maximize the attribution, accrual, realization, generation, production, recognition and validation of Green Attributes throughout the Delivery Term as Buyer may reasonably request. If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 8.5 after the Effective Date, the Parties promptly shall modify Section 8.4 as reasonably required to cause and enable Seller to transfer to Buyer's designees a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy and Replacement Energy delivered in the same calendar month; provided, however, that Seller's obligations under Section 8.4 shall be subject to the Compliance Expenditure Cap, in accordance with Section 8.6(c).

Section 8.6 RPS Compliance.

(a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project'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. [STC 6].

(b) The term "commercially reasonable efforts" as used in Section 8.6(a) and in Section 8.6(e) means Seller's compliance with Section 8.6(c) and (d), below. The term "Project" as used in Section 8.6(a) means each Facility included in the Project.

(c) If (i) a Change in Law occurring after the Effective Date has increased Seller's known or reasonably expected costs (A) to cause any Facility, its Facility Energy or the associated Green Attributes to be RPS Compliant or to obtain, maintain, convey or effectuate Buyer's use of any Green Attributes, or (B) to cause any Facility to be or to remain a Firm Clean Resource, or (ii) a change in WREGIS Operating Rules after the Effective Date increases Seller's

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costs to comply with its obligations under Section 8.4 (the obligations set forth in the foregoing clauses (i) and (ii) collectively, "***Compliance Obligations***"), then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses ("***Compliance Costs***") that Seller shall be required to bear during the Delivery Term with respect to each affected Facility to comply with all of such Compliance Obligations shall be capped at [redacted] of the Facility Net Capacity of the applicable affected Facility ("***Compliance Expenditure Cap***"). Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

(d) Any actions required for Seller to comply with its obligations set forth in Section 8.6(c) above, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "***Compliance Actions***." If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action, then Seller shall provide written notice to Buyer of such anticipated Compliance Costs. 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 (i) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap, as applicable (such Buyer-agreed upon costs, the "***Accepted Compliance Costs***"), or (ii) 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 8.6(d) 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, the Compliance Actions that are the subject of the notice for the remainder of the Term. 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.

(e) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. 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. [STC REC-1].

(f) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].

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(g) The phrase "such Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource" as used in Section 8.6(a) means "such Facility qualifies and is CEC Pre-certified or CEC Certified as an Eligible Renewable Energy Resource."

Section 8.7 Solar Generating Capacity Serving Parasitic Load. Seller has the right, but not the obligation, to install and operate solar generating capacity behind a Facility's Electric Metering Devices at any Site for purposes of providing some or all of such Facility's Parasitic Load, in which case the geothermal Energy generated by such Facility that would have otherwise served the Parasitic Load shall for purposes of this Agreement constitute Facility Energy from such Facility and shall be sold to Buyer in accordance with the provisions of this Agreement; provided, that Seller shall ensure that such solar generation (i) is only used to serve Parasitic Load associated with the applicable Facility, and (ii) is not delivered to Buyer for sale hereunder. Buyer acknowledges that using on-site solar generation to supply the applicable Facility's Parasitic Load will result in an increase in Delivered Energy and associated Green Attributes delivered by Seller hereunder by reducing station use, and Buyer agrees that such increase in Delivered Energy and associated Green Attributes will be sold to Buyer in accordance with the terms of this Agreement.

ARTICLE IX
MAKEUP OF SHORTFALL ENERGY

Section 9.1 Makeup of Shortfall. During each Contract Year, all Delivered Energy during such Contract Year shall first be applied to the determination of whether Seller has delivered the Guaranteed Generation. Except to the extent caused by a Force Majeure (but subject to the provisions of Section 14.6(a) providing that the obligations of Seller with respect to satisfaction of Guaranteed Generation under this Article IX not satisfied due to Force Majeure are not excused, but such required delivery shall be extended for the duration of the Force Majeure), or except for curtailment under Section 7.4 or Buyer's failure to accept Facility Energy in accordance with this Agreement, if Seller fails during any Contract Year to deliver Delivered Energy in an amount equal to the Guaranteed Generation, then Seller shall make-up that shortfall of Delivered Energy (such shortfall between the Guaranteed Energy and the Delivered Energy, "***Shortfall Energy***") in the same Contract Year in accordance with this Article IX.

Section 9.2 Replacement Energy. Seller may reduce the amount of Shortfall Energy by providing Replacement Energy in the same Contract Year. The Replacement Energy shall be delivered to Buyer at the Points of Delivery on a delivery schedule reasonably approved by Buyer and consistent with the Project's historic delivery profile. As employed in this Agreement, "***Replacement Energy***" means Energy and associated Green Attributes that is produced by a Replacement Unit (a) for which Seller has obtained rights to sell prior to the time that the Energy and associated Green Attributes have been generated, (b) that Seller has not sold or transferred to any other person or entity, (c) that is free and clear of all encumbrances, (d) that includes Green Attributes that have the same value and the same vintage with respect to the timeframe for retirement of such Green Attributes as the Green Attributes that would have been generated by the Project during the period for which the Replacement Energy is being provided; and (e) that is transferred to Buyer in real time.

Section 9.3 Shortfall Liquidated Damages. To the extent Seller is unable to procure sufficient Replacement Energy to make up any remaining Shortfall Energy within the same

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Contract Year, Seller shall pay Buyer, as liquidated damages, an amount for each MWh of remaining Shortfall Energy equal to the positive difference, if any, obtained by subtracting the amount that Buyer would have paid had Project Energy equal to the amount of Shortfall Energy been delivered to the Points of Delivery from the Replacement Price ("***Shortfall Liquidated Damages***"). The Shortfall Liquidated Damages payable under this Section 9.3 shall be payable in lieu of actual damages, shall be guaranteed as to payment by the Delivery Term Security, and, notwithstanding any other provision of this Agreement, other than Buyer's remedies for a Default by Seller under Section 13.1(f), Shortfall Liquidated Damages shall be Buyer's sole remedy, and Seller's sole liability, for Seller's failure to deliver Facility Energy and the associated Green Attributes and Replacement Energy and associated Green Attributes as provided under Sections 9.1 and 9.2, above. The Parties acknowledge and agree that (i) the damages that Buyer would incur due to shortfalls in Delivered Energy would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in those circumstances and, therefore, Shortfall Liquidated Damages are a fair and reasonable calculation of such damages.

ARTICLE X
CAPACITY RIGHTS

Section 10.1 Purchase and Sale of Capacity Rights.

(a) For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Facility Energy and Green Attributes on the terms and conditions set forth in this Agreement, Seller hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of the Capacity Rights, subject to Section 6.4. The consideration for the transfer of Capacity Rights is contained within the relevant prices for Facility Energy. In no event shall Buyer have any obligation or liability whatsoever for any debt pertaining to any Facility by virtue of Buyer's ownership of the Capacity Rights or otherwise

(b) Prior to Commercial Operation of each Facility, Seller either shall qualify each such Facility as a Pseudo-Tie Resource or a Dynamically Scheduled Resource with the CAISO pursuant to the CAISO's New Resource Implementation process (as defined in the CAISO Tariff) and Seller shall maintain each Facility as either a Pseudo-Tie Resource or a Dynamically Scheduled Resource in compliance with the CAISO Tariff throughout the Delivery Term.

(c) Buyer shall cause the Project Participants to use commercially reasonable efforts to maintain the Import Capability necessary to import the Guaranteed Net Qualifying Capacity from the Project into the CAISO. Seller shall use commercially reasonable efforts to support Buyer and Project Participants in obtaining such Import Capability. To the extent Project Participants do not or cannot maintain Import Capability necessary to support the importation of the Guaranteed Net Qualifying Capacity into the CAISO for reasons other than a Seller failure under this Agreement or the inability of Seller to maintain each Facility as either a Pseudo-Tie Resource or a Dynamically Scheduled Resource, the Capacity Attributes that are not imported or that cannot be imported shall constitute Deemed Delivered RA.

(d) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause each Facility's Scheduling Coordinator

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to submit, Supply Plans to identify and confirm the Resource Adequacy Benefits provided to Project Participants for each Showing Month from each Facility.

(e) Resource Adequacy Benefits are delivered and received when the CIRA Tool shows that the Supply Plans for each Project Participant for each Facility have been accepted by the CAISO. If CAISO rejects either the Supply Plans or Project Participants' Resource Adequacy Plans with respect to any part of the Resource Adequacy Benefits in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plans or Resource Adequacy Plans for validation before the applicable Notification Deadline for the relevant Showing Month.

(f) If Seller anticipates that it will have an RA Shortfall Month, Seller may provide Replacement RA in the amount of (i) the Guaranteed Net Qualifying Capacity with respect to such Showing Month, *minus* (ii) the expected Net Qualifying Capacity that is able to be included in the Supply Plans for the Project Participants for such Showing Month *plus* any Deemed Delivered RA; *provided*, that any Replacement RA is communicated in the form of Appendix Q by Seller to Buyer no later than the Notification Deadline.

(g) Notwithstanding anything to the contrary in this Agreement, Seller shall be permitted to reduce deliveries of Capacity Attributes and Resource Adequacy Benefits during any Force Majeure Event that results in Seller's inability, despite the use of commercially reasonable efforts, to deliver Facility Energy to the Points of Delivery.

Section 10.2 Representation Regarding Ownership of Capacity Rights. Subject to Section 6.4, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any of the Capacity Rights to any Person other than the Project Participants or attempt to do any of the foregoing with respect to any of the Capacity Rights. Seller shall not report to any Person that any of the Capacity Rights belong to any Person other than Buyer (or at Buyer's designation, the Project Participants).

Section 10.3 Resource Adequacy Failure.

(a) For each RA Shortfall Month, Seller shall pay to Buyer as liquidated damages the RA Deficiency Amount, as set forth in Section 10.3(b), and/or provide Replacement RA, as set forth in Section 10.1(f), in each case, as the sole remedy for Capacity Attributes that Seller fails to convey to the Project Participants from each Facility.

(b) For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "***RA Deficiency Amount***") equal to the product of (i) the difference, expressed in kW, of (A) the then applicable Guaranteed Net Qualifying Capacity, *minus* (B) the Net Qualifying Capacity included in the Supply Plans for the Project Participants (or any subsequent purchasers to whom Project Participants have resold Capacity Attributes), *plus* any Replacement RA that was able to be included in the Supply Plans for such Showing Month for the Project Participants (or any subsequent purchasers to whom Project Participants have resold Capacity Attributes) and any Deemed Delivered RA, *multiplied by* (ii) the lower of (A) thirteen dollars and fifty cents ($13.50) per kW-month, or (B) the sum of the CPM Soft Offer Cap and the RA Penalties paid or required

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to be paid Project Participants for RAR applicable to the RA Deficiency Amount for such RA Shortfall Month.

Section 10.4 CPUC Mid-Term Reliability Requirements.

(a) Seller acknowledges that Buyer intends for this product to comply with mandatory procurement obligations for incremental capacity pursuant to CPUC D.21-06-035. Seller represents and warrants to Buyer that commencing on the Effective Date and continuing throughout the Agreement Term:

(i) The Agreement includes the exclusive right to claim the Guaranteed Net Qualifying Capacity of the Facility as an incremental resource for purposes of CPUC D.21-06-035;

(ii) Seller has not and will not sell, assign, or transfer the right to claim any Facility as an incremental resource for purposes of CPUC D.21-06-035 to any other person or entity; and

(iii) Seller will reasonably cooperate with Buyer to ensure the Agreement will meet the procurement mandates set forth in CPUC D.21-06-035.

(b) In furtherance of any compliance and reporting obligations related to the foregoing, and without limiting Seller's obligations under any other provision of this Agreement, Seller agrees to provide documentation reasonably requested by Buyer in connection with such compliance obligations, including but not limited to the following:

(i) Evidence of interconnection, site control, notice to proceed with construction, and other evidence of construction status and progress towards Commercial Operation;

(ii) Engineering assessments demonstrating that each Facility satisfies the Firm Clean Resource requirements; and

(iii) Any other engineering assessments, contractual support, or relevant information required or requested by the CPUC pursuant to CPUC D.21-06-035 and any other applicable requirements of CPUC D.21-06-035 as such decision has been interpreted by the CPUC in public guidance documents or other public communications.

ARTICLE XI
BILLING; PAYMENT; AUDITS; METERING; POLICIES

Section 11.1 Billing and Payment. Billing and payment for all Delivered Energy, Green Attributes, and Capacity Rights shall be as set forth in this Article XI.

Section 11.2 Calculation of Delivered Energy; Invoices and Payment.

(a) **Delivered Quantity**. For each month during the Agreement Term, commencing with the first month in which Energy is delivered by Seller to and received by Buyer

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under this Agreement, Seller shall calculate the amount of Energy so delivered and received during such month as determined (i) in the case of Delivered Energy, from recordings produced by the Electric Metering Devices maintained pursuant to Section 11.6, at or near midnight on the last day of the month in question, (ii) in the case of a Market Curtailment Period, the amount of curtailed Energy determined pursuant to Section 7.4, and (iii) in the case of Replacement Energy, the amount in MWh actually supplied by Seller pursuant to Section 9.2, as measured by metering equipment approved by Buyer in its reasonable discretion. Seller shall measure the amount of Delivered Energy using the Electric Metering Devices. All Electric Metering Devices will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost.

(b) **Invoice**. Not later than the tenth (10th) day of each month, commencing with the month next following the month in which Energy is first delivered by Seller and received by Buyer under this Agreement, Seller shall deliver to Buyer an invoice showing the amount of Energy delivered by Seller for each Facility of the Project and received by Buyer, or curtailed Energy during a Market Curtailment Period, during the preceding month (with a separate allocation for each Facility and any Replacement Energy), Seller's computation of the amount due Seller in respect thereof for Delivered Energy, including start-up and test Energy consistent with Section 3.10, for curtailed Energy resulting from a Market Curtailment Period, and for Replacement Energy, in each case in accordance with Appendix A. Seller shall deliver to Buyer with each monthly invoice copies of the recordings and data from the Electric Metering Devices that support the calculations of Energy and Green Attributes included in the invoice for such month. Each invoice shall include (a) a reconciliation in .xlsx format of hourly meter data, E-Tag data and associated calculations, including the lesser of each by hour, in a format reasonably requested by Buyer, plus any additional data as may be reasonably required by Buyer for compliance with CPUC reporting obligations, including pursuant to the CPUC's Energy Division *Portfolio Content Category Classification Review Handbook* (or successor publication); (b) a statement of the quantity of WREGIS Certificates transferred during the prior month that have been matched with E-Tags, including as associated with the Dynamic Schedules, and (c) any additional information reasonably requested by Buyer. Buyer may reconcile invoices using meter data made available through Section 11.6(d). Monthly invoices shall be sent to the address set forth in Appendix C or such other address as Buyer may provide to Seller. Buyer shall not be required to make invoice payments if the invoice is received more than six (6) months after the billing period, unless Seller's delay in delivering the invoice is due to one or more events of Force Majeure. Each invoice shall show the title of the Agreement and, if applicable, the Agreement number, the name, address and identifying information of Seller and the identification of material, equipment, or services covered by the invoices. To the extent applicable in accordance with Section 8.4, Seller shall deliver to Buyer attestations of Green Attributes concurrently with the monthly invoices sent pursuant to this Section 11.2(b).

(c) **Payment**. Not later than the thirtieth (30th) day after receipt by Buyer of Seller's monthly invoice (or the next succeeding Business Day, if such thirtieth (30th) day is not a Business Day), Buyer shall pay to Seller, by wire transfer of immediately available funds to an account specified by Seller or by any other means agreed to by the Parties from time to time, the amount set forth as due in such monthly invoice, subject to Section 11.3.

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Section 11.3 Disputed Invoices. In the event any portion of any invoice is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment shall promptly notify the other Party of the basis for the dispute, setting forth the details of such dispute in reasonable specificity. Disputes shall be discussed by the Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve the disputes, and any failure to agree shall be subject to resolution in accordance with Section 14.3. Upon resolution of any dispute, if all or part of the disputed amount is later determined to have been due, then the Party owing such payment or refund shall pay within ten (10) days after receipt of notice of such determination the amount determined to be due plus interest thereon at the Interest Rate from the due date until the date of payment. For purposes of this Section 11.3, "***Interest Rate***" shall mean the lesser of (i) two hundred (200) basis points above the per annum prime rate reported daily in The Wall Street Journal, or (ii) the maximum rate permitted by applicable Requirements of Law. Buyer may dispute an invoice at any time within three hundred sixty-five (365) days after Buyer's receipt of the invoice, provided that Buyer provides Seller with a written notification of such dispute, setting forth the details of such dispute in reasonable specificity. If, within three hundred sixty-five (365) days of Buyer's receipt of an invoice, Buyer does not notify Seller in writing of a dispute related to that invoice, Buyer shall be deemed to have waived any dispute related to that invoice and the invoice shall be considered correct and complete.

Section 11.4 Right of Setoff. In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, either Party shall have the right at any time or from time to time without notice to the other Party or to any other Person, any such notice being hereby expressly waived, to set off against any amount due from such Party to the other under this Agreement any amount due from the other Party to it under this Agreement, including any amounts due because of breach of this Agreement or any other obligation.

Section 11.5 Records and Audits. Seller and its Affiliates shall maintain, and shall cause Seller's and its Affiliates' subcontractors and suppliers, as applicable, to maintain, all records pertaining to the management of this Agreement, related subcontracts, and performance of services pursuant to this Agreement (including all billings, costs, metering, and Green Attributes), in their original form, including reports, documents, deliverables, employee time sheets, accounting procedures and practices, records of financial transactions, and other evidence, regardless of form (for example, machine readable media such as disk or tape, etc.) or type (for example, databases, applications software, database management software, or utilities), sufficient to properly reflect all services performed pursuant to this Agreement. If Seller and its Affiliates or Seller's and its Affiliates' subcontractors or suppliers are required to submit cost or pricing data in connection with this Agreement, Seller and its Affiliates shall maintain all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. Buyer and the Authorized Auditors may discuss such records with Seller's officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings and costs), all at such times and as often as may be reasonably requested. All such records shall be retained and shall be subject to examination and audit by the Authorized Auditors, for a period of not less than four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. Seller and its Affiliates shall make said records or to the extent accepted by the Authorized Auditors, photographs, micro-photographs, or other authentic reproductions thereof, available to the Authorized Auditors at the Seller's offices located at all

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reasonable times and without charge. The Authorized Auditors may reproduce, photocopy, download, transcribe, and the like any such records. Any information provided by Seller and its Affiliates on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. Seller shall not, however, be required to furnish the Authorized Auditors with commonly available software. Seller, its Affiliates, and Seller's subcontractors and suppliers, as applicable to the services provided under this Agreement, shall be subject at any time with fourteen (14) days prior written notice to audits or examinations by Authorized Auditors, relating to all billings and to verify compliance with all Agreement requirements relative to practices, methods, procedures, performance, compensation, and documentation. Examinations and audits shall be performed using generally accepted auditing practices and principles. To the extent that the Authorized Auditor's examination or audit reveals inaccurate, incomplete or non-current records, or records are unavailable, the records shall be considered defective. Consistent with standard auditing procedures, Seller shall be provided fifteen (15) days to review the Authorized Auditor's examination results or audit and respond to Buyer's prior to the examination's or audit's finalization and public release. If the Authorized Auditor's examination or audit indicates Seller has been overpaid under a previous payment application, the identified overpayment amount shall be paid by Seller to Buyer within fifteen (15) days of notice to Seller of the identified overpayment. Notwithstanding the foregoing, if the audit reveals that Buyer's overpayment to Seller is more than the greater of $100,000 or five percent (5.0%) of the billings reviewed, Seller shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit. Such examination or audit expenses and costs shall be paid by Seller to Buyer within fifteen (15) days of notice to the Seller of such costs and expenses. Any information provided by Seller to the Authorized Auditor shall be held by such Authorized Auditor in strict confidence and Seller may require such Authorized Auditor to enter into a reasonable confidentiality agreement prior to the disclosure of information hereunder; provided that the Authorized Auditors shall not be prevented from disclosure of such information to Buyer to the extent such disclosure to Buyer is required to enable Buyer to carry out its rights and responsibilities under this Agreement and Buyer shall treat such information as Confidential Information to the extent provided under Section 14.21.

Section 11.6 Electric Metering Devices.

(a) Delivered Energy shall be measured using Electric Metering Devices installed, owned and maintained by the Seller and its Affiliates. If the Electric Metering Devices are not installed at a Point of Delivery, meters or meter readings shall be adjusted to reflect losses from the Electric Metering Devices to such Point of Delivery. To the extent consistent with the requirements of the Transmission Provider, all Electric Metering Devices used to provide data for the computation of payments shall be sealed and Seller or its designee shall only break the seal when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Section 11.6. Seller or its designee shall specify the number, type, and location of such Electric Metering Devices.

(b) Seller, its Affiliates or its designee, at no expense to Buyer, shall inspect and test all Electric Metering Devices upon installation and at least annually thereafter. Seller or its Affiliates shall provide Buyer annual certified test reports for each Facility Electric Metering Device thereafter throughout the duration of the Delivery Term. Seller shall provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify, such inspections and tests to the extent consistent with the requirements of the Transmission Provider.

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Upon request by Buyer, Seller or its designee shall perform additional inspections or tests of any Electric Metering Device and shall allow a qualified representative of Buyer the right to inspect or witness the testing of any Electric Metering Device. The actual expense of any such requested additional inspection or testing shall be borne by Buyer, unless the results of such additional inspection or testing show an inaccuracy greater than one percent (1%), in which case Seller shall bear such costs. Seller shall provide copies of any inspection or testing reports to Buyer. Notwithstanding the foregoing, Seller shall have the right and Buyer shall permit Seller to withhold proprietary information unless such information is reasonably needed by Buyer to evaluate and verify such inspections and tests. In addition, Buyer shall hold any information obtained during or in connection with such inspections and tests in confidence.

(c) If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy. The adjustment period shall be determined by reference to Seller's check-meters, if any, or as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-third of the time elapsed since the preceding test of the Electric Metering Devices. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Section 11.6 to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due to Seller from Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset.

(d) Seller shall work with Buyer to establish direct access by the Buyer to interval meter data for purposes of Buyer reconciliation of invoices.

Section 11.7 Taxes. Seller shall be responsible for and shall pay before the due dates therefor, any and all federal, state and local Taxes incurred by it as a result of entering into this Agreement and all Taxes imposed or assessed with respect to each Facility, each Site, or any other assets of Seller, the sale of Facility Energy and Green Attributes and all Taxes related to Seller's income. Buyer shall be responsible for and shall pay before the due dates therefor, any and all federal, state and local Taxes incurred by it as a result of entering into this Agreement and all Taxes imposed or assessed with respect to any assets of Buyer or the purchase of Facility Energy and Green Attributes under this Agreement.

ARTICLE XII
REPRESENTATIONS AND WARRANTIES; COVENANTS OF SELLER

Section 12.1 Representations and Warranties of Buyer. Buyer makes the following representations and warranties to Seller as of the Effective Date:

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(a) Buyer is a validly existing California joint powers authority and has the legal power and authority to carry on its business as now being conducted and to enter into this Agreement and each Buyer Ancillary Document and carry out the transactions contemplated hereby and thereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and all such Buyer Ancillary Documents.

(b) The execution, delivery and performance by Buyer of this Agreement and each Buyer Ancillary Document have been duly authorized by all necessary action, and do not and will not require any consent or approval of Buyer's regulatory or governing bodies, other than that which has been obtained and except as otherwise set forth in this Agreement.

(c) This Agreement and each of the Buyer Ancillary Documents constitute the legal, valid, and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

Section 12.2 Representations, Warranties and Covenants of Seller. Seller makes the following representations and warranties to Buyer as of the Effective Date:

(a) Each of the Seller Parties is a partnership, corporation or limited liability company duly organized, validly existing, and in good standing under the laws of its respective state of incorporation, organization or formation, is qualified to do business in the State of California and to the extent required by the nature or scope of its operations, the State of Nevada, and has the legal power and authority to own and lease its properties, to carry on its business as now being conducted and (in the case of Seller) to enter into this Agreement and (in the case of each Seller Party) each Seller Ancillary Document to which it may be party and, carry out the transactions contemplated hereby and/or thereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and/or all Seller Ancillary Documents as applicable.

(b) The execution, delivery and performance by the Seller and the Seller Parties of this Agreement and all Seller Ancillary Documents, as applicable, have been duly authorized by all necessary action, and do not and will not require any consent or approval other than those which have already been obtained.

(c) The execution and delivery of this Agreement and all Seller Ancillary Documents, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and the Seller Ancillary Documents by the respective Seller Party, do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other material agreement or instrument to which the applicable Seller Party is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of the applicable Seller Party (except for any Permitted Encumbrances or as

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otherwise contemplated or permitted hereby), and each Seller Party has obtained or shall timely obtain all Permits required for the performance of its obligations hereunder and thereunder, as the case may be, and Seller or its Affiliates will timely obtain all Permits required for the operation of the Facility in accordance with Prudent Utility Practices, the requirements of this Agreement, the Seller Ancillary Documents and all applicable Requirements of Law.

(d) Each of this Agreement and the Seller Ancillary Documents constitutes the legal, valid and binding obligation of the respective Seller Party which is party thereto enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(e) There is no pending, or to the knowledge of the Seller, threatened action or proceeding affecting any Seller Party before any Governmental Authority, which purports to affect the legality, validity or enforceability of this Agreement or any of the Seller Ancillary Documents.

(f) None of the Seller Parties is in violation of any Requirement of Law, which violations, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of any Seller Party, or the ability of any Seller Party to perform any of its obligations under this Agreement or any Seller Ancillary Document.

(g) The respective Seller Parties have (i) not entered into this Agreement or any Seller Ancillary Document with the actual intent to hinder, delay or defraud any creditor, and (ii) received reasonably equivalent value in exchange for their respective obligations under this Agreement and/or the Seller Ancillary Documents. No petition in bankruptcy has been filed against any of the Seller Parties, and none of the Seller Parties have ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(h) With respect to the Delivery Term, Seller has not assigned, transferred, conveyed, encumbered, sold, or otherwise disposed of any Facility Energy, Green Attributes, or Capacity Rights except in connection with Permitted Encumbrances or as otherwise permitted herein.

(i) As of the Effective Date, the organizational structure and ownership of Seller and each Project Company and each Upstream Equity Owner and each Downstream Equity Owner is as set forth on Schedule A.

(j) Subject to Section 8.6(c), Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that each Facility shall qualify as a Firm Clean Resource.

(k) Throughout the Delivery Term, Seller shall maintain Firm Transmission rights sufficient to deliver the Project Net Capacity to the Points of Delivery.

(l) With regard to each Facility that Seller has elected to designate as Pseudo-Tie Resource, throughout the Delivery Term, Seller shall comply with all CAISO Tariff

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requirements applicable to Pseudo-Tie Resources, including Appendix N to the Tariff, with respect to such Facility; and with regard to each Facility that Seller has elected to designate as Dynamically Scheduled Resource, throughout the Delivery Term, Seller shall comply with all CAISO Tariff requirements applicable to a Dynamic Resource-Specific System Resource, including Appendix M to the Tariff, with respect to such Facility.

(m) Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including, without limitation, and employment discrimination laws.

(n) With respect to each Facility that is located in Nevada, the Parties agree that such Facility is not a "public work" as defined by Nevada law, and Seller shall (i) use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform new construction work or provide services at the Site related to new construction work of each Facility are paid wages not less than the rate of such wages then prevailing in the region in which each Facility is located, as determined by the Nevada Labor Commissioner in the manner provided in Nevada Revised Statutes Section 338.030 (as may be amended from time to time), and are paid wages in compliance with Nevada Revised Statutes Section 338.020 (as may be amended from time to time), despite such Facilities not constituting a public work under Nevada law ("***Nevada Prevailing Wage Requirement***"), or (ii) ensure that any new construction work for a Facility contracted by Seller in furtherance of this Agreement shall 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 ("***Project Labor Agreement***"). To the extent any Facility that is located in Nevada may be eligible for a State of Nevada Renewable Energy Tax Abatement ("***RETA***") agreement pursuant to NRS 701A.300-.390, inclusive, and NAC 701A.500-660, inclusive (the "***RETA Regulations***"), in lieu of complying with the Nevada Prevailing Wage Requirement, should Seller apply for and receive a RETA agreement, Seller may instead opt to comply with the requirements of the RETA Regulations, including the requirements of having a construction workforce comprised of no less than 50% Nevada residents, paying the construction workforce no less than 175% of the statewide average annual wage (as that phrase is defined in the RETA Regulations), and providing a health insurance plan satisfying the applicable requirements of the RETA Regulations. If Seller does not execute a Project Labor Agreement for the construction of a Nevada Facility, at the time of Commercial Operation of such Facility, Seller must certify that it has either complied with the Nevada Prevailing Wage Requirement or the RETA Regulations, and upon Buyer's request, provide US DOL Wage & Hour Division Forms WH 347 to demonstrate such compliance.

(o) With respect to each Facility that is located in California, the Parties agree that such Facility is not a "public work" as defined by California law, and Seller shall (i) use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform new construction work or provide services at the Site related to new construction work of each Facility shall be paid rates as set by the Department of Industrial Relations in accordance with California Labor Code section 1770, as may be amended from time to time ("***California Prevailing Wage Requirement***"), or (ii) ensure that any new construction work for a Facility contracted by Seller in furtherance of this Agreement shall be conducted using a Project Labor Agreement. If Seller does not execute a Project Labor Agreement for the

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construction of a California Facility, at the time of Commercial Operation of such Facility, Seller must certify that it has complied with the California Prevailing Wage Requirement, and upon Buyer's request, provide US DOL Wage & Hour Division Forms WH 347 to demonstrate such compliance.

(p) For purposes of Sections 12.2(n) and (o), new construction work does not include: (i) Seller inspections of incoming equipment, supplies, and materials; (ii) any engineering, design, or procurement work; (iii) any work performed by employees of an Original Equipment Manufacturer ("***OEM***") on the OEM's equipment if required by the standard warranty or guarantee for the equipment between the OEM and Seller in order to maintain the warranty or guarantee of such equipment, or as consistent with industry practice; (iv) start-up and commissioning work performed by Seller, OEM, or their contractors or subcontractors; (v) any work after Mechanical Completion of a Facility or any portion of a Facility, including operations, maintenance, and post-completion service and repair work (unless repair work is part of new construction and not repair of an OEM's equipment), or any work performed by Seller's employees, and with respect to the foregoing, "Mechanical Completion" shall mean the relevant portion of the Facility has been certified by the contractor(s) as mechanically complete and turned over to Seller for operation; (vi) any non-construction specialty services, including technical representatives from equipment or design suppliers, project management personnel, and all laboratory work for specialty testing or inspections and all testing or inspection; (vii) any non-construction support services contracted by Seller in connection with this Agreement; (viii) any installation of SCADA components and housing of SCADA systems, control devices, computers or servers; (ix) any off-site manufacturing, purchase, and/or handling of equipment, machinery and items produced in a genuine manufacturing facility and not in yards or lots adjacent to the gathering system; (x) any transportation and delivery of materials and equipment to a Facility, except the transportation of materials from any temporary yards or areas near a Facility or dedicated batch plant constructed solely to supply materials to the Facility construction site; and (xi) any work performed on, near, or leading to a Facility undertaken by state, county, city or local governmental bodies or their contractors, or work performed by public utilities or their contractors.

(q) Seller represents and warrants that it has not and will not knowingly utilize equipment or resources for the construction, operation or maintenance of a Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily ("***Forced Labor***"). Seller shall comprehensively implement due diligence procedures for its and its Affiliate's suppliers, subcontractors and other participants in its supply chains, to comply with this prohibition on the use of Forced Labor. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 12.2(q). Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor

(r) Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of any Facility or the delivery of materials necessary to complete any Facility, in each case that would cause the Minimum Capacity to achieve Commercial Operation later than the Final COD Deadline.

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Section 12.3 Covenant of Seller Related to Investments. Seller shall inform all investors in the Seller of the existence of this Agreement and all Seller Ancillary Documents on or before the date of such investment in the Seller.

Section 12.4 Covenants of Seller Related to Tax Equity Financing. Seller shall provide Buyer with at least thirty (30) days' prior written notice of the consummation of a Tax Equity Financing, which notice shall include (i) introductory and contact information about and for any potential Tax Equity Investor, (ii) a summary of the provisions related to, and the structure surrounding, the power to control the management and policies of Seller, and any entity that is jointly-owned by any Upstream Equity Owner and such Tax Equity Investor arising in connection with the Tax Equity Financing, and (iii) a statement of the circumstances under which such provisions and structure could be modified by such Tax Equity Investor.

Section 12.5 Additional Covenants of Seller. Seller and each Seller Party shall, at its expense, take all steps, or Seller shall cause its Affiliates to take all steps, necessary to maintain all Permits, including as set forth in the Facility Specifications for the applicable Facility, required for the performance of such Seller or Seller Party's obligations hereunder and under the Seller Ancillary Documents to which such Seller Party is a party, and for the construction of the Facility, and the operation of the Facility, in accordance with the Requirements.

ARTICLE XIII
DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE

Section 13.1 Default. Each of the following events or circumstances shall constitute a "***Default***" by the responsible Party (the "***Defaulting Party***"):

(a) Payment Default. Failure by either Party to make any payment under this Agreement or any of the Buyer Ancillary Documents, in the case of Buyer, or Seller Ancillary Documents, in the case of Seller, when and as due which is not cured within thirty (30) calendar days after receipt of notice thereof.

(b) Performance Default. Failure by Buyer or Seller to perform any of its other duties or obligations under this Agreement or any of the Buyer Ancillary Documents, in the case of Buyer, or Seller Party Ancillary Documents, in the case of Seller, except for obligations as to which an express remedy is herein provided, when and as required that is not cured within thirty (30) days after receipt of notice thereof; provided that if such failure cannot be cured within such thirty (30) day period, despite reasonable commercial efforts and such failure is not a failure to make a payment when due, the non-performing Party shall have up to ninety (90) days to cure.

(c) Breach of Representation and Warranty. Inaccuracy in any material respect at the time made or deemed to be made of any representation, warranty, certification, or other statement made herein or in any Buyer Ancillary Document, in the case of Buyer, or Seller Ancillary Documents, in the case of Seller, which representation, warranty, certification or other statement is not cured within thirty (30) days after receipt of notice thereof.

(d) Buyer Bankruptcy. Bankruptcy of Buyer.

(e) Seller Bankruptcy. Bankruptcy of Seller.

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(f) Shortfall Energy Default. The failure of Seller to deliver in each of two consecutive Contract Years at least fifty percent (50%) of the Guaranteed Generation, which shall be reduced by the amount of Facility Energy that would have been generated and delivered during such Contract Year but for (i) Force Majeure, (ii) Buyer's failure to perform (including Buyer's failure to receive Facility Energy under Section 6.3), or (iii) curtailment pursuant to Section 7.4.

(g) Performance Security Failure. The failure of Seller to maintain or replace the Performance Security in compliance with Section 5.9.

(h) Buyer Financial Covenants. The failure of Buyer, following Project Participant Approval, to maintain Buyer Liability Pass Through Agreements from Project Participants with Liability Shares that total one hundred percent (100%), and such failure is not remedied within thirty (30) days after written notice thereof, or the termination or expiration of the Project Participation Share Agreement.

(i) Insurance Default. The failure of Seller or any Project Company to maintain and provide acceptable evidence of Insurance unless cured within ten (10) days.

(j) Fundamental Change. Except as permitted by Section 14.7 (i) a Party makes an assignment of its rights or a delegation of its obligations under this Agreement (other than as a result of a transaction or series of transactions that does not constitute a Change in Control) or (ii) a Change in Control occurs (whether voluntary or by operation of law).

Section 13.2 Default Remedy.

(a) If Buyer is in Default for nonpayment, subject to any duty or obligation under this Agreement, Seller may continue to provide services pursuant to its obligations under this Agreement; provided that nothing in this Section 13.2(a) shall affect Seller's rights and remedies set forth in this Section 13.2. Seller's continued service to Buyer shall not act to relieve Buyer of any of its duties or obligations under this Agreement.

(b) Notwithstanding any other provision herein, if any Default has occurred and is continuing, the affected Party may, whether or not the dispute resolution procedure set forth in Section 14.3 has been invoked or completed, bring an action in any court of competent jurisdiction as set forth in Section 14.13 seeking injunctive relief in accordance with applicable rules of civil procedure.

(c) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and the Buyer is the Defaulting Party, Seller may without further notice exercise any rights and remedies provided herein or otherwise available at law or in equity, including the right to terminate this Agreement pursuant to Section 13.3. No failure of Seller to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Seller of any other right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and the Seller is the Defaulting Party, Buyer may without further notice exercise any rights and remedies provided for herein or otherwise available at law or equity, including (i)

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application of all amounts available under the Performance Security against any amounts then payable by Seller to Buyer under this Agreement and (ii) termination of this Agreement pursuant to Section 13.3. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

Section 13.3 Termination for Default.

(a) If a Default occurs, the Party that is not the Defaulting Party (the "***Non-Defaulting Party***") may, for so long as the Default is continuing and without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement, by notice ("***Termination Notice***") to the Defaulting Party (i) establish a date (which shall be no earlier than the date of such notice and no later than twenty (20) days after the date of such notice) ("***Early Termination Date***") on which this Agreement shall terminate, and (ii) withhold any payments due in respect of this Agreement; provided, upon the occurrence of any Default of the type described in Section 13.1(d) or Section 13.1(e), this Agreement shall automatically terminate, without notice or other action by either Party as if an Early Termination Date had been declared immediately prior to such event.

(b) If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate in a commercially reasonable manner its Gains, Losses and Costs resulting from the termination of this Agreement and the resulting Termination Payment. The Gains, Losses and Costs relating to the Facility Energy, Capacity Rights and Green Attributes that would have been required to be delivered under this Agreement had it not been terminated shall be determined by comparing the amounts Buyer would have paid therefor under this Agreement to the equivalent quantities and relevant market prices either quoted by a bona fide third party offer or which are reasonably expected by Buyer to be available in the market under a replacement contract for this Agreement covering the same products and having a term equal to the Remaining Term at the date of the Termination Notice adjusted to account for differences in transmission, if any. The Non-Defaulting Party shall not be required to enter into any such replacement agreement in order to determine its Gains, Losses and Costs or the Termination Payment. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, quotations from dealers in energy contracts and bona fide third party offers. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Termination Payment shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Termination Payment shall be zero dollars ($0). The Termination Payment shall not include consequential, incidental, punitive, exemplary, or indirect or business interruption damages.

(c) For purposes of the Non-Defaulting Party's determination of its Gains, Losses and Costs and the Termination Payment, it shall be assumed, regardless of the facts, that Seller would have sold, and Buyer would have purchased, each day during the Remaining Term (i) Facility Energy in an amount equal the Assumed Daily Deliveries, and (ii) the Green Attributes associated therewith. The "***Assumed Daily Deliveries***" is an amount equal to the Guaranteed Generation for the then current Contract Year *multiplied by* 1.0556, divided by 365.

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(d) The Non-Defaulting Party shall notify the Defaulting Party of the Termination Payment, which notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Defaulting Party shall, within ten (10) Business Days after receipt of such notice, pay the Termination Payment to the Non-Defaulting Party, together with interest accrued at the Interest Rate from the Early Termination Date until paid.

(e) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal non-binding dispute resolution as provided in Section 14.3(a). Following resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment (if any) determined by such resolution as and when required, but no later than thirty (30) days following the date of such resolution, together with all interest, at the Interest Rate, that accrued from the Early Termination Date until the date the Termination Payment is paid.

(f) For purposes of this Agreement:

(i) "***Gains***" means, with respect to a Party, an amount equal to the present value of the economic benefit (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner;

(ii) "***Losses***" means, with respect to a Party, an amount equal to the present value of the economic loss (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner;

(iii) "***Costs***" means, with respect to a Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement, excluding attorneys' fees, if any, incurred in connection with enforcing its rights under this Agreement. Each Party shall use reasonable efforts to mitigate or eliminate its Costs.

(iv) In no event shall a Party's Gains, Losses or Costs include any penalties or similar charges imposed by the Non-Defaulting Party; provided, however, that Buyer may include in a calculation of Losses, should Seller be the Defaulting Party, any RA Penalties resulting from Seller's Default.

(g) At the time for payment of any amount due under this Section 13.3, each Party shall pay to the other Party all additional amounts, if any, payable by it under this Agreement (including any amounts withheld pursuant to Section 13.3(a)(ii) above).

Section 13.4 Pass Through of Buyer Liability. Notwithstanding any other provision of this Agreement, if Buyer fails to make when due any payment required pursuant to this Agreement, and such failure is not remedied within thirty (30) calendar days after receipt of notice thereof, Seller may, without waiving any of its rights with respect to Buyer except as expressly provided herein, pursue remedies under any or all of the Buyer Liability Pass Through Agreements as provided therein. Seller hereby waives the right to recover directly from Buyer any Termination

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Payment owed by Buyer that is not paid by Buyer pursuant to Section 13.3(d), but the foregoing waiver does not apply to any other right or remedy of Seller under this Agreement, including the right to recover payments owed by Buyer pursuant to Section 11.2, other amounts payable or reimbursable under this Agreement or any other amounts incurred or accrued prior to termination of this Agreement, and the right to terminate the Agreement as the result of a Default by Buyer.

Section 13.5 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. Except as set forth in Section 13.4 and any Buyer Liability Pass Through Agreements issued by one or more Project Participants pursuant to Section 5.12, Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and 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 or Buyer or its constituent members, in connection with this Agreement.

ARTICLE XIV
MISCELLANEOUS

Section 14.1 Authorized Representative. Each Party shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained herein (each an "***Authorized Representative***"), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) days after execution of this Agreement, each Party shall notify the other Party of the identity of its Authorized Representative, and alternate if designated, and shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement.

Section 14.2 Notices. With the exception of billing invoices pursuant to Section 11.2(b) hereof, all notices, requests, demands, consents, waivers and other communications which are required under this Agreement shall be (a) in writing (regardless of whether the applicable provision expressly requires a writing), (b) deemed properly sent if delivered in person or sent by facsimile transmission, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Appendix C, and (c) deemed delivered, given and received on the date of delivery, in the case of facsimile transmission, or on the date of receipt in the case of registered or certified mail. In addition to the foregoing, the Parties may agree in writing at any time to deliver notices, requests, demands, consents, waivers and other communications through alternate methods, such as electronic mail.

Section 14.3 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 14.3) (a "***Dispute***"), either Party (the "***Notifying Party***") may deliver to the other Party (the "***Recipient Party***") notice of the

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Dispute with a detailed description of the underlying circumstances of such Dispute (a "***Dispute Notice***"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a parallel schedule of availability of the Recipient Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Section 14.3(a) and Section 14.3(b) by the expiration of the thirty (30) day period set forth in Section 14.3(a), then either Party may pursue any legal remedy available to it in accordance with the provisions of Section 14.13 of this Agreement.

Section 14.4 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents and take all further action not inconsistent with the provisions of this Agreement that may be reasonably necessary to effectuate the purposes and intent of this Agreement.

Section 14.5 No Dedication of Facilities. Any undertaking by one Party hereto to the other Party under any provisions of this Agreement shall not constitute the dedication of the system or any portion thereof of either Party to the public or to the other Party or any other Person, and it is understood and agreed that any such undertaking by either Party shall cease upon the termination of such Party's obligations under this Agreement.

Section 14.6 Force Majeure.

(a) A Party shall not be considered to be in default in the performance of any of its obligations under this Agreement, other than an obligation to make payment, when and to the extent such Party's performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to prevent or mitigate, provided the Party, as soon as practicable after becoming aware of the Force Majeure, declares the Force Majeure by giving a written notice (the "***Force Majeure Notice***") to the other Party and upon request by the other Party furnishes the other Party with a detailed description of the full particulars of the Force Majeure reasonably promptly (and in any event within fourteen (14) days after the request therefor), which shall include information with respect to the nature, cause and date and time of commencement of such event, and the anticipated scope and duration of the delay. The Party providing the Force Majeure Notice shall be excused from fulfilling its obligations under this Agreement until such time as the Force Majeure has ceased to prevent performance or other remedial action is taken, at which time the Party shall promptly notify the other Party of the resumption of its obligations under this Agreement. If Seller is unable to deliver, or Buyer is unable to receive, Facility Energy due to a Force Majeure, Buyer shall have no obligation to pay Seller for the Energy not delivered or received by reason thereof. It is understood by the Parties that the foregoing provisions shall not

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excuse any obligations of Seller with respect to Guaranteed Generation, as provided for under Article IX, that is not achieved due to Force Majeure, provided that Seller's requirement to provide the Guaranteed Generation shall be extended for the duration of the Force Majeure. In no event shall Buyer be obligated to compensate Seller or any other Person for any losses, expenses or liabilities that Seller or such other Person may sustain as a consequence of any Force Majeure.

(b) The term "***Force Majeure***" means (i) curtailment or interruption of Transmission Service (subject to Section 14.6(c)), any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, civil disturbances, sabotage, blockade, expropriation, confiscation, fire, unusual or extreme adverse weather-related events or natural disasters (such as lightning, landslide, earthquake, tornado, hurricane, storm or flood), condemnation, epidemic, pandemic (including the disease designated COVID-19 or the related virus designated SARS-CoV-2 or any mutation thereof), or any order, regulation or restriction imposed by WECC or NERC or by governmental, military or lawfully established civilian authorities, or (ii) any other event of circumstance, which, in each case of clauses (i) and (ii), (A) prevents one Party from performing any of its obligations under this Agreement, (B) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the Control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (C) which by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; provided, nothing in this clause (C) shall be construed so as to require either Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure does not include any of the following (each an "***Unexcused Cause***"): (1) any Change in Law that shall cause the RPS to be no longer in force or effect or that, as a result of such Change in Law, Seller shall be unable to make a Facility RPS Compliant as provided in Section 8.6; (2) events arising from the failure by Seller to construct, operate or maintain a Facility in accordance with this Agreement; (3) any increase of any kind in any cost; (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller's ability to sell any Energy at a price in excess of those provided in this Agreement; (6) Seller's failure to secure or obtain interconnection of a Facility or Transmission Services to a Point of Delivery; (7) curtailment or other interruption of any Transmission Services except as otherwise expressly provided in Section 14.6(c); (8) failure of third parties to provide goods or services essential to a Party's performance except to the extent caused by an event that otherwise constitutes Force Majeure hereunder; (9) Facility or equipment failure of any kind except to the extent caused by an event that otherwise constitutes Force Majeure hereunder; (10) any changes in the financial condition of the Buyer, any Seller Party, the Facility Lender or any subcontractor or supplier affecting the affected Party's ability to perform its obligations under this Agreement; or (11) drought in any county in which the affected Facility is located except to the extent it is a drought that (i) begins after the Effective Date, and (ii) is materially more severe than the drought conditions that have existed during the ten (10) year period prior to the Commercial Operation Date of the Facility as determined by the National Integrated Drought Information System.

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(c) Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment or other interruption of Transmission Services for any Energy at any time unless (A) such Party has arranged for Firm Transmission to be provided for the Facility Energy in connection with such Transmission Service at the time, and (B) the curtailment or interruption is not due to the fault or negligence of the Party claiming Force Majeure; provided, that notwithstanding anything in this Section to the contrary, the existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in Section 14.6(b) has occurred. For the avoidance of doubt, Buyer may not claim Force Majeure for any curtailment, interruption or other circumstance associated with Transmission Services downstream of a Point of Delivery, unless and to the extent that such curtailment, interruption or circumstance prevents Buyer or Buyer's Transmission Provider from receiving Facility Energy at such Point of Delivery.

(d) During the Delivery Term, if one or more events of Force Majeure (i) shall cause the aggregate capacity net of Parasitic Load of the Facilities that have achieved Commercial Operation to be reduced to a capacity of less than fifty percent (50%) of the Project Net Capacity prior to the event of Force Majeure (adjusted to reflect the difference between ambient temperatures and annual average temperature) for a period of six (6) consecutive months, or (ii) shall prevent Buyer from accepting more than fifty percent (50%) of the Project Net Capacity prior to the event of Force Majeure (adjusted to reflect the difference between ambient temperatures and annual average temperature) at the Points of Delivery for any hour that a Facility is able to generate Facility Energy for a period of six (6) consecutive months (the period of six (6) consecutive months in either (i) or (ii), the "***Force Majeure Trigger Period***"), the non-claiming Party shall have the right, if the claiming Party is unable to overcome the condition in clause (i) or (ii) above, as applicable, within the Force Majeure Cure Period, to terminate this Agreement upon the last day of such Force Majeure Cure Period, so long as written notice of termination is received by the other Party prior to the end of the Force Majeure Cure Period. Such termination shall automatically trigger release and return of the Delivery Term Security in accordance with Section 5.9(d).

(e) If one or more events of Force Majeure shall prevent or delay Seller from causing the Project Net Capacity to be equal to or greater than ninety percent (90%) of the Minimum Capacity by the Minimum Capacity Cure Date, then Buyer shall have the right to terminate this Agreement upon the Minimum Capacity Cure Date. Such termination shall automatically trigger release and return of the Project Development Security in accordance with Section 5.9(c).

Section 14.7 Assignment of Agreement; Certain Agreements by Seller.

(a) Except as set forth in this Section 14.7, neither Party may assign any of its rights, or delegate any of its obligations, under this Agreement or the Ancillary Documents without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed. Any Change in Control (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. Seller shall provide Buyer with sixty (60) days' prior written notice of any proposed Change in Control. Concurrently with any reorganization or financing transaction or transactions constituting any Change in Control in which

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Seller merges or consolidates with any other Person and ceases to exist, the successor entity to Seller shall execute a written assumption agreement in favor of Buyer pursuant to which any such successor entity shall assume all of the obligations of Seller under this Agreement and the Seller Ancillary Documents to which Seller is a party and agree to be bound by all the terms and conditions of this Agreement and such Seller Ancillary Documents, as applicable.

(b) Buyer may from time to time and at any time assign any or all of its rights, and delegate any or all of its obligations, under this Agreement in whole or in part without the consent of Seller to any of Buyer's Members that has executed, or will execute contemporaneously with such assignment, an agreement to purchase the Energy delivered to Buyer under this Agreement; provided that the proposed assignee has an Investment-Grade Credit Rating and an assignment pursuant to this Section 14.7 will not impair the assignee's credit rating. Except as set forth in this Section 14.7(b), Buyer shall not assign any of its rights, or delegate any of its obligations, under this Agreement without the prior written consent of Seller, which consent shall not be withheld, conditioned or delayed unreasonably. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect.

(c) Except as set forth in or permitted by this Section 14.7, neither Seller nor any Project Company has sold or transferred or shall sell or transfer any Facility to any Person, without the prior written consent of Buyer, which consent shall not be withheld, conditioned or delayed unreasonably. Any purported sale or transfer in violation of this Section 14.7(c) shall be null and void and of no force or effect.

(d) There are no third-party beneficiaries of this Agreement, and, except as provided in this Section 14.7, this Agreement shall not grant any rights enforceable by any Person not a party to this Agreement. Notwithstanding the foregoing, Buyer's consent shall not be required for Seller to collaterally assign this Agreement to any Facility Lender for the sole purpose of financing or refinancing. Seller shall provide Buyer with prior written notice of any such assignment to any Facility Lender. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Facility Energy, Capacity Rights or Green Attributes (not including the proceeds thereof) to any Facility Lender.

(e) To facilitate Seller's or its Affiliates' obtaining of financing or refinancing after the date of this Agreement in connection with the construction and/or operation of one or more Facilities, which may be financed individually or in one or more Portfolios as provided in Section 14.7(f), or the performance by Seller of its obligations under this Agreement, Buyer shall provide such consents to assignment of this Agreement, any Buyer Ancillary Documents and/or any Seller Ancillary Documents, in each case not including the deed of trust, mortgage or similar arrangement referred to in Section 14.7(f), (in form and substance reasonably satisfactory to Buyer), as may be reasonably requested by Seller or any Facility Lender in connection with such financing, including the acquisition of equity for the development, construction, or operation of one or more Facilities or Seller. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Buyer for the reasonable incremental direct third-party expenses incurred by Buyer in the preparation, negotiation, execution or delivery of any documents requested by Seller or the Facility Lender, and provided by Buyer, pursuant to this Section 14.7(e).

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(f) Notwithstanding anything to the contrary in this Agreement, Seller or one of more Affiliates thereof may hereafter enter into one or more credit or other agreements with one or more Facility Lenders providing for financing or refinancing of one or more Facilities, individually or as a Portfolio, (each, a "***Facility Credit Agreement***") that provides, as security for Seller's or such Affiliates' performance thereunder, in addition to any assignment of this Agreement (if applicable), for a Lien on and security interest in and to the Facility(ies) or the Portfolio (as applicable) under a deed of trust, mortgage or similar arrangement, but only with the consent by Buyer (which consent shall not be withheld, conditioned or delayed unreasonably) provided pursuant to an agreement by and among Buyer, Seller or Seller's Affiliates and the Facility Lender which shall be in form and substance reasonably acceptable to Buyer and shall contain terms that are customary for such consents provided in the context of arrangements similar to those contemplated in this Agreement.

Section 14.8 Ambiguity. The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

Section 14.9 Attorney Fees & Costs. Both Parties hereto agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorney fees and costs. Each of the Parties to this Agreement was represented by its respective legal counsel during the negotiation and execution of this Agreement. Notwithstanding the foregoing, to the extent Buyer incurs third party legal costs in order to facilitate any collateral assignment or pledge of this Agreement under Section 14.7 or in taking such other action or review that is at the request of Seller, Seller shall bear Buyer's reasonable and documented third party legal costs therefor.

Section 14.10 Voluntary Execution. Both Parties hereto acknowledge that they have read and fully understand the content and effect of this Agreement and that the provisions of this Agreement have been reviewed and approved by their respective counsel. The Parties to this Agreement further acknowledge that they have executed this Agreement voluntarily, subject only to the advice of their own counsel, and do not rely on any promise, inducement, representation or warranty that is not expressly stated herein.

Section 14.11 Entire Agreement. This Agreement (including all Appendices and Exhibits) contains the entire understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, discussions or agreements between the Parties, or any of them, concerning that subject matter, whether written or oral, except as expressly provided for herein. This is a fully integrated document. Each Party acknowledges that no other party, representative or agent, has made any promise, representation or warranty, express or implied, that is not expressly contained in this Agreement that induced the other Party to sign this document. This Agreement may be amended or modified only by an instrument in writing signed by each Party.

Section 14.12 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

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litigation arising under or in connection with this agreement. [STC 17]. For avoidance of doubt, although "agreement" is not capitalized in this Section 14.12, the parties intend for "agreement" to mean this Agreement, and for "party" and "parties" to refer to the Party and Parties as set forth in the preamble to this Agreement.

Section 14.13 Venue. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

Section 14.14 Execution in Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

Section 14.15 Effect of Section Headings. Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

Section 14.16 Waiver. The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. Notwithstanding anything expressed or implied herein to the contrary, nothing contained herein shall preclude either Party from pursuing any available remedies for breaches not rising to the level of a Default, including recovery of damages caused by the breach of this Agreement and specific performance or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise. Seller acknowledges that money damages may not be an adequate remedy for violations of this Agreement and that Buyer may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. Seller hereby waives any objection to specific performance or injunctive relief. The rights granted herein are cumulative.

Section 14.17 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either such Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

Section 14.18 Third-Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

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Section 14.19 Damage or Destruction; Insurance; Condemnation; Limit of Liability.

(a) **Damage or Destruction**. In the event of any damage or destruction of a Facility or any part thereof, Subject to the consent of the Facility Lender, Seller shall apply any applicable proceeds of Insurance directly related to such damage or destruction to cause the Facility or such part thereof to be diligently repaired, replaced or reconstructed by Seller so that the Facility or such part thereof shall be restored to substantially the same general condition and use as existed prior to such damage or destruction, unless a different condition or use is approved by the Buyer.

(b) **Insurance**. Seller shall obtain and maintain the Insurance in accordance with Appendix F.

(c) **Condemnation or Other Taking**. For the Agreement Term, Seller shall immediately notify Buyer of the institution of any proceeding for the condemnation or other taking of a Facility or any portion thereof. Buyer may seek to participate in any such proceeding and Seller will deliver to Buyer all instruments reasonably available to Seller that are necessary or required by Buyer to permit such participation. Subject to the consent of the Facility Lender, all awards and compensation for the taking or purchase in lieu of condemnation of a Facility or any portion thereof shall be applied toward the repair, restoration, reconstruction or replacement of the Facility.

(d) **Limitation of Liability**. Except to the extent included in the liquidated damages, indemnification obligations related to third party claims or other specific charges expressly provided for herein, neither Party hereunder shall be liable for special, incidental, exemplary, indirect, punitive or consequential damages arising out of a Party's performance or non-performance under this Agreement, whether based on or claimed under contract, tort (including such Party's own negligence) or any other theory at law or in equity.

Section 14.20 Severability. In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect, provided that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

Section 14.21 Confidentiality.

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, to keep confidential, except as required by law, all documents, data, drawings, studies, projections, plans and other written information that relate to economic benefits to or amounts payable by either Party under this Agreement, and, with respect to documents, that are clearly marked "Confidential" at the time a Party shares such information with the other Party or, if orally disclosed, clearly identified as "Confidential" at the time a Party shares such information with the other Party ("***Confidential Information***"). The provisions of this Section 14.21 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the

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date of termination of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Either Party may, without violating this Section 14.21, disclose matters that are made confidential by this Agreement:

(i) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective co-owners, investors, lenders, underwriters, contractors, suppliers, and others involved in construction, operation and financing transactions and arrangements for a Party or its subsidiaries, Affiliates, or parent;

(ii) to governmental officials and parties involved in any proceeding in which either Party is seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; and

(iii) to governmental officials or the public as required by any law, regulation, order, rule, order, ruling or other Requirement of Law, including oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Records Act (Government Code Section 6250 et seq.).

(c) If a Party is requested or required, pursuant to any applicable law, regulation, order, rule, order, ruling or other Requirement of Law, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

Section 14.22 Mobile-Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in 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 agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of this Agreement proposed by a Party, a non-Party or the FERC acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 US 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 US 348 (1956).

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Section 14.23 Service Contract and Forward Contract.

(a) The Parties intend that this Agreement will qualify as a "service contract" as such term is used in Section 7701(e) of the United States Internal Revenue Code of 1986.

(b) The Parties acknowledge and agree that this Agreement constitutes a "Forward Contract" within the meaning of the United States Bankruptcy Code.

[*Remainder of page intentionally left blank. Signature page follows.*]

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IN WITNESS WHEREOF, each Party was represented by legal counsel during the negotiation and execution of this Agreement and the Parties have executed this Agreement as of the dates set forth below effective as of the Effective Date.

CALIFORNIA COMMUNITY POWER

Date:_____ By:_____

Name: Tim Haines
Title: Interim General Manager

ORGP LLC
By: Ormat Nevada Inc., its managing member

Date:_____ By:_____

Name: Elizabeth Helms
Title: Corporate Secretary

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APPENDIX A

PAYMENT SCHEDULE

Buyer shall compensate Seller for the Delivered Energy, Capacity Rights, and associated Green Attributes in accordance with this Appendix A.

1. **Energy Delivered Prior to Commercial Operation**. The purchase price for Delivered Energy that is comprised of Facility Energy from a Facility prior to the Commercial Operation Date for such Facility shall be the Contract Price per MWh; provided, in no event shall Buyer be obligated to purchase or receive Delivered Energy in excess of the Maximum Generation unless Buyer shall by notice given to Seller elect to purchase any such Energy in excess of Maximum Generation.

2. **Energy Delivered Following Commercial Operation**. The purchase price for Delivered Energy that is comprised of Facility Energy from a Facility after the Commercial Operation Date for such Facility or for Replacement Energy shall be the Contract Price per MWh; provided, in no event shall Buyer be obligated to purchase or receive Delivered Energy in excess of the Maximum Generation unless Buyer shall by notice given to Seller elect to purchase any such Energy in excess of Maximum Generation.

3. **Payment for Curtailed Energy during Market Curtailment Period**. Buyer shall pay Seller the Contract Price per MWh for Energy that is curtailed as a result of a Market Curtailment Period, with the quantity of such curtailed Energy determined pursuant to Section 7.4.

4. **Calculation of Monthly Delivered Energy Payment**. For each MWh of Delivered Energy in each Settlement Period, Buyer shall pay Seller the difference of: (i) the Contract Price per MWh; *minus* (ii) the Day-Ahead Market LMP applicable to the Settlement Point for such Settlement Period; *provided, however,* that (A) if the Day-Ahead Market LMP applicable to the Settlement Point for such Settlement Period is less than the Negative LMP Strike Price, then the Day-Ahead Market LMP applicable to the Settlement Point for such Settlement Period shall be deemed to be equal to the Negative LMP Strike Price, and (B) if the result of the difference of (i) *minus* (ii) above results in a negative value, then Seller shall pay Buyer the absolute value of such result (which payment may be applied as a credit to Buyer on Seller's monthly invoice). Seller, through its Scheduling Coordinator, shall receive (and, except as otherwise provided in subpart (B) above, is entitled to retain) payment for Delivered Energy from CAISO for such delivery based on the applicable Energy price, as published by CAISO. For the avoidance of doubt, Buyer is purchasing a bundled product and Seller's receipt of payment directly via CAISO settlements is for the Parties' mutual convenience.

5. **Negative LMP Strike Price**. Buyer may change the Negative LMP Strike Price by providing written notice to Seller at least five (5) Business Days prior to the effective date of such change, which notice must identify the new Negative LMP Strike Price and the effective date for the new Negative LMP Strike Price; *provided, however,* that the

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Negative LMP Strike Price identified by Buyer must be less than or equal to zero dollars per MWh ($0/MWh).

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APPENDIX B

FORM OF FACILITY SPECIFICATIONS

1. **Name of Facility**:

Seller may from time to time refurbish, repower, decommission or otherwise modify power plants and related property, equipment, facilities and improvements of any Facility using Prudent Utility Practices. Each such refurbishing, repowering, decommissioning or other modification shall comply with the applicable terms and provisions of the Agreement and shall not impair Seller's ability to carry out its obligations under the Agreement. For the avoidance of doubt, except as permitted pursuant to Section 3.9, the Guaranteed Generation and Maximum Generation will not be revised to reflect any such refurbishing, repowering, decommissioning or other modification of any Facility.

Location:

Facility Site:

Facility Interconnection Rights and Interests:

Facility Transmission Rights and Interests:

Point of Interconnection:

Primary Point of Delivery:

Pseudo-Tie Resource or a Dynamically Scheduled Resource:

2. **Owner:**

3. **Operator:** Ormat Nevada Inc., subject to Section 4.5

4. **Equipment:**

   (a) Type of Facility: Geothermal Electric Generation Facility

   (b) Facility Net Capacity:

5. **Commercial Operation Date:**

6. **Facility Geothermal Resource Leases and Rights of Way:**

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GEOTHERMAL LEASES				
LEASE #	ISSUER	HELD BY	ACRES	DATE ISSUED
RIGHTS OF WAY				
ROW	ISSUER	HELD BY	ACRES	DATE ISSUED

7. Construction period Permits:

AGENCY	PERMIT	DATE RECEIVED
DRILLING PERMITS		
STATE		
FEDERAL		
PRINCIPAL DISCRETIONARY PERMITS		
FEDERAL		
ENVIRONMENTAL DOCUMENTS		
FEDERAL		

8. Additional permits required to achieve Commercial Operation:

AGENCY	PERMIT
PRINCIPAL DISCRETIONARY PERMITS	
LOCAL/REGIONAL	
MINISTERIAL PERMITS	
LOCAL/REGIONAL	
STATE	

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AGENCY	PERMIT
FEDERAL	
ENVIRONMENTAL DOCUMENTS	
FEDERAL	

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APPENDIX C

BUYER AND SELLER BILLING, NOTIFICATION AND SCHEDULING CONTACT INFORMATION

1. **Authorized Representative**. Correspondence pursuant to Section 14.2 shall be transmitted to the following addresses:

   1.1 If to Buyer:

   Tim Haines
   70 Garden Court, Suite 300
   Monterey, CA 93940
   Telephone: 916-207-4078
   Email: timhaines@powergridsymmetry.com

   With a copy to: Brittany Iles – General Counsel
   Braun Blaising Smith Wynne, P.C.
   555 Capitol Mall, Suite 570
   Sacramento, CA 95814
   Telephone: 916-326-5812
   Email: iles@braunlegal.com

   1.2 If to Seller:

   OCGP LLC
   6140 Plumas Street
   Reno, NV 89519
   Attn: CEO

   With a copy to: OCGP LLC – Asset Manager
   Telephone: 775-356-9029
   Facsimile: 775-356-9039
   Email: Assetmanager@ormat.com

2. Billings and payments pursuant to Article XI and Appendix A shall be transmitted to the following addresses:

   2.1 If Billing to Buyer:

   Tim Haines
   70 Garden Court, Suite 300
   Monterey, CA 93940
   Telephone: 916-207-4078
   Email: timhaines@powergridsymmetry.com

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With a copy to: Brittany Iles – General Counsel
Braun Blaising Smith Wynne, P.C.
555 Capitol Mall, Suite 570
Sacramento, CA 95814
Telephone: 916-326-5812
Email: iles@braunlegal.com

2.2 If Payment to Buyer:

Tim Haines
70 Garden Court, Suite 300
Monterey, CA 93940
Telephone: 916-207-4078
Email: timhaines@powergridsymmetry.com

With a copy to: Brittany Iles – General Counsel
Braun Blaising Smith Wynne, P.C.
555 Capitol Mall, Suite 570
Sacramento, CA 95814
Telephone: 916-326-5812
Email: iles@braunlegal.com

2.3. If Billing to Seller:

OCGP LLC
6140 Plumas Street
Reno, NV 89519
Attn: CEO

With a copy to: OCGP LLC – Asset Manager
Telephone: 775-356-9029
Facsimile: 775-356-9039
Email: Assetmanager@ormat.com

2.4 If Payment to Seller:

OCGP LLC
6140 Plumas Street
Reno, NV 89519
Attn: CEO

With a copy to: OCGP LLC – Asset Manager
Telephone: 775-356-9029
Facsimile: 775-356-9039
Email: Assetmanager@ormat.com

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3. Unless otherwise specified by Buyer (for notices to Buyer) or Seller (for notices to Seller) all notices related to scheduling of the Facility shall be sent to the following address:

If to Buyer:

Tim Haines
70 Garden Court, Suite 300
Monterey, CA 93940
Telephone: 916-207-4078
Email: timhaines@powergridsymmetry.com

With a copy to: Brittany Iles – General Counsel
Braun Blaising Smith Wynne, P.C.
555 Capitol Mall, Suite 570
Sacramento, CA 95814
Telephone: 916-326-5812
Email: iles@braunlegal.com

If to Seller:

OCGP LLC
6140 Plumas Street
Reno, NV 89519
Attn: CEO

With a copy to: OCGP LLC – Scheduling Coordinator
Telephone: 775-398-4302
Facsimile: 775-356-9039
Email: energyscheduling@ormat.com

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APPENDIX D

OPERATIONAL CHARACTERISTICS

[redacted]

[redacted]

[redacted]

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APPENDIX E

[FORM OF LETTER OF CREDIT]

IRREVOCABLE AND UNCONDITIONAL STANDBY LETTER OF CREDIT NO. _____

Applicant:

Beneficiary:

CALIFORNIA COMMUNITY POWER

[ADDRESS]
Telephone:
Facsimile:

Amount:
Expiry Date:
Expiration Place:

Ladies and Gentlemen:

We, [insert bank name and address] ("Issuer"), hereby issue our Irrevocable Unconditional Documentary Letter of Credit No. [XXXXXXX] (the "Letter of Credit") in favor of California Community Power, a California joint powers authority (the "Beneficiary") by order and for the account of [_____] (the "Applicant"), pursuant to that certain Renewable Power Purchase Agreement dated as of [____], 2022 (the "Agreement") between Applicant and Beneficiary. This Letter of Credit is available at sight for USD $XX,XXX,XXX by sight payment:

(a) upon presentation to us at our office at [*bank's address*],[1] of: (i) your written demand for payment containing the text of Exhibit I and (ii) your signed statement containing the text of Exhibit II; or

(b) upon both your (1) telephone, e-mail or fax advice of demand to the attention of _____ at telephone [_____], e-mail [_____] and/or fax number _____ and (2) presentation to us by e-mail or fax of: (i) your written demand for payment containing the text of Exhibit I and (ii) your statement containing the text of Exhibit II. Funds may be drawn under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the amount specified above.

[1] Note to Issuer: The Letter of Credit must be payable in U.S. dollars within the continental U.S.

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Upon presentation to us in conformity with the foregoing, we will, on the next business day after such presentation (unless such presentation occurs after 3:00 p.m., Pacific Standard Time, on the day of such presentation, in which event payment will be made after the opening of business at the office specified above on the second business day), but without any other delay whatsoever, irrevocably and without reserve or condition: (a) if the office set forth above for presentation is in [_____], California, pay to your order in the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds in United States dollars which are immediately available to you, or (b) if the office set forth above for presentation is not in [_____], California, issue payment instructions to the Federal Reserve wire transfer system in proper form to transfer to the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds in United States dollars which are immediately available to you in [_____], California. We agree that if, on the expiration date of this Letter of Credit, the office specified above is (i) not open for business by virtue of an interruption of the nature described in the Uniform Customs and Practices for Documentary Credits, Article 36, this Letter of Credit will be duly honored if the specified statements are presented by you within thirty (30) days after such office is reopened for business, or (ii) not otherwise open for business, this Letter of Credit will be duly honored if the specified statements are presented by you within three (3) days after such office is reopened for business.

Payment hereunder shall be made regardless of: (a) any written or oral direction, request, notice or other communication now or hereafter received by us from the Applicant or any other person except you, including without limitation any communication regarding fraud, forgery, lack of authority or other defect not apparent on the face of the documents presented by you, but excluding solely an effective written order issued otherwise than at our instance by a court of competent jurisdiction, which order is legally binding upon us and specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of the Applicant or any other person or property from whom or which we may be entitled to reimbursement for such payment; and (c) without limiting clause (b) above, whether we are in receipt of or expect to receive funds or other property as reimbursement in whole or in part for such payment. We agree that we will not take any action to cause the issuance of an order described in clause (a) of the preceding sentence. We agree that the time set forth herein for payment of any demand(s) for payment is sufficient to enable us to examine such demand(s) and the related documents(s) referred to above with care so as to ascertain that on their face they appear to comply with the terms of this Letter of Credit and that if such demand(s) and document(s) on their face appear to so comply, failure to make any such payment within such time shall constitute dishonor of such demand(s) and this Letter of Credit.

This Letter of Credit shall become effective immediately and shall renew annually until terminated in accordance with the terms hereof (the "Expiration Date").

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. The stated amount of this Letter of Credit may be increased or decreased, by an amendment to this Letter of Credit in the form of Exhibit III. Any such amendment shall become effective only upon acceptance by your signature on a hard copy amendment.

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This Letter of Credit may only be terminated upon one hundred twenty (120) days' prior written notice from Issuer to Beneficiary by registered mail or overnight courier service that Issuer elects 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.

You shall not be bound by any written or oral agreement of any type between us and the Applicant or any other person relating to this credit, whether now or hereafter existing.

We hereby engage with you that your demand(s) for payment in conformity with the terms of this credit will be duly honored as set forth above. All fees and other costs associated with the issuance of and any drawing(s) against this Letter of Credit shall be for the account of the Applicant.

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the "Uniform Customs and Practices for Documentary Credits," International Chamber of Commerce, in effect on the date of issuance of this credit.

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. [XXXXXXX]. 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: California Community Power, [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.

Yours faithfully,
(name of issuing bank)
By_____
Title_____

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EXHIBIT I
Demand for Payment

Re: Irrevocable and Unconditional Standby Letter of Credit
No. _____ Dated _____, 20__

To Whom It May Concern:

Demand is hereby made upon you for payment to us of $_____ by deposit to our account no. _____ at [insert name of bank]. This demand is made under, and is subject to and governed by, your Irrevocable and Unconditional Standby Letter of Credit no. _____ dated _____, 20__ in the amount of $_____ established by you in our favor for the account of _____ as the Applicant.
DATED: _____, 20__.

CALIFORNIA COMMUNITY POWER

By_____
Title_____

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EXHIBIT II
Statement

Re: Your Irrevocable and Unconditional Standby Letter of Credit
No. _____ Dated _____, 20_____

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Standby Letter of Credit no. _____, dated _____, 20____ in the amount of $_____ established by you in our favor for the account of _____.

We hereby certify to you that $_____ is due and owing to us and unpaid under that certain **[Describe Agreement]**.

DATED: _____, 20__.

CALIFORNIA COMMUNITY POWER

By_____
Title_____

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EXHIBIT III
Amendment

Re: Irrevocable and Unconditional Standby Letter of Credit
No. _____ Dated _____, 20__

Beneficiary:
CALIFORNIA COMMUNITY POWER
[ADDRESS]

Applicant:

To Whom It May Concern:

The above referenced Irrevocable and Unconditional Standby Letter of Credit is hereby amended as follows: by increasing / decreasing / leaving unchanged *(strike two)* the stated amount by $ _____ to a new stated amount of $ _____. All other terms and conditions of the Letter of Credit remain unchanged.

This amendment is effective only when accepted by CALIFORNIA COMMUNITY POWER, which acceptance may only be valid by a signature of an authorized representative.

Dated: _____

Yours faithfully,

(name of issuing bank)
By_____
Title_____

ACCEPTED
CALIFORNIA COMMUNITY POWER

By_____
Title_____
Date_____

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APPENDIX F

[INSURANCE]

I. GENERAL REQUIREMENTS

Prior to the start of work, but not later than thirty (30) days after the date of award of contract, Seller shall furnish Buyer evidence of coverage from insurers rated A VIII or higher by AM Best (for clauses II A - D below) and A- X (for clauses II F-G below) and in a form acceptable to the Risk Management Section of the project manager for Buyer for this purpose. Such insurance shall be maintained by Seller at Seller's sole cost and expense.

Such insurance shall not limit or qualify the liabilities and obligations of Seller assumed under this Agreement. Buyer shall not by reason of its inclusion under these policies incur liability to the insurance carrier for payment of premium for these policies.

Any insurance carried by Buyer which may be applicable shall be deemed to be excess insurance and Seller's insurance is primary for all purposes despite any conflicting provision in Seller's policies to the contrary.

Said evidence of insurance shall contain a provision that the policy cannot be canceled or reduced in coverage or amount without first giving thirty (30) days prior notice thereof (ten (10) days for non-payment of premium) by registered mail to [INSERT BUYER CONTACT].

Should any portion of the required insurance be on a "Claims Made" policy, Seller shall, at the policy expiration date following completion of work, provide evidence that the "Claims Made" policy has been renewed or replaced with the same limits, terms and conditions of the expiring policy, or that an extended discovery period has been purchased on the expiring policy at least for the contract under which the work was performed.

Seller shall be responsible for all subcontractors' compliance with the insurance requirements.

II. SPECIFIC COVERAGES REQUIRED

A. Commercial Automobile Liability

Seller shall provide Commercial Automobile Liability insurance which shall include coverages for liability arising out of the use of owned, non-owned, and hired vehicles for performance of the work as required to be licensed under the California or any other applicable state vehicle code. The Commercial Automobile Liability insurance shall have not less than $1,000,000.00 combined single limit per occurrence and shall apply to all operations of Seller.

The Commercial Automobile Liability policy shall include Buyer, its Board of Directors, its members, and their officers, agents, and employees while acting within the scope of

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their employment, as additional insureds with Seller (but only to the extent of Seller's insurable indemnity obligations under this Agreement), and shall insure against liability for death, bodily injury, or property damage resulting from the performance of this Agreement.

B. Commercial General Liability

Seller shall provide Commercial General Liability insurance with Contractual Liability, Independent Contractors, Broad Form Property Damage, Premises and Operations, Products and Completed Operations, fire Legal Liability and Personal Injury coverages included. Such insurance shall provide coverage for total limits actually arranged by Seller, but not less than $10,000,000.00 combined single limit per occurrence. Should the policy have an aggregate limit, such aggregate limits should not be less than double the Combined Single Limit. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall provide for the following:

1. Include Buyer and its officers, agents, and employees as additional insureds with the Named Insured for the activities and operations under this Agreement (but only to the extent of Seller's insurable indemnity obligations under this Agreement).

2. Severability-of-Interest or Cross-Liability Clause such as: "The policy to which this endorsement is attached shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the company's liability."

3. A description of the coverages included under the policy.

C. Excess Liability

Seller may use an Umbrella or Excess Liability Coverage to meet coverage limits specified in this Agreement. Seller shall require the carrier for Excess Liability to properly schedule and to identify the underlying policies as provided for Buyer on the Buyer additional insured endorsement form, or on an endorsement to the policy acceptable to Buyer's risk management agent. Such policy shall include, as appropriate, coverage for Commercial General Liability, Commercial Automobile Liability, Employer's Liability, or other applicable insurance coverages.

D. Workers' Compensation/Employer's Liability Insurance

Seller shall provide Workers' Compensation insurance covering all of Seller's employees in accordance with the laws of any state in which the work is to be performed and including Employer's Liability insurance and a Waiver of Subrogation in favor of Buyer. The limit for Employer's Liability coverage shall be not less than $1,000,000.00 each accident and shall be a separate policy if not included with Workers' Compensation coverage. Evidence of such insurance shall be in the form of a Buyer Special Endorsement of insurance or on an endorsement to the policy acceptable to Buyer's risk management agent. Workers'

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Compensation/Employer's Liability exposure may be self-insured provided that Buyer is furnished with a copy of the certificate issued by the state authorizing Seller to self-insure. Seller shall notify Buyer's Risk Management Section by receipted delivery as soon as possible of the state withdrawing authority to self-insure.

F. Property All Risk Insurance

Seller shall procure and maintain an All Risk Physical Damage policy to insure the full replacement value of the property located at Facility as described in this Agreement. The policy shall include coverage for expediting expense, extra expense, Business Interruption, ensuing loss from faulty workmanship, faulty materials, or faulty design.

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APPENDIX G
[FORM OF GUARANTEE]

This GUARANTEE (this "Guarantee"), dated as of [_____] (the "Effective Date"), is issued by [_____], a corporation organized and existing under the laws of Delaware ("Guarantor") in favor of California Community Power, a California joint powers authority ("Company").

Pursuant to that certain Geothermal Portfolio Power Purchase Agreement, dated as of [_____] (as the same may be amended, modified or supplemented from time to time, the "Agreement"), by and between Company and [_____], a limited liability company organized and existing under the laws of Delaware, of which Guarantor is the [indirect] parent ("Subsidiary"), and pursuant to which Guarantor will indirectly benefit from the terms and conditions thereof, and the performance by Subsidiary of its obligations thereunder, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants, undertakes and agrees with Company as follows:

SECTION 1. DEFINITIONS. Capitalized terms used herein and not otherwise defined shall have their respective meanings as set forth in the Agreement.

SECTION 2. GUARANTEE.

(a) Guarantee. Guarantor hereby irrevocably and unconditionally guarantees to and for the benefit of Company, the full and prompt payment when due of all obligations owing by Subsidiary to Company arising pursuant to the Agreement on or after the Effective Date up to the limitations set forth in the Agreement (the "Guaranteed Obligations"). The Guaranteed Obligations shall further include, without limitation, all reasonable costs and expenses (including reasonable attorneys' fees), if any, incurred in successfully enforcing Company's rights under this Guarantee.

(b) Nature of Guarantee. The Guarantee and the obligations of Guarantor hereunder shall continue to be effective or be automatically reinstated, as the case may be, even if at any time payment of any of the Guaranteed Obligations is rendered unenforceable or is rescinded or must otherwise be returned by Company upon the occurrence of any action or event including, without limitation, the bankruptcy, reorganization, winding-up, liquidation, dissolution or insolvency of the Subsidiary, Guarantor, any other Person or otherwise, all as though the payment had not been made.

(c) Absolute Guarantee. Guarantor agrees that its obligations under this Guarantee are irrevocable, absolute, independent, unconditional and continuing and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting

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the generality thereof, Guarantor agrees, subject to the other terms and conditions hereof, as follows:

(i) this Guarantee is a guarantee of payment when due and not of collectability;

(ii) Company may from time to time in accordance with the terms of the Agreement, without notice or demand and without affecting the validity or enforceability of this Guarantee or giving rise to any limitation, impairment or discharge of Guarantor's liability hereunder, (A) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment or performance of the same to the payment or performance of any other obligations, (B) request and accept other guaranties of or security for the Guaranteed Obligations and take and hold security for the payment or performance of this Guarantee or the Guaranteed Obligations, (C) release, exchange, compromise, subordinate or modify, with or without consideration, any security for payment or performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any person with respect to the Guaranteed Obligations, (D) enforce and apply any security now or hereafter held by or for the benefit of Company in respect of this Guarantee or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that Company may have against any such security, as Company in its discretion may determine consistent with the Agreement and any applicable security agreement, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or any other right or remedy of Guarantor against Subsidiary or any other guarantor of the Guaranteed Obligations or any other guarantee of or security for the Guaranteed Obligations, and (E) exercise any other rights available to Company under the Agreement, at law or in equity; and

(iii) this Guarantee and the obligations of Guarantor hereunder shall be valid and enforceable and shall not be subject to any limitation, impairment or discharge for any reason (other than payment in full of the Guaranteed Obligations and otherwise as set forth in this Guarantee), including, without limitation, the occurrence of any of the following, whether or not Guarantor shall have had notice or knowledge of any of them: (A) any failure to assert or enforce, or agreement not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, or the exercise or enforcement of, any claim or demand or any right, power or remedy with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guarantee of or security for the payment or performance of the Guaranteed Obligations; (B) any waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions of the Agreement or any agreement or instrument executed pursuant thereto or of any other guarantee or security for the Guaranteed Obligations; (C) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (D) the personal or corporate incapacity of any person; (E) any change in the financial condition, or the bankruptcy, administration, receivership or insolvency of Subsidiary or any other person, or any rejection, release, stay or discharge of Subsidiary's or any other person's obligations in connection with any bankruptcy, administration, receivership or similar proceeding or otherwise or any disallowance of all or any portion of any claim by Company, its successors or permitted assigns in connection with any such proceeding; (F) any change in the corporate existence of, or cessation of existence of, Guarantor or the Subsidiary

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(whether by way of merger, amalgamation, transfer, sale, lease or otherwise); (G) the failure to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, any person; (H) any substitution, modification, exchange, release, settlement or compromise of any security or collateral for or guaranty of any of the Guaranteed Obligations or failure to apply such security or collateral or failure to enforce such guaranty; (I) the existence of any claim, set-off, or other rights which Guarantor or any affiliate thereof may have at any time against Company or any affiliate thereof in connection with any matter unrelated to the Agreement; and (J) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of Guarantor as an obligor in respect of the Guaranteed Obligations.

(d) Currency. All payments made by Guarantor hereunder shall be made in U.S. dollars in immediately available funds.

(e) Defenses. Notwithstanding anything herein to the contrary, Guarantor specifically reserves to itself all rights, counterclaims and other defenses that the Subsidiary is or may be entitled to arising from or out of the Agreement, except for any defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of the Subsidiary, or the lack of power or authority of the Subsidiary to enter into the Agreement and to perform its obligations thereunder, or the lack of validity or enforceability of the Subsidiary's obligations under the Agreement or any transaction thereunder; provided, however, that under no circumstances shall Guarantor's liability under this Guarantee exceed Subsidiary's liability under the Agreement.

SECTION 3. OTHER PROVISIONS OF THE GUARANTEE.

(a) Demands and Payment.

(i) If Subsidiary fails to pay any Guaranteed Obligations when such Guaranteed Obligation is due and owing under the Agreement (an "Overdue Obligation"), Company may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guarantee (a "Payment Demand").

(ii) Guarantor's obligation hereunder to pay any particular Overdue Obligation(s) to Company is conditioned upon Guarantor's receipt of a Payment Demand from Company satisfying the following requirements: (1) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand, the specific date(s) upon which such Overdue Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Overdue Obligation(s) became due and owing; (2) such Payment Demand must be delivered to Guarantor in accordance with Section 5 below; and (3) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

(iii) After issuing a Payment Demand in accordance with the requirements specified in Section 3(b) above, Company shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and, subject to Section 2(e) above, Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within twenty (20) Business Days after Guarantor receives such demand.

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(b) Waivers by Guarantor. Guarantor hereby waives for the benefit of Company, to the maximum extent permitted by Applicable Law:

(i) notice of acceptance hereof;

(ii) notice of any action taken or omitted to be taken by Company in reliance hereon;

(iii) any right to require Company, as a condition of payment by Guarantor, to (A) proceed against or exhaust its remedies against Subsidiary or any person, including any other guarantor of the Guaranteed Obligations, or (B) proceed against or exhaust any security held from Subsidiary or any person, including any other guarantor of the Guaranteed Obligations;

(iv) subject to Clause 2(e), any defense arising by reason of the incapacity, lack of authority or any disability of Subsidiary including, without limitation, any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Subsidiary from any cause other than payment in full of the Guaranteed Obligations or termination of this Guarantee in accordance with its terms; and

(v) any requirement that Company protect, secure, perfect or insure any security interest or lien or any property subject thereto.

(c) Deferral of Subrogation. Until such time as the Guaranteed Obligations have been paid or performed in full, notwithstanding any payment made by Guarantor hereunder or the receipt of any amounts by Company with respect to the Guaranteed Obligations, (i) Guarantor (on behalf of itself, its successors and assigns, including any surety) hereby expressly agrees not to exercise any right, nor assert the impairment of such rights, it may have to be subrogated to any of the rights of Company against Subsidiary or against any other collateral security held by Company for the payment or performance of the Guaranteed Obligations, (ii) Guarantor agrees that it will not seek any reimbursement from Company in respect of payments or performance made by Guarantor in connection with the Guaranteed Obligations, or amounts realized by Company in connection with the Guaranteed Obligations and (iii) Guarantor shall not claim or prove in a liquidation or other insolvency proceeding of the Subsidiary in competition with the Company. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Guaranteed Obligations shall not have been paid in full or otherwise fully satisfied, such amount shall be held in trust by Guarantor for the benefit of Company and shall forthwith be paid to Company, to be credited and applied to the Guaranteed Obligations.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF GUARANTOR. Guarantor hereby represents, warrants, and undertakes to Company as follows:

(a) Guarantor is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and has the corporate power, authority and legal right to own its property and assets and to transact the business in which it is engaged.

(b) Guarantor has full power, authority and legal right to execute and deliver this Guarantee and all other instruments, documents and agreements required by the provisions of this

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Guarantee to be executed, delivered and performed by Guarantor, and to perform its obligations hereunder and thereunder.

(c) The execution, delivery and performance of this Guarantee and all other instruments, documents and agreements required by the provisions of this Guarantee to be executed, delivered and performed by Guarantor have been duly authorized by all necessary company action on the part of Guarantor and do not contravene or conflict with Guarantor's memorandum and articles of association.

(d) This Guarantee and all other instruments, documents and agreements required by the provisions of this Guarantee to be executed, delivered and performed by Guarantor have been duly executed and delivered by Guarantor and constitute the legal, valid and binding obligations of Guarantor, enforceable against it in accordance with their respective terms.

(e) Neither the execution and delivery of this Guarantee nor the performance of the terms and conditions hereof by Guarantor shall result in (i) a violation or breach of, or a default under, or a right to accelerate, terminate or amend, any contract, commitment or other obligation to which Guarantor is a party or is subject or by which any of its assets are bound, or (ii) a violation by Guarantor of any Applicable Law.

(f) There are no actions, suits, investigations, proceedings, condemnations, or audits by or before any court or other governmental or regulatory authority or any arbitration proceeding pending or, to its actual knowledge after due inquiry, threatened against or affecting Guarantor, its properties, or its assets that would impair Guarantor's ability to perform its obligations under this Guarantee.

(g) All necessary action has been taken under Applicable Laws to authorize the execution, delivery and performance of this Guarantee. No governmental approvals or other consents, approvals, or notices of or to any person are required in connection with the execution, delivery, performance by Guarantor, or the validity or enforceability, of this Guarantee.

SECTION 5. NOTICES. All Payment Demands, notices, demands, instructions, waivers, consents, or other communications required or permitted hereunder shall be in writing in the English language and shall be sent by personal delivery, courier, certified mail, electronic mail or facsimile, to the following addresses:

(a) If to Guarantor:

[_____].
6140 Plumas Street
Reno, NV 89519-6075
Attention: Asset Manager
Facsimile No.: 775-356-9039
Email: AssetManagement@ormat.com

With a copy to (which shall not constitute notice):

[_____].

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6140 Plumas Street
Reno, NV 89519-6075
Attention: Legal Department
Facsimile No.: 775-356-9039
Email: ContractNotices@ormat.onmicrosoft.com

(b) If to Company:

[_____]
[_____]
[_____]
Attention: [_____]
Facsimile No.: [_____]
Email: [_____]

With a copy to (which shall not constitute notice):

[_____]
[_____]
[_____]
Attention: [_____]
Facsimile No.: [_____]
Email: [_____]

The addresses and facsimile numbers of either party for notices given pursuant to this Guarantee may be changed by means of a written notice given to the other party at least three (3) Business Days (being a day on which clearing banks are generally open for business in the jurisdiction of the party to whom a notice is sent) prior to the effective date of such change. Any notice required or authorized to be given hereunder shall be in writing (unless otherwise provided) and shall be served (i) personally, (ii) by courier service, (iii) by electronic email or (iv) by facsimile transmission addressed to the relevant Person at the address stated below or at any other address notified by that Person as its address for service. Any notice so given personally shall be deemed to have been served on delivery, any notice so given by express courier service shall be deemed to have been served the next Business Day after the same shall have been delivered to the intended Person, and any notice so given by electronic mail or facsimile transmission shall be deemed to have been served on dispatch unless dispatched after the recipient's normal business hours on a Business Day or dispatched on any day other than a Business Day, in which case such notice shall be deemed to have been delivered on the next Business Day. As proof of such service it shall be sufficient to produce a receipt showing personal service, the receipt of a courier company showing the correct address of the addressee, a copy of the electronic mail showing the correct electronic mail address of the addressee or an activity report of the sender's facsimile machine showing the correct facsimile number of the Person on whom notice is served and the correct number of pages transmitted.

SECTION 6. MISCELLANEOUS PROVISIONS.

(a) Waiver; Remedies Cumulative. No failure on the part of Company to exercise, and no delay on the part of Company in exercising, any right or remedy, in whole or in part

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hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by Company shall be effective unless it is in writing and such writing expressly states that it is intended to constitute such waiver. Any waiver given by Company of any right, power or remedy in any one instance shall be effective only in that specific instance and only for the purpose for which given and will not be construed as a waiver of any right, power or remedy on any future occasion. The rights and remedies of Company herein provided are cumulative and not exclusive of any rights or remedies provided by Applicable Law.

(b) Successors and Assigns. This Guarantee shall be binding upon the successors of Guarantor and shall inure to the benefit of Company and its successors and permitted assigns. Guarantor shall not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of Company, which consent shall not be unreasonably withheld. Any purported assignment or delegation without such written consent shall be null and void. Company may assign its rights and obligations hereunder to any assignee of its rights under the Agreement permitted in accordance with Section 14.7 of the Agreement.

(c) Amendment. This Guarantee may not be modified, amended, terminated or revoked, in whole or in part, except by an agreement in writing signed by Company and Guarantor.

(d) Termination, Limits and Release. This Guarantee is irrevocable, unconditional and continuing in nature and is made with respect to all Guaranteed Obligations now existing or hereafter arising and shall remain in full force and effect until the earlier of (i) the time when in accordance with the terms of the Agreement all of the Guaranteed Obligations are fully satisfied and discharged or (ii) Subsidiary has provided the alternative Delivery Term Security to Buyer then, and only then, this Guarantee shall automatically be released and shall be of no further force and effect; otherwise, it shall remain in full force and effect. Other than as set forth in the previous sentence, no release of this Guarantee shall be valid unless executed by Company and delivered to Guarantor. Except with respect to (x) claims made by, damages incurred by, or amounts payable to third parties pursuant to an indemnity given under the Agreement and (y) claims arising out of Subsidiary's fraud or willful misconduct, under no circumstances will Guarantor's aggregate liability hereunder exceed the amount of Delivery Term Security required in the Agreement.

(e) Law and Jurisdiction.

(i) THIS GUARANTEE IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD FOR ANY PRINCIPLES OF CONFLICTS OF LAW THAT WOULD DIRECT OR PERMIT THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

(ii) GUARANTOR AND COMPANY IRREVOCABLY AGREE THAT THE STATE AND FEDERAL COURTS LOCATED IN SAN FRANCISCO COUNTY, CALIFORNIA, SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY SUIT, ACTION OR PROCEEDING, AND TO SETTLE ANY DISPUTE, WHICH MAY ARISE OUT OF OR IN CONNECTION WITH THIS GUARANTEE, AND FOR SUCH PURPOSES HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF SUCH COURTS, AND GUARANTOR CONSENTS TO THE JURISDICTION OF, AND TO THE LAYING OF VENUE IN, SUCH COURTS FOR SUCH PURPOSES AND HEREBY WAIVES

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ANY DEFENSE BASED ON LACK OF VENUE OR PERSONAL JURISDICTION OR OF INCONVENIENT FORUM.

(f) Survival. All representations and warranties made in this Guarantee and by Guarantor in any other instrument, document, or agreement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Guarantee.

(g) Severability. Any provision of this Guarantee that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Where provisions of law or regulation resulting in such prohibition or unenforceability may be waived, they are hereby waived by Guarantor and Company to the full extent permitted by law so that this Guarantee shall be deemed a valid binding agreement in each case enforceable in accordance with its terms.

(h) Third Party Rights. The terms and provisions of this Guarantee are intended solely for the benefit of Company and Guarantor and their respective successors and permitted assigns, and it is not the intention of Company or Guarantor to confer upon any other persons any rights by reason of this Guarantee.

(i) No Set-off, Deduction or Withholding. Guarantor hereby guarantees that payments hereunder shall be made without set-off or counterclaim and free and clear of and without deduction or withholding for any taxes; provided, that if the Guarantor shall be required under Applicable Law to deduct or withhold any taxes from such payments, then (i) the sum payable by Guarantor shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable pursuant to this sentence) the Company receives an amount equal to the sum it would have received had no such deduction or withholding been required, (ii) Guarantor shall make such deduction or withholding, and (iii) Guarantor shall timely pay the full amount deducted or withheld to the relevant governmental authority in accordance with Applicable Law.

(j) Waiver of Right to Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF GUARANTOR AND COMPANY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTEE. EACH OF GUARANTOR AND COMPANY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

(k) Counterparts; Facsimile Signatures. This Guarantee may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures delivered by facsimile shall be deemed to be original signatures.

[Signature page follows.]

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IN WITNESS WHEREOF, Guarantor has duly executed this Guarantee on the day and year first before written.

[_____], a Delaware Corporation

_____

Name:
Title:

Acknowledged and Accepted:

[_____], a [_____]

_____

Name:
Title:

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APPENDIX H

QUALITY ASSURANCE PROGRAM

Seller shall implement a Quality Assurance ("Q/A") Program to ensure that the operation of each Facility fulfills the requirements of this Agreement. The Q/A Program shall provide assurance that purchasing, manufacturing, shipping, storage, and examination of all equipment, materials, services and maintenance of each Facility will comply with the requirements of this Agreement, all applicable Requirements of Law and the manufacturers or suppliers' requirements for successful operation of the Facility.

Quality at Seller

Seller believes that quality is the unit of measure for assessing fulfillment of project goals. A quality project meets or exceeds the contract requirements and accepted standards of professional and industry practice. Furthermore, high quality projects are those that address client and societal needs more successfully than "low" quality projects. While this may seem like a straightforward definition, the process to ensure quality is much more involved and includes quality management, quality planning, quality control, quality assurance, a quality system, and total quality management.

"Quality assurance" refers to a process that reduces the potential for error throughout the phases of a project. On projects with a Q/A Program, the chances of producing a poor-quality deliverable are substantially reduced. Quality control procedures are an integral part of quality assurance. Historically, industry has used the term "quality control" to indicate a checking procedure for verifying the quality of deliverables. This checking commonly occurs at the end of the process, long after an error may have been made and compounded by subsequent work. While quality control checks at the end of a project are an essential exercise, scheduled periodic reviews at each phase are integral to Seller's Q/A Program. In addition, quality maintenance which meet or exceed manufacturers' or suppliers' requirements and best industry practices must be an integral part of Seller's Q/A Program.

The Quality Management Process

The surest way to achieve satisfactory quality is to adhere to a proven quality process. The term "quality" most accurately refers to a project's ability to satisfy needs when considered as a whole and each part of the process meets or exceeds the standards of Prudent Utility Practices.

Seller project management team is responsible for proactively planning and directing the quality of the work process, services, and deliverables. Seller's project management team utilizes a written maintenance manual for each Facility for the duration of the commercial operation that complies with the maintenance manuals of the manufacturers and suppliers from whom the Seller has purchased equipment or material and best industry practices.

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APPENDIX I

FORM OF MILESTONE SCHEDULE

Name of Facility:

Facility Milestones:

Milestone	Footnote	Milestone Date
Evidence of Site Control	1	
CEC Pre-Certification Obtained	2	
Interconnection Agreement executed	3	
Major Equipment procured	4	
Federal and State discretionary permits obtained	5	
Construction Start	6	
Firm Transmission obtained	7	
Commercial Operation Date	8	

The documents listed below in footnotes (which many be redacted to remove confidential information) shall be provided by Seller to Buyer by the Milestone Date for the Milestone shown above.

Footnotes:

1. Seller shall have provided Buyer with real property agreements sufficient to demonstrate that Seller or its Affiliates owns the Site, has a right-of-way with respect to the Site, or is the lessee of the Site under a lease.
2. Seller shall have provided Buyer with documentation from the CEC demonstrating the Facility is CEC Pre-Certified.
3. Seller shall have provided Buyer with a copy of the executed Interconnection Agreement for the Facility.
4. Seller shall have provided Buyer with documentation evidencing that all major equipment required for construction of the Facility have been ordered.
5. Seller shall have provided Buyer with a copy of a temporary or final certificate of occupancy (or equivalent) for the Facility.
6. Seller shall have provided Buyer with a fully executed copy of the Notice to Proceed, which many be redacted to remove confidential information, and evidence that construction has commenced (e.g., project management reports or photos on status of construction).

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7. Seller shall have provided Buyer with fully executed copy(ies) of the Transmission Service Agreements(s) with Transmission Service Provider showing Firm Transmission rights sufficient to deliver Facility Delivered Energy to the Points of Delivery.
8. Seller shall have provided written notice to Buyer certifying that the Facility satisfies the definition of Commercial Operation in Article I of this Agreement.

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APPENDIX J

GUARANTEED GENERATION AND MAXIMUM GENERATION

"**Guaranteed Generation**" means, for each Contract Year, the result of the following equation:

Guaranteed Generation (in MWh) =

$$\sum_{j=1}^{n} A_j \times (B_j \div C_j) \times D_j \times E_j$$

Where:

j = each Facility that has achieved Commercial Operation as of the end of such Contract Year;

n = the total number of Facilities that have achieved Commercial Operation as of the end of such Contract Year;

A = Facility Net Capacity for Facility "j";

B = the number of days in such Contract Year occurring after Facility "j" achieved Commercial Operation;

C = the total number of days in such Contract Year;

D = 8,760 hours;

E = ninety percent (90%); and.

$\sum$ = summation of n Facilities.

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"**Maximum Generation**" means (i) for each hour, the product of the Project Net Capacity for such hour, expressed in MW, and one hundred fifty percent (150%); and (ii) for each Contract Year, the result of the following equation:

Maximum Generation (in MWh) =

$$\sum_{j=1}^{n} A_j \times (B_j \div C_j) \times D_j \times E_j$$

Where:

j = each Facility that has achieved Commercial Operation as of the end of such Contract Year;

n = the total number of Facilities that have achieved Commercial Operation as of the end of such Contract Year;

A = Facility Net Capacity for Facility "j";

B = the number of days in such Contract Year occurring after Facility "j" achieved Commercial Operation;

C = the total number of days in such Contract Year;

D = 8,760 hours;

E = one hundred ten percent (110%); and

$\sum$ = summation of n Facilities.

Within thirty (30) days after the last Facility achieves Commercial Operation hereunder, the Parties will administratively update this Appendix J to replace the formulas for Guaranteed Generation and Maximum Generation for each Contract Year with a table substantially in the form set forth below, which specifies the Guaranteed Generation and Maximum Generation for each Contract Year. For purposes of populating such table, (i) the Guaranteed Generation and Maximum Generation for the Contract Year following the Contract Year in which the last Facility achieves Commercial Operation hereunder will be established based on the formulas set forth above in this Appendix J, and (ii) the Guaranteed Generation and Maximum Generation for each Contract Year thereafter will be equal to 99.5% of the value for the prior Contract Year.

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Form of Guaranteed Generation and Maximum Generation Table

Contract Year	Guaranteed Generation [MWh]	Maximum Generation [MWh]
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24(if applicable)		
25(if applicable)		

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APPENDIX K

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of commercial operation is delivered by _____[*licensed professional engineer*] ("**Engineer**") to _____ **(**"**Buyer**") in accordance with the terms of that certain Geothermal Portfolio Power Purchase Agreement dated _____ ("**Agreement**") by and between _____ 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 Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Facility with a nameplate capacity of no less than one hundred percent (100%) of the Facility Net Capacity.

3. The Facility's testing included a performance test demonstrating peak electrical output of no less than one hundred percent (100%) of the Facility Net Capacity for the Facility at the Points of Delivery, as adjusted for ambient temperature, resource temperature, and flow rate in accordance with the Performance Testing Conditions Criteria on the date of the Facility testing, and such peak electrical output, as adjusted, was peak output in MW.

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**
this _____ day of _____, 20__.

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APPENDIX L

FORM OF BUYER LIABILITY PASS THROUGH AGREEMENT

This Buyer Liability Pass Through Agreement (this "***BLPTA***") is entered into as of [_____], 2022 (the "***BLPTA Effective Date***") by and between [_____], a [_____] (together with its successors and permitted assigns "***Project Participant***"), California Community Power, a California joint powers authority ("***CC Power***"), and [_____], a [_____] (together with its successors and permitted assigns "***Seller***"). Seller, CC Power, and Project Participant are sometimes referred to herein individually as a "***Party***" and jointly as the "***Parties***".

RECITALS

WHEREAS, CC Power and Seller have entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "***PPA***") dated as of [_____], 2022;

WHEREAS, Project Participant is entering into this BLPTA to secure, in part, CC Power's obligations under the PPA;

WHEREAS, Project Participant is named as a Project Participant under the PPA and will derive substantial direct and indirect benefits from the execution and delivery of the PPA;

WHEREAS, Seller and CC Power will derive substantial and direct benefits from the execution and delivery of this BLPTA; and

WHEREAS, initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

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:

AGREEMENT

1. Project Participant Covenants. For value received, Project Participant does hereby unconditionally, absolutely, and irrevocably guarantee, as obligor and not as a surety, to Seller the complete and prompt payment of such Project Participant's Liability Share as set forth on Appendix M, as the same may be adjusted pursuant to Paragraph 4 hereof, of all payment obligations and liabilities now or hereafter owing by CC Power to Seller under the PPA, including liabilities for payments owed by CC Power pursuant to Section 11.2 of the PPA or any Termination Payment owed by CC Power, as applicable, and any other damage payments or reimbursement amounts (each such obligation or liability of CC Power under the PPA, a "***Guaranteed Amount***"). Any payment made directly from CC Power to Seller under the PPA shall reduce Project Participant's liability hereunder by reducing the total amount that is used to calculate the Guaranteed Amount pursuant to the preceding sentence. This BLPTA is an irrevocable, absolute, unconditional, and

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continuing guarantee of the punctual payment and performance, and not of collection, of Project Participant's Liability Share of the Guaranteed Amount. In the event CC Power shall fail to duly, completely, or punctually pay any amount owed by Buyer pursuant to the terms and conditions of the PPA, and such failure is not remedied within thirty (30) calendar days after notice thereof pursuant to Section 13.1(a) of the PPA, or in the event CC Power shall fail to duly, completely, or punctually pay any Termination Payment owed by CC Power pursuant to Section 13.3(d) of the PPA, Project Participant shall promptly pay Project Participant's Liability Share of the Guaranteed Amount, as required herein. Project Participant shall be liable to Seller for all reasonable costs and expenses (including reasonable attorneys' fees), if any, incurred in successfully enforcing Seller's rights under this Agreement ("***Enforcement Costs***"), which Enforcement Costs shall be in addition to Project Participant's liability for the Guaranteed Amount. Project Participant shall pay any Enforcement Costs to Seller within thirty (30) calendar days after Seller's delivery of an invoice therefor, together with documentation reasonably supporting the invoiced amount.

2. **Seller Waiver**. In consideration of the foregoing, Seller unconditionally waives all right to recover directly from CC Power any Termination Payment that is not paid by CC Power pursuant to Section 13.3(d) of the PPA, but the foregoing waiver does not apply to any other right or remedy of Seller under the PPA, including the right to recover payments owed by CC Power pursuant to Section 11.2 of the PPA, other amounts payable or reimbursable under the PPA or any other amounts incurred or accrued prior to termination of the PPA and the right to terminate the PPA as the result of a Default by Buyer.

3. **Demand Notice**. For avoidance of doubt, Seller may demand payment from Project Participant for purposes of this BLPTA only when and if a Termination Payment that is owed by CC Power pursuant to Section 13.3(d) is not duly, completely, or punctually paid by CC Power pursuant to the terms and conditions of the PPA, or when and if CC Power fails to make timely payment as required in the PPA and such failure is not remedied by CC Power within thirty (30) calendar days after notice thereof is issued pursuant to Section 13.1(a), as applicable. If CC Power fails to pay any amount when due pursuant to the PPA, and such failure is not remedied by CC Power within the timeframe afforded to CC Power to cure such non-payment, then Seller may exercise its rights under this BLPTA and make a payment demand upon Project Participant to pay Project Participant's Liability Share of the unpaid Guaranteed Amount (a "***Payment Demand***"). A Payment Demand shall be in writing and shall reasonably specify (a) what amount CC Power has failed to pay, (b) an explanation of why such payment is due and owing, (c) a calculation of Project Participant's Liability Share of the Guaranteed Amount, and (d) a specific statement that Seller is requesting that Project Participant pay its Liability Share of the unpaid Guaranteed Amount under this BLPTA. Project Participant shall, within fifteen (15) Business Days following its receipt of the Payment Demand, pay to Seller Project Participant's Liability Share of the unpaid Guaranteed Amount.

4. **Replacement BLPTAs.** Upon Seller's execution of Replacement BLPTAs pursuant to Section 5.12(b) of the PPA, Seller shall cancel this Buyer Liability Pass Through Agreement, effective upon the effectiveness of the Replacement BLPTAs. For the avoidance of doubt, the cancellation of existing Buyer Liability Pass Through Agreements shall not be effective unless and until the Replacement BLPTAs have become effective and binding.

5. **Scope and Duration of BLPTA**. The obligations under this BLPTA are independent of the obligations of CC Power under the PPA, and an action may be brought to enforce this BLPTA whether or

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not action is brought against CC Power under the PPA. This BLPTA shall continue in full force and effect from the BLPTA Effective Date, unless Replacement BLPTAs are executed, until both of the following have occurred: (a) the Agreement Term of the PPA has expired or terminated early, and (b) either (i) all payment and indemnity obligations of CC Power due and payable under the PPA are paid in full (whether directly or indirectly such as through set-off or netting) or have otherwise expired or (ii) Project Participant has paid the maximum Guaranteed Amount in full. This BLPTA shall also continue to be effective or be reinstated, as the case may be, if at any time any payment of any Guaranteed Amount by CC Power is rescinded or must otherwise be returned by Seller upon the insolvency, bankruptcy or reorganization of CC Power or similar proceeding, all as though such payment had not been made, and Project Participant's Liability Share of such Guaranteed Amount shall be subject to payment following a Payment Demand issued pursuant to this BLPTA. Without limiting the generality of the foregoing, and to the extent that the Project Participant has not paid its maximum Guaranteed Amount in full, the obligations of the Project Participant hereunder shall not be released, discharged, or otherwise affected, and this BLPTA shall not be invalidated or impaired or otherwise affected for the following reasons:

a) The extension of time for the payment of any Guaranteed Amount; or

b) Any amendment, modification or other alteration of the PPA; or

c) Any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount; or

d) Any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting CC Power, or any Project Participant, including but not limited to any rejection or other discharge of CC Power's obligations under the PPA, or such Project Participant's obligations hereunder, imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding; or

e) Any reorganization of CC Power or Project Participant, or any merger or consolidation of CC Power or Project Participant into or with any other Person, or the sale of all or substantially all of the assets of CC Power or Project Participants; or

f) The receipt, release, modification or waiver of, or failure to pursue or seek relief under or with respect to, the PPA, any other BLPTA, guaranty, collateral, pledge or security device whatsoever; or

g) CC Power's, or any Project Participant's inability to pay any Guaranteed Amount or perform its obligations under the PPA or hereunder as the case may be; or

h) Any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, by either CC Power or any Project Participant, including, without limitation, statute of frauds and accord and satisfaction; *provided* that Project Participant reserves the right to assert for itself any defenses, setoffs or counterclaims that CC Power is or may be entitled to assert against Seller under the terms of the PPA (but not otherwise), including with respect to disputes regarding the calculation of a Guaranteed Amount.

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6. **Waivers by Project Participant**. Project Participant hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraphs 2 and 3, (a) notice of acceptance, presentment, demand, or protest, notice of any of the events described in Paragraph 5, or any other notice or demand of any kind with respect to the Guaranteed Amounts and this BLPTA, (b) any requirement that Seller pursue or exhaust any right, power or remedy or proceed against CC Power under the PPA or otherwise or against any other Person, including any obligation to pursue any other BLPTAs, or to marshal assets, (c) any defense based on any of the matters described in Paragraph 4, (d) all rights of subrogation or other rights to pursue CC Power for payments made under this BLPTA until all amounts owing under the PPA have been paid in full, and (e) any duty of Seller to disclose any information or other matters relating to the business, operations or finances or other condition of CC Power, any Project Participant, or any other Person who has provided a BLPTA or other security or guaranty with respect to the PPA now or hereafter known to Seller. Project Participant further acknowledges and agrees that it is and will be bound by actions taken and elections made by CC Power under the PPA and waives any defense based on lack of notice or consent, or CC Power's authority or lack thereof or the validity, regularity or advisability of the actions taken or elections made.

7. **Project Participant Representations and Warranties**. Project Participant hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene Project Participant's organizational documents, any applicable Law or any contractual provisions binding on or affecting Project Participant, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Project Participant, threatened, against or affecting Project Participant or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Project Participant to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any member of the Project Participant), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Project Participant.

8. **Seller Representations and Warranties**. Seller hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene Seller's organizational documents, any applicable Law or any contractual provisions binding on or affecting Seller, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Seller, threatened, against or affecting Seller or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Seller to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including,

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any stockholder or creditor of the Seller), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Seller.

9. **CC Power Representations and Warranties**. CC Power hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene CC Power's organizational documents, any applicable Law or any contractual provisions binding on or affecting CC Power, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the CC Power, threatened, against or affecting CC Power or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of CC Power to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any member of CC Power), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by CC Power.

10. **Notices**. Notices under this BLPTA shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) Business Days after mailing if sent by certified, first-class mail, return receipt requested. Any Party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 10.

If delivered to Seller, to it at:

[____]
Attn: [____]
Fax: [____]

If delivered to Project Participant, to it at:

[____]
Attn: [____]
Fax: [____]

If delivered to CC Power, to it at:

[____]
Attn: [____]
Fax: [____]

11. **Governing Law and Forum Selection**. This BLPTA shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this BLPTA shall be brought in the federal courts of

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the United States or the courts of the State of California sitting in the county of San Francisco, California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

12. **Miscellaneous**. This BLPTA shall be binding upon the Parties and their respective successors and assigns and shall inure to the benefit of the Parties and their successors and permitted assigns. No provision of this BLPTA may be amended or waived except by a written instrument executed by Seller, CC Power, and Project Participant. No provision of this BLPTA confers, nor is any provision intended to confer, upon any third party (other than the Parties' successors and permitted assigns) any benefit or right enforceable at the option of that third party. This BLPTA embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the Parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this BLPTA is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the Parties hereto, and (ii) such determination shall not affect any other provision of this BLPTA and all other provisions shall remain in full force and effect. This BLPTA may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This BLPTA may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

13. **Assignment**. Except as provided below in this Paragraph 13, no Party may assign this BLPTA or its rights or obligations under this BLPTA, without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Seller may, without the prior written consent of Project Participant and CC Power, transfer or assign this BLPTA to any Person to whom Seller may assign its rights or obligations under the PPA, including assignments for financing purposes, including a Portfolio Financing; *provided*, Seller shall give Project Participant and CC Power notice at least fifteen (15) Business Days before the date of such proposed assignment and, except in the case of a collateral assignment or other assignment for financing purposes, provide Project Participant and CC Power a written agreement signed by the Person to which Seller wishes to assign its interests that provides that such Person will fully assume all of Seller's obligations and liabilities under this BLPTA, including obligations and liabilities that arose prior to the date of transfer or assignment, upon such transfer or assignment. Project Participant may, without the prior written consent of Seller and CC Power, transfer or assign this BLPTA to any member of CC Power that (A) has a Credit Rating of at least BBB- from S&P or Baa3 from Moody's, and (B) is a load serving entity; *provided*, Project Participant shall give Seller and CC Power notice at least fifteen (15) Business Days before the date of such proposed assignment and provide to Seller and CC Power a written agreement signed by the Person to which Project Participant wishes to assign its interests that provides that such Person will fully assume all of Project Participant's obligations and liabilities, including obligations and liabilities that arose prior to the date of transfer or assignment, under this BLPTA upon such transfer or assignment, and such agreement is reasonably acceptable to Seller.

14. **No Recourse to Members of Project Participant**. Project Participant 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. Project Participant shall solely be responsible for all debts, obligations and liabilities

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accruing and arising out of this BLPTA. Seller and CC Power shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Project Participant's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

15. No Recourse to Members of CC Power. CC Power 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. Except as expressly set forth in the PPA and this BLPTA, CC Power shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA, and as such, Seller and Project Participant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CC Power's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

16. CleanPowerSF as Project Participant. Paragraph 14 shall not apply if CleanPowerSF is the Project Participant, but the following shall apply:

a) Designated Fund. CleanPowerSF payment obligations under this BLPTA are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. CleanPowerSF's payment obligations under this BLPTA are not a charge upon the revenues or general fund of the San Francisco Public Utility Commission ("***SFPUC***") or the City and County of San Francisco or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City and County of San Francisco.

b) Controller Certification. CleanPowerSF's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of CleanPowerSF are not authorized to request, and CleanPowerSF is not required to reimburse Seller for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of CleanPowerSF are not authorized to offer or promise, nor is CleanPowerSF required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

c) Biennial Budget Process. For each City and County of San Francisco biennial budget cycle during the term of this BLPTA, CleanPowerSF agrees to take all necessary action to include the maximum amount of its annual payment obligations under this BLPTA in its budget submitted to the City and County of San Francisco's Board of Supervisors for each year of that budget cycle.

d) Compliance with Laws. Each Party shall keep itself fully informed of all applicable federal, state, and local laws in any manner affecting the performance of its obligations under this BLPTA, and must at all times materially comply with such applicable laws as they may be amended from time to time.

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e) Prohibition on Political Activity with City Funds. In performing any services required under this BLPTA, Seller shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this BLPTA from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco.

f) Non-discrimination in Contracts. Seller shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

g) Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Seller does not as of the date of this BLPTA, and will not during the term of this BLPTA, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

h) Submitting False Claims. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (1) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (3) conspires to defraud the City by getting a false claim allowed or paid by the City; (4) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (5) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

i) Consideration of Salary History. Seller shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Seller is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this BLPTA or in furtherance of this BLPTA, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property.

j) Consideration of Criminal History in Hiring and Employment Decisions. Seller agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to Seller's operations to the extent those operations are in furtherance of the performance of this BLPTA, shall apply only to applicants and employees

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who would be or are performing work in furtherance of this BLPTA, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

k) Conflict of Interest. By executing this BLPTA, Seller certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this BLPTA.

l) Campaign Contributions. By executing this BLPTA, Seller acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Seller's board of directors; Seller's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Seller. Seller shall inform the relevant persons of the limitation on contributions imposed by Section 1.126.

m) MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles.

n) Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, Seller shall not provide any items to the City in performance of this BLPTA which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of Seller to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

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o) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 16(d) through 16(n) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 16(d) through 16(n) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

17. City of San José (San José Clean Energy) as Project Participant. Paragraph 14 shall not apply if the City of San José, as administrator of San José Clean Energy ("***SJCE***") is the Project Participant, but the following shall apply:

a) Designated Fund. The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; *provided, however*, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) ("***Designated Fund***") for payment of its obligations under this BLPTA. Subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the SJCE's obligations, SJCE agrees to establish rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this BLPTA.

b) Limited Obligations. SJCE's payment obligations under this BLPTA are special limited obligations of the SJCE payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

c) Nondiscrimination/Non-Preference. In performing its obligations under this BLPTA, Seller shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Seller to file, and cause any Seller's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

d) Conflict of Interest. Seller represents that it is familiar with the local and state conflict of interest laws and agrees to comply with those laws in performing this BLPTA. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of

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a conflict of interest. Seller shall avoid all conflicts of interest or appearances of conflicts of interest in performing this BLPTA. Seller has the obligation of determining if the manner in which it performs any part of this BLPTA results in a conflict of interest or an appearance of a conflict of interest and shall immediately notify SJCE in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Seller's violation of this subsection (ii) is a material breach.

e) Environmentally Preferable Procurement Policy. Seller shall perform its obligations under this BLPTA in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 13.1(g) be a material breach of this BLPTA or otherwise give rise to a Default or entitle SJCE to terminate this BLPTA.

f) Gifts Prohibited. Seller represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Seller's violation of this subsection (iv) is a material breach.

g) Disqualification of Former Employees. Seller represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

h) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 17(d) through 17(g) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 17(c) through 17(h) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

IN WITNESS WHEREOF, the Parties have caused this BLPTA to be duly executed and delivered by their duly authorized representatives on the date first above written.

[**PROJECT PARTICIPANT**]:

By:_____

Printed Name:_____
Title:_____

CALIFORNIA COMMUNITY POWER, a California joint powers authority:

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By:_____

Printed Name:_____
Title:_____

[**SELLER**]:
By:_____

Printed Name:_____
Title:_____

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APPENDIX M

PROJECT PARTICIPANTS AND LIABILITY SHARES

Project Participant	Liability Share
Central Coast Community Energy	17.9%
CleanPowerSF	13.9%
Peninsula Clean Energy	17.1%
Redwood Coast Energy Authority	3.2%
San Jose Clean Energy	19.6%
Silicon Valley Clean Energy	13.4%
Sonoma Clean Power Authority	11.2%
Valley Clean Energy	3.7%

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APPENDIX N

ILLUSTRATIVE FACILITY LIST

Project Name	Location	New or Existing	2023	2024	2025	2026	2027	2028	Estimated COD
NV Gonder 1	NV	New		15					12/31/2024
NV Gonder 2	NV	New			20				9/1/2025
NV Gonder 3	NV	New			20				10/1/2025
NV Eldorado 4	NV	New			20				10/1/2024
NV Eldorodo 5	NV	New				20			1/1/2026
CA Imperial Valley 1	CA	New			25				6/1/2025
CA Imperial Valley 2	CA	New				25			12/31/2026
CA CAISO 3	CA	New						30	12/31/2028

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APPENDIX O

FORM OF PROGRESS REPORT

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 likely to potentially 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. A detailed description of all actions taken by Seller to comply with Prevailing Wage Requirement and Project Labor Agreement requirements of this Agreement.

12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

13. 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.

14. Workforce Development reporting (if applicable). Format to be provided by Buyer.

15. Any other documentation reasonably requested by Buyer.

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APPENDIX P

FORM OF ATTESTATION
_____(Seller)_____ Green Attribute Attestation and Bill of Sale

_____ ("Seller") hereby sells, transfers and delivers to _____ ("Buyer") the Green Attributes and Green Tag Reporting Rights associated with the generation from the Facility described below:

Facility name and location:
Fuel Type:
Capacity (MW):_____ Operational Date:

As applicable: CEC Reg. no. ___ Energy Admin. ID no. ____ Q.F. ID no. ___

Dates		MWhrs generated
_____	_	_____
_____	_	_____
_____	_	_____

in the amount of one Green Attribute or its equivalent for each megawatt hour generated.

Seller further attests, warrants and represents as follows:

i) the information provided herein is true and correct;

ii) its sale to Buyer is its one and only sale of the Green Attributes and associated Green Tag Reporting Rights referenced herein;

iii) the Facility generated and delivered to the grid the Energy in the amount indicated as undifferentiated Energy; and

iv) Seller owns the Facility and each of the Green Attributes and Green Tag Reporting Rights associated with the generation of the indicated Energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the Green Attributes and Green Tag Reporting Rights associated with the generation of the Energy for delivery to the grid.

Contact Person: _____

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APPENDIX Q

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by ORGP LLC, a Delaware limited liability company ("**Seller**") to California Community Power, 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 10.1(f) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information:[1]

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Dispatchable (yes or no)	
Point of Interconnection with CAISO Controlled Grid (substation or transmission line)	
Path 26 (North or South)	
LCR Area (if any)	
Flexible Capacity (MW) (if any)	
Flexible Capacity category	
Slice of Day category (if applicable)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	**Unit CAISO NQC (MW)**	**Unit CAISO EFC (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.

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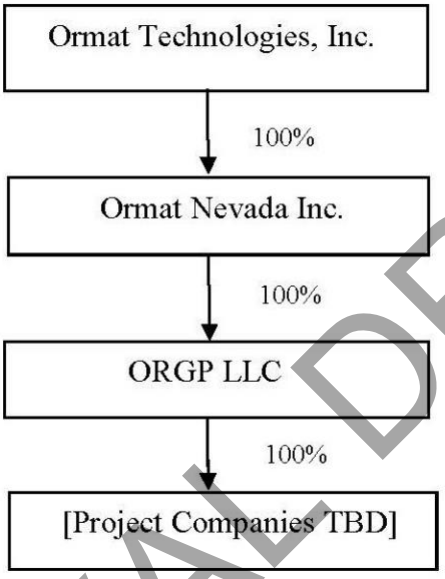
SCHEDULE A

ORGANIZATIONAL AND OWNERSHIP STRUCTURE OF PROJECT COMPANIES, SELLER, AND EQUITY OWNERS



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ORGP LLP GEOTHERMAL PORTFOLIO

PROJECT PARTICIPATION SHARE AGREEMENT

among

CENTRAL COAST COMMUNITY ENERGY

and

CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH ITS PUBLIC UTILITIES COMMISSION CLEANPOWERSF

and

PENINSULA CLEAN ENERGY

and

REDWOOD COAST ENERGY AUTHORITY

and

CITY OF SAN JOSÉ, ADMINISTRATOR OF SAN JOSÉ CLEAN ENERGY

and

SILICON VALLEY CLEAN ENERGY

and

SONOMA CLEAN POWER

and

VALLEY CLEAN ENERGY

and

CALIFORNIA COMMUNITY POWER

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ORGP LLP GEOTHERMAL PORTFOLIO

PROJECT PARTICIPATION SHARE AGREEMENT

PREAMBLE

This Project Participation Share Agreement ("**Agreement**") is entered into as of _____ (the "**Effective Date**"), by and among Central Coast Clean Energy, a California joint powers authority, the City and County of San Francisco acting by and through its Public Utilities Commission, CleanPowerSF, Peninsula Clean Energy, a California joint powers authority, Redwood Coast Energy Authority, a California joint powers authority, City of San José, a California municipality, Silicon Valley Clean Energy, a California joint powers authority, Sonoma Clean Power, a California joint powers authority, and Valley Clean Energy, a California joint powers authority (each individually a "**Project Participant**" and collectively referred to as the "**Project Participants**") and California Community Power ("**CCP**"), a California joint powers authority. CCP and the Project Participants 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 CCP is a Joint Powers Authority, was formed for the purpose of developing, acquiring, constructing, owning, managing, contracting for, engaging in, or financing electric energy generation and storage projects, and for other purposes; and

WHEREAS, the Project Participants have participated with CCP in the negotiation of an agreement for purchase of the electric output of a portfolio of geothermal powered electric generating plants (the "**Project**" as described in Section 3.1 of the PPA), and CCP is to enter into a Renewable Power Purchase Agreement ("**PPA**"), which is incorporated herein by this reference, with ORGP LLC, a Delaware limited liability company ("**Project Developer**"), providing for purchase of the electric output, and associated rights, benefits, and credits from the Project on behalf of the Project Participants.

WHEREAS, pursuant to this Agreement, CCP shall cause to deliver to each Project Participant the Project Participant's associated share of the electric output and associated rights, benefits, and credits of the Project.

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:

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ARTICLE 1
DEFINITIONS

1.1. **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 8.6(c) of the PPA.

"**Affiliate**" means, as to any Person, any other Person that, directly or indirectly, is in Control of, is under Control by, or is under common Control with such Person.

"**Agreement**" has the meaning set forth in the Preamble and any Exhibits, schedules, and any written supplements hereto.

"Amended Annual Budget" means the budget approved by the Project Committee and adopted by the CCP Board pursuant to Section 5.1(c) of this Agreement.

"**Ancillary Services**" means all ancillary services, products and other attributes, if any, associated with the installed capacity of the Project.

"**Annual Budget**" means the budget approved by the Project Committee and adopted by the CCP Board pursuant to Section 5.1(c) of this Agreement.

"**Authorized Representative**" has the meaning set forth in Section 1.1 of the PPA.

"**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.

"**Billing Statement**" has the meaning set forth in Section 9.2 of this Agreement.

"**Buyer Liability Pass Through Agreement**" **or** "**BLPTA**" means, for each Project Participant, the form set forth in Appendix L of the PPA, as executed by such Project Participant, countersigned by CCP, and delivered to the Project Developer.

"**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.

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

"**CAISO Balancing Authority Area**" has the meaning set forth in the CAISO Tariff.

"**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.

"**California Renewables Portfolio Standard**" or "**RPS**" means the renewables portfolio standard 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, and as administered by the CEC as set forth in CEC RPS Eligibility Guidebook (9th Ed.), as may be subsequently modified by the CEC, and the CPUC as set forth in CPUC Decision ("D.") 08-08-028, D.08-04-009, D.10-03-021, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038, D.13-11-024, D.14-12-023, D.17-06-026, and D.19-02-007, and as may be modified by subsequent decisions of the CPUC or by subsequent legislation and regulations promulgated with respect thereto.

"Capital Improvements" means any unit of property, property right, land or land right which is a replacement, repair, addition, improvement or betterment to the Project or any transmission facilities relating to, or for the benefit of, the Project, the betterment of land or land rights or the enlargement or betterment of any such unit of property constituting a part of the Project or related transmission facilities which is (i) consistent with Prudent Utility Practices and determined necessary and/or desirable by the CCP Board or (ii) required by any governmental agency having jurisdiction over the Project.

"CCP Board" means the Board of Directors of California Community Power.

"CCP Manager" means the General Manager of California Community Power.

"**CEC**" means the California Energy Commission, or any successor agency performing similar statutory functions.

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

"**Capacity Buydown Damages**" means any liquidated damages paid by the Project Developer to CCP pursuant to Section 3.7(a) of the PPA.

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"**CEQA**" means the California Environmental Quality Act, as amended or supplemented from time to time.

"Chairperson" has the meaning set forth in Exhibit D.

"**Change of Control**" has the meaning set forth in Section 1.1 of the PPA.

"**Compliance Costs**" has the meaning set forth in Section 8.6(c) of the PPA.

"**Commercial Operation**" has the meaning set forth in Section 1.1 of the PPA.

"**Commercial Operation Date**" or "**COD**" has the meaning set forth in Section 1.1 of the PPA.

"**Community Choice Aggregator**" has the meaning set forth in California Public Utilities Code § 331.1.

"**Confidential Information**" has the meaning set forth in Section 14.21(a) of the PPA.

"**Control**" means (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.

"**Construction Start**" has the meaning set forth in Section 1.1 of the PPA.

"**Contract Price**" has the meaning set forth on the Cover Sheet of the PPA.

"**Contract Year**" means (a) the period beginning on the Commercial Operation Date of the first Facility to achieve Commercial Operation, as determined pursuant to Section 3.5 of the PPA, and ending on December 31st of that year, and (b) each succeeding period of twelve (12) consecutive months following the period described in the preceding clause (a) until the end of the Delivery Term; provided that, unless the Commercial Operation Date for the last Facility to achieve Commercial Operation occurs on January 1st of any Contract Year, the last Contract Year will be shorter than twelve (12) months..

"**Costs**" means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Project Participant in terminating any arrangement pursuant to which it has hedged its obligations; and all reasonable attorneys' fees and expenses incurred by the Project Participant in connection with the Step-Up Allocation.

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

"Cured Payment Default" means a Payment Default that has been cured in accordance with Section 12.4 of this Agreement.

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"**Damage Payment**" has the meaning set forth in Section 1.1 of the PPA.

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

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

"**Default**" has the meaning set forth in Section 13.1 of the PPA.

"Defaulting Project Participant" has the meaning set forth in Section 12.1.

"**Delay Damages**" has the meaning set forth in Section 3.7(a) of the PPA.

"**Delivered Energy**" has the meaning set forth in Section 1.1 of the PPA.

"**Delivery Term**" has the meaning set forth in Section 2.2 of the PPA.

"**Delivery Term Security**" has the meaning set forth in Section 5.9(b) of the PPA.

"Designated Fund" has the meaning set forth in Section 10.5.

"**Effective Date**" has the meaning set forth in the Preamble.

"**Electric Metering Devices**" has the meaning set forth in Section 1.1 of the PPA.

"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 Megawatt-hours or multiple units thereof.

"**Energy Management System**" or "**EMS**" means the Project's energy management system.

"**Entitlement Share**" means the percentage entitlement of each Project Participant as set forth in Exhibit B of this Agreement (entitled "Schedule of Project Participant Entitlement Shares and Step-Up Allocation Caps") attributable to each such Project Participant, as may be amended pursuant to Section 4.2 or 12.8.

"**Entitlement Share Reduction Amount**" has the meaning set forth in Exhibit C.

"**Entitlement Share Reduction Compensation Amount**" has the meaning set forth in Exhibit C.

"**Entitlement Share Reduction Notice**" has the meaning set forth in Exhibit C.

"**Estimated Monthly Project Cost**" has the meaning set forth in Section 8.1.

"**Facility**" has the meaning set forth in Section 1.1 of the PPA.

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"**Facility Energy**" has the meaning set forth in Section 1.1 of the PPA.

"**FERC**" means the Federal Energy Regulatory Commission or any successor government agency.

"**Force Majeure**" has the meaning set forth in Section 14.6 of the PPA.

"**Gains**" means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from such Step-Up Allocation for the remaining Delivery Term of the PPA, determined in a commercially reasonable manner. Factors used in determining the economic benefit to such Project Participant may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of such Project Participant, 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 Delivery Term, and include the value of Green Attributes and Capacity Attributes.

"**GHG Regulations**" means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

"**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, except to the extent that the Party is acting solely in its governmental capacity.

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from each Facility, or, as applicable, from any facility that generates Replacement Energy, and, in each case, 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; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Delivered Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from each Facility, (ii) production tax credits associated with the construction or operation of each Facility and other financial incentives

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in the form of credits, reductions, or allowances associated with each Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, (iv) emission reduction credits encumbered or used by each Facility for compliance with local, state, or federal operating or air quality permits, or (v) "portfolio energy credits" as defined in Nevada Revised Statutes Section 704.7803 associated with the Parasitic Load of any Facility.

"**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.

"**Greenhouse Gas**" or "**GHG**" has the meaning set forth in the GHG Regulations or in any other applicable Laws.

"**Indemnifying Party**" has the meaning set forth in Section 13.5.

"**Interest Rate**" has the meaning set forth in Section 11.3 of the PPA.

"**Invoice Amount**" has the meaning set forth in Section 9.2.

"**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 January 29, 2021, as amended from time to time, under which CCP 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.

"**Late Payment Notice**" means a notice issued by CCP to a Project Participant pursuant to Section 9.7.

"**Late Payment Charge**" has the meaning set forth in Section 9.7.

"**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.

"**Letter(s) of Credit**" has the meaning set forth in Section 1.1 the PPA.

"**Losses**" means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section

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12.8(b) or 12.8(c), an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from such Step-Up Allocation for the remaining Delivery Term of the PPA, determined in a commercially reasonable manner. Factors used in determining economic loss to such Project Participant may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Project Participant, 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 Delivery Term of the PPA and must include the value of Green Attributes and Capacity Attributes.

"**Month**" means a calendar month.

"**Monthly Costs**" has the meaning set forth in Section 9.1.

"**Monthly Payment**" means the payment required to be made by CCP to Project Developer each month of the Delivery Term as compensation for the Product, as calculated in accordance with Section 11.2 of the PPA and Appendix A of the PPA.

"**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 Strike Price**" has the meaning set forth in Section 1.1 of the PPA.

"**NERC**" means the North American Electric Reliability Corporation.

"**Net Qualifying Capacity**" or "**NQC**" has the meaning set forth in the CAISO Tariff.

"**Non-Defaulting Project Participant**" has the meaning set forth in Section 12.1.

"**Normal Vote**" has the meaning set forth in Exhibit D.

"**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).

"**Operating Account**" means an account established by CCP for each Project Participant pursuant to Section 8.2.

"**Operating Cost**" means the share of the Annual Budget or Amended Annual Budget attributable to the applicable Month for a Billing Statement plus any Accepted Compliance Costs approved by the CCP Board pursuant to Section 5.2(a)(xiii).

"**Party**" has the meaning set forth in the Preamble.

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"**Payment Default**" has the meaning set forth in Section 12.2.

"**Payment Default Termination Deadline**" has the meaning set forth in Section 12.6.

"**Parasitic Load**" has the meaning set forth in Section 1.1 of the PPA.

"**Permitted Transferee**" has the meaning set forth in Section 1.1 of the PPA.

"**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.

"**Power Purchase Agreement**" or "**PPA**" means the agreement between CCP and Project Developer for the purchase of the electric output of the Project, executed on _____.

"**PPA Defaulting Party**" means a "Defaulting Party" as defined in in Section 13.1 of the PPA.

"**PPA Non-Defaulting Party**" means a "Non-Defaulting Party" as defined in Section 13.3 of the PPA.

"**PMAX**" means the applicable CAISO-certified maximum operating level of the Facility.

"**PMIN**" means the applicable CAISO-certified minimum operating level of the Facility.

"**PNode**" has the meaning set forth in the CAISO Tariff.

"**Product**" has the meaning set forth in Section 3.1

"**Progress Report**" means a progress report including the items set forth in Appendix O of the PPA.

"**Project**" has the meaning set forth in Section 1.1 of the PPA.

"**Project Committee**" means the committee established in accordance with Section 6.1.

"**Project Development Security**" has the meaning set forth in Section 5.9(a) of the PPA.

"**Project Developer**" means ORGP LLC or assignee as permitted under the PPA.

"**Project Participants**" means those entities executing this Agreement, as identified in the Preamble, together in each case with each entity's successors or assigns.

"**Project Revenue Rights**" means all rights of a Project Participant under this Agreement to any revenue associated with the Facility Energy, Capacity Attributes, Ancillary Services, or Green Attributes associated with the Project.

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"**Project Rights**" means all rights and privileges of a Project Participant under this Agreement, including but not limited to its Entitlement Share, its right to receive the Product from the Project, and its right to vote on Project Committee matters.

"**Project Rights and Obligations**" means the Project Participants' Project Rights and obligations under the terms of this Agreement.

"**Proposed Entitlement Share Reduction Compensation Amount**" has the meaning set forth in Exhibit C.

"**Proposed Facility**" has the meaning set forth in Section 3.1 of the PPA.

"**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 industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States, and (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 in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and 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.

"**Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

"**RA Compliance Showing**" means the RAR compliance or advisory showings (or similar or successor showings) that 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**" has the meaning set forth in Section 1.1 of the PPA.

"**RA Shortfall Month**" has the meaning set forth in Section 1.1 of the PPA.

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**REC**" or "**Renewable Energy Credit**" means a certificate of proof associated with the generation of electricity from an Eligible Renewable Energy Resource, which certificate is issued through the accounting system established by the CEC pursuant to California Public Utilities Code Section 399.25 and satisfies the requirements of California Public Utilities Code Section 399.12(h), evidencing that one (1) MWh of energy was generated and delivered from such Eligible Renewable Energy Resource. Such certificate is a tradable environmental commodity (also known as a "green tag") for which the owner of the REC can prove that it has purchased renewable energy.

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"**Reliability Network Upgrades**" has the meaning set forth in the CAISO Tariff.

"**Replacement Energy**" has the meaning set forth in Section 9.2 of the PPA.

"**Replacement RA**" has the meaning set forth in Section 1.1 of the PPA.

"**Resource Adequacy Benefits**" means the rights and privileges attached to a Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes local, zonal or otherwise locational attributes associated with a Facility (if any).

"**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**" has 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, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006, 21-06-035 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.

"**Schedule**" has the meaning set forth in the CAISO Tariff, and "**Scheduled**" has a corollary meaning.

"**Scheduled Energy**" has the meaning set forth in Section 1.1 of the PPA.

"**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.

"**Settlement Interval**" has the meaning set forth in the CAISO Tariff.

"**Settlement Period**" has the meaning set forth in the CAISO Tariff.

"**Showing Month**" means the calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, 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.

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"**Site**" has the meaning set forth in Section 1.1 of the PPA.

"**Step-Up Allocation Cap**" has the meaning set forth in Section 12.8(a).

"**Step-Up Invoice**" means an invoice sent to a Non-Defaulting Project Participant as a result of a Defaulting Project Participant's Payment Default, which invoice shall separately identify any amount owed with respect to the monthly Billing Statement of the Defaulting Project Participant, as the case may be, pursuant to Section 12.7.

"Step-Up Invoice Amount" has the meaning set forth in Section 12.7.

"Step-Up Invoice Amount Cap" has the meaning set forth in Section 12.7.

"**Step-Up Reserve Account**" has the meaning set forth in Section 12.7(a)(i).

"**System Emergency**" has the meaning set forth in Section 1.1 of the PPA.

"**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 Delivery 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.

"**Termination Payment**" has the meaning set forth in Section 1.1 of the PPA.

"**Transmission Provider**" has the meaning set forth in Section 1.1 of the PPA.

"**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.

"**Unanimous Vote**" has the meaning set forth in Exhibit D.

"**Uncontrollable Forces**" means any Force Majeure event and any cause beyond the control of any Party, which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, epidemic or pandemic (excluding impacts of the disease designated COVID-19 or the related virus designated SARS-CoV-2 impacts actually known by the Party claiming the event of Force Majeure as of the Effective Date), an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, licenseor permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the PPA, as defined therein.

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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

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Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings;

(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; and

(n) in the event of any conflict or inconsistency between the terms of this Agreement and the terms of the PPA, the terms and provisions of this Agreement shall control.

ARTICLE 2
EFFECTIVE DATE AND TERM

2.1. Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the occurrence of all of the following: (i) the termination of the PPA and (ii) the termination of the Buyer Liability Pass Through Agreement for all the Project Participants, and (iii) all Parties have met their obligations under this Agreement ("**Term**").

(b) Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. All indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

ARTICLE 3
AGREEMENT

3.1. Transaction. Subject to the terms and conditions of this Agreement, the Project Participants authorize CCP to purchase all Facility Energy, Capacity Attributes, Ancillary Services, and Green Attributes associated with the Project, any Replacement RA, or Replacement Energy provided pursuant to the PPA (collectively the "**Product**"), on behalf of the Project Participants. CCP shall cause Project Developer to deliver each Project Participant's Entitlement Share of the Product to such Project Participant, including but not limited to (i) any revenue associated with the Facility Energy, Capacity Attributes, Ancillary Services, or Green Attributes associated with the Project, and (ii) the Capacity Attributes and Green Attributes associated with the Project or otherwise provided to CCP pursuant to the PPA. To the extent that any Facility Energy, Capacity Attributes, Ancillary Services, or Green Attributes associated with the Project, any Replacement RA, or Replacement Energy are delivered to CCP, then CCP shall transfer each Project Participant's Entitlement Share of such Facility Energy, Capacity Attributes, Ancillary Services, or Green Attributes to the Project Participants. CCP shall cause all Facility Energy and associated Green Attributes delivered to the Project Participants by the Project Developer, and shall deliver to the Project Participants all Facility Energy and associated Green Attributes that CCP receives from the Project Developer, on a fully bundled basis in order to meet the requirements of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1). CCP shall administer the PPA and oversee the operation of the Project. CCP shall not sell, assign, or otherwise transfer any Product, or any portion thereof, to any third party

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other than to the Project Participants, unless authorized by the Project Participants pursuant to this Agreement.

3.2. RPS Compliance.

(a) CCP represents and warrants that:

(i) the Product and any Replacement Energy purchased by CCP on behalf of the Project Participants consists of Energy and Green Attributes only from Eligible Renewable Energy Resources of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1);

(ii) the Energy and Green Attributes that are delivered to Project Participants by Project Developer, or delivered to Project Participants by CCP to the extent Project Developer delivers Energy and Green Attributes to CCP, consists only of Energy and Green Attributes that have not yet been generated prior to the commencement of the term of the PPA or the Effective Date of this Agreement;

(iii) the Energy that is delivered to Project Participants by Project Developer, or delivered to Project Participants by CCP to the extent Project Developer delivers Energy to CCP, shall be transferred to each Project Participant in real time; and

(b) If the PPA includes an agreement to dynamically transfer electricity to a California balancing authority, then any transactions implemented under this Agreement are not contrary to any condition imposed by a balancing authority participating in the dynamic transfer arrangement.

ARTICLE 4
ENTITLEMENT SHARE

4.1. Initial Entitlement Share. Each Project Participant's initial Entitlement Share as of the Effective Date shall be set forth in Column B of the Table provided in Exhibit B of this Agreement (entitled "Schedule of Project Participant Entitlement Shares and Step-Up Allocation Caps"). Any revisions to the Entitlement Share specified in Exhibit B pursuant to Section 4.2. or Section 12.8 shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

4.2. Change of Entitlement Share.

(a) Any Project Participant may reduce its Entitlement Share of the Project pursuant to the process set forth in Exhibit C.

(b) Upon each occurrence of CCP accepting a Proposed Facility pursuant to Section 3.1 of the PPA, the CCP Board may consider and approve a change to the Entitlement Shares of the Project Participants.

4.3. Reduction of Entitlement Share to Zero. If any Project Participant's Entitlement Share is reduced to zero through any process specified in Exhibit C, such Project Participant shall

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remain a Party to this Agreement and shall be subject to all rights, obligations, and liabilities of this Agreement, including but not limited to any liabilities for Monthly Payments, Damage Payment, or Termination Payment, as applicable, and any other damage payments or reimbursement amounts under the PPA.

ARTICLE 5
OBLIGATIONS OF CCP; ROLE OF CCP BOARD AND CCP MANAGER

5.1. Obligations of CCP.

(a) CCP shall take such commercially reasonable actions or implement such commercially reasonable measures as may be necessary or desirable for the utilization, maintenance, or preservation of the rights and interests of the Project Participants in the Project including, if appropriate, such enforcement actions or other measures as the Project Committee or CCP Board deems to be in the Project Participants' best interests. To the extent not inconsistent with the PPA or other applicable agreements, CCP may also be authorized by the Project Participants to assume responsibilities for planning, designing, financing, developing, acquiring, insuring, contracting for, administering, operating, and maintaining the Project to effectuate the conveyance of the Product to Project Participants in accordance with Project Participants' Entitlement Shares.

(b) To the extent such services are available and can be carried forth in accordance with the PPA, CCP shall also provide such other services, as approved by the Project Committee or CCP Board, as may be deemed necessary to secure the benefits and/or satisfy the obligations associated with the PPA.

(c) Adoption of Annual Budget. The Annual Budget and any amendments to the Annual Budget shall be prepared and approved in accordance with this Section 5.1(c).

(i) The CCP Manager will prepare and submit to the Project Committee a proposed Annual Budget at least ninety (90) days prior to the beginning of each Contract Year during the term of this Agreement. The proposed Annual Budget shall be based on the prior Contract Year's actual costs and shall include reasonable estimates of the costs CCP expects to incur during the applicable Contract Year in association with the administration of the PPA, including the cost of insurance coverages that are determined to be attributable to the Project by action of the CCP Board. Upon approval of the proposed Annual Budget by a Normal Vote of the Project Committee, the CCP Manager shall present the proposed Annual Budget to the CCP Board. The CCP Board shall adopt the Annual Budget no later than thirty (30) days prior to the beginning of such Contract Year and shall cause copies of such adopted Annual Budget to be delivered to each Project Participant.

(ii) At any time after the adoption of the Annual Budget for a Contract Year, the CCP Manager may prepare and submit to the Project Committee a proposed Amended Annual Budget for and applicable to the remainder of such Contract Year. The proposal shall (A) explain why an amendment to the Annual Budget is needed, (B) compare estimated costs against actual costs, and (C) describe the events that triggered the need for additional funding. Upon approval of the proposed Amended Annual Budget by a Normal Vote of the Project Committee,

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the CCP Manager shall present the proposed Amended Annual Budget to the CCP Board. Upon adoption of the Amended Annual Budget by the CCP Board, such Amended Annual Budget shall apply to the remainder of the Contract Year and the CCP Board shall cause copies of such adopted Amended Annual Budget to be delivered to each Project Participant.

(iii) Reports. CCP will prepare and issue to Project Participants the following reports each quarter of a year during the Term:

(A) Financial and operating statement relating to the Project.

(B) Variance report comparing the costs in the Annual Budget versus actual costs, and the status of other cost-related issues with respect to the Project.

(d) Records and Accounts. CCP will keep, or cause to be kept, accurate records and accounts of the Project as well as of the operations relating to the Project, all in a manner similar to accepted accounting methodologies associated with similar projects. All transactions of CCP relating to the Project with respect to each Contract Year shall be subject to an annual audit. Each Project Participant shall have the right at its own expense to examine and copy the records and accounts referred to above on reasonable notice during regular business hours.

(e) Information Sharing. Upon CCP's request, each Project Participant agrees to coordinate with CCP to provide such information, documentation, and certifications that are reasonably necessary for the design, financing, refinancing, development, operation, administration, maintenance, and ongoing activities of the Project, including information required to respond to requests for such information from any federal, state, or local regulatory body or other authority.

(f) Consultants and Advisors Available. CCP shall make available to the Project Committee all consultants and advisors, including financial advisors and legal counsel that are retained by CCP, and such consultants, counsel and advisors shall be authorized to consult with and advise the Project Committee on Project matters. CCP agrees to waive any conflicts of interest or any other applicable professional standards or rules as required by consultants, counsel, and advisors to advise the Project Committee on Project matters.

(g) Deposit of Insurance Proceeds. CCP shall promptly deposit any insurance proceeds received by CCP from any insurance obtained pursuant to this Agreement or otherwise associated with the Project into the Operating Accounts of the Project Participants based on each Project Participants' Entitlement Shares.

(h) Liquidated and Other Damages. Any amounts paid to CCP, or applied against payments otherwise due by CCP pursuant to the PPA or each Project Participant's respective BLPTA, by the Project Developer shall be deposited on a pro rata share, based on each Project Participant's Entitlement Share into each Project Participant's Operating Account. Liquidated damages include, but are not limited to Delay Damages, RA Deficiency Amount, Capacity Buydown Damages, Shortfall Liquidated Damages, Damage Payment, and Termination Payment.

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(i) Green Attributes. CCP shall take such actions or implement such measures as may be necessary to facilitate the transfer of Green Attributes from the Project Developer to the Project Participants.

(j) Resale of Product. Any Project Participant may direct CCP to remarket such Project Participant's Entitlement Share of the Product, or such Project Participant's Entitlement Share of any part of the Product. If CCP incurs any expenses associated with the remarketing activities pursuant to this Section 5.1(j), then CCP shall include the total amount of such expenses as a Monthly Cost on the Project Participant's next Billing Statement. Prior to offering the Project Participant's Entitlement Share of the Product, or the Project Participant's Entitlement Share of any part of the Product to any third party, CCP shall first offer the Product or portion of the Product to the other Project Participants. The amount of compensation paid to the selling Project Participant shall be negotiated and agreed to between the selling Project Participant and the purchasing Project Participant or third party. Any payments for any resold Product pursuant to this Section 5.1(j) shall be transmitted directly from the purchasing Project Participant or purchasing third party to the reselling Project Participant. Any such resale to a third party shall not convey any rights or authority over the operation of the Project, and the Project Participant shall not make a representation to the third party that the resale conveys any rights or authority over the operation of the Project.

(k) Uncontrollable Forces. CCP shall not be required to provide, and CCP shall not be liable for failure to provide, the Product, Replacement RA, or other service under this Agreement when such failure, or the cessation or curtailment of, or interference with, the service is caused by Uncontrollable Forces or by the failure of the Project Developer, or its successors or assigns, to obtain any required governmental permits, licenses, or approvals to acquire, administer, or operate the Project; provided, however, that the Project Participants shall not thereby be relieved of their obligations to make payments under this Agreement except to the extent CCP is so relieved pursuant to the PPA, and provided further that CCP shall pursue all applicable remedies against the Project Developer under the PPA and distribute any remedies obtained pursuant to Section 5.1(h).

(l) Insurance. Within one hundred and eighty days (180) of the Effective Date of this Agreement, CCP shall secure and maintain, during the Term, insurance coverage as follows:

(i) Commercial General Liability. CCP shall maintain, or cause to be maintained, 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 CCP's obligations under this Agreement and including each Project Participant as an additional insured.

(ii) Employer's Liability Insurance. CCP, if it has employees, shall maintain Employers' Liability insurance with limits of not 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.

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(iii) Workers' Compensation Insurance. CCP, if it has employees, shall also maintain at all times during the Term workers' compensation and employers' liability insurance coverage in accordance with statutory amounts, with employer's liability limits of not less than One Million Dollars ($1,000,000.00) for each accident, injury, or illness; and include a blanket waiver of subrogation.

(iv) Business Auto Insurance. CCP shall maintain at all times during the 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 CCP's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name each Project Participant as an additional insured and contain standard cross-liability and severability of interest provisions.

(v) Public Entity Liability Insurance. CCP shall maintain public entity liability insurance, including public officials' liability insurance, public entity reimbursement insurance, and employment practices liability insurance in an amount not less than One Million Dollars ($1,000,000) per claim, and an annual aggregate of not less than One Million Dollars ($1,000,000) and CCP shall maintain such coverage for at least two (2) years from the termination of this Agreement.

(m) Evidence of Insurance. Within ten (10) days after the deadline for securing insurance coverage specified in Section 5.1(l), and upon annual renewal thereafter, CCP shall deliver to each Project Participant certificates of insurance evidencing such coverage with insurers with ratings comparable to A-VII or higher, and that are authorized to do business in the State of California, in a form evidencing all coverages set forth above. Such certificates shall specify that each Project Participant shall be given at least thirty (30) days prior Notice by CCP in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of each Project Participant. Any other insurance maintained by CCP not associated with this Agreement is for the exclusive benefit of CCP and shall not in any manner inure to the benefit of Project Participants. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of each Project Participant for all work performed by CCP, its employees, agents and sub-contractors.

5.2. Role of CCP Board.

(a) The rights and obligations of CCP under the PPA shall be subject to the ultimate control at all times of the CCP Board. The CCP Board, shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:

(i) Dispute Resolution. The CCP Board shall review, discuss and attempt to resolve any disputes among CCP, any of the Project Participants, and the Project Developer relating to the Project, the operation and management of the Project, and CCP's rights and interests in the Project.

(ii) PPA. The CCP Board shall have the authority to review, modify, and approve, as appropriate, all amendments, modifications, and supplements to the PPA.

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(iii) Capital Improvements. The CCP Board shall review, modify, and approve, if appropriate, all Capital Improvements undertaken with respect to the Project and all financing arrangements for such Capital Improvements. The CCP Board shall approve those budgets or other provisions for the payments associated with the Project and the financing for any development associated with the Project.

(iv) Committees. The CCP Board shall exercise such review, direction, or oversight as may be appropriate with respect to the Project Committee and any other committees established pursuant to this Agreement.

(v) Budgeting. Upon the submission of a proposed Annual Budget or proposed Amended Annual Budget, approved by a Normal Vote of the Project Committee, the CCP Board shall review, modify, and approve each Annual Budget and Amended Annual Budget in accordance with Section 5.1(c) of this Agreement.

(vi) Early Termination of PPA. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(ii) of this Agreement, as to an early termination of the PPA pursuant to Section 13.3 of the PPA.

(vii) Assignment by Project Developer. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(iii) of this Agreement, as to any assignment by Project Developer pursuant to Section 14.7.

(viii) Buyer Financing Assignment. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(iv) of this Agreement, as to an assignment by CCP to a financing entity.

(ix) Change of Control. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(v) of this Agreement, as to any Change of Control requiring CCP's consent, as specified in Section 14.7 of the PPA.

(x) Supervening Authority of the Board. The CCP Board has complete and plenary supervening power and authority to act upon any matter which is capable of being acted upon by the Project Committee or which is specified as being within the authority of the Project Committee pursuant to the provisions of this Agreement.

(xi) Other Matters. The CCP Board is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Project Committee or CCP Manager as may be provided for under this Agreement and under the PPA, or as may otherwise be appropriate.

(xii) Periodic Audits. The CCP Board or the Project Committee may arrange for the annual audit by certified accountants, selected by the CCP Board and experienced in electric generation or electric utility accounting, of the books and accounting records of CCP, the Project Developer to the extent authorized under the PPA, and any other counterparty under any agreement to the extent allowable, and such audit shall be completed and submitted to the CCP Board as soon as reasonably practicable after the close of the Contract Year. CCP shall

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promptly furnish to the Project Participant copies of all audits. No more frequently than once every calendar year, each Project Participant may, at its sole cost and expense, audit, or cause to be audited the books and cost records of CCP, and/or the Project Developer to the extent authorized under the PPA.

(xiii) Compliance Expenditures. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(vi) of this Agreement, as to Compliance Costs as specified in Section 8.6(c) of the PPA. If the CCP Board authorizes CCP to agree to reimburse Project Developer for Accepted Compliance Costs, then such amount shall be added to the amount of Operating Costs included in the Monthly Cost calculation for the subsequent month.

(b) Pursuant to Section 5.06 of the Joint Powers Agreement, this Agreement modifies the voting rules of the CCP Board for purposes of approving or acting on any matter identified in this Agreement, as follows:

(i) Quorum. A quorum shall consist of a majority of the CCP Board members that represent Project Participants.

(ii) Voting. Each CCP Board member that represents a Project Participant shall have one vote for any matter identified in this Agreement. Any CCP Board member representing a CCP member that is not a Project Participant shall abstain from voting on any matter identified in this Agreement. A vote of the majority of the CCP Board members representing Project Participants that are in attendance shall be sufficient to constitute action, provided a quorum is established and maintained.

5.3. Role of CCP Manager.

(a) In addition to the duties and responsibilities set forth elsewhere in this Agreement, the CCP Manager is delegated the following authorities and responsibilities:

(i) Request for Tax Documentation. Respond to any requests for tax-related documentation by the Project Developer.

(ii) Request for Financial Statements. Provide the Project Developer with Financial Statements as may be required by the PPA.

(iii) Request for Information by Project Participant. Respond to any request by a Project Participant for information or documents that are reasonably available to allow the Project Participant to respond to requests for such information from any federal, state, or local regulatory body or other authority.

(iv) Coordinate Response to a Request for Confidential Information. Upon a request or demand by any third person that is not a Party to the PPA or a Project Participant, for Confidential Information as described in Section 14.21 of the PPA, the CCP Manager shall notify the Project Developer and coordinate the response of CCP and Project Participants.

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(v) Invoices. The CCP Manager shall review each invoice submitted by Project Developer and shall request such other data necessary to support the review of such invoices.

ARTICLE 6
PROJECT COMMITTEE

6.1. Establishment and Authorization of the Project Committee. The Project Committee is hereby established and duly authorized to act on behalf of the Project Participants as provided for in this Section 6 for the purpose of (a) providing coordination among, and information to, the Project Participants and CCP, (b) making any recommendations to the CCP Board regarding the administration of the Project, and (c) execution of the Project Committee responsibilities set forth in Section 6.4.

6.2. Project Committee Membership. The Project Committee shall consist of one representative from each Project Participant. The CCP Manager shall be a non-voting member of the Project Committee. Within thirty (30) days after the Effective Date, each Project Participant shall provide notice to each other of such Project Participant's representative on the Project Committee. Alternate representatives may be appointed by similar written notice to act on the Project Committee, or on any subcommittee established by the Project Committee, in the absence of the regular representative. An alternate representative may attend all meetings of the Project Committee but may vote only if the representative for whom they serve as alternate for is absent. No Project Participant's representative shall exercise any greater authority than permitted by the Project Participant which they represent.

6.1. Project Committee Operations, Meetings, and Voting. Project Committee operations, meetings, and voting shall be in accordance with the procedures and requirements specified in Exhibit D.

6.2. Project Committee Responsibilities. The Project Committee shall have the following responsibilities:

(a) General Responsibilities of the Project Committee.

(i) Provide a liaison between CCP and the Project Participants with respect to the ongoing administration of the Project.

(ii) Exercise general supervision over any subcommittee established pursuant to Section 6.5.

(iii) Oversee, as appropriate, the completion of any Project design, feasibility, or planning studies or activities.

(iv) Review, discuss, and attempt to resolve any disputes among the Project Participants relating to this Agreement or the PPA.

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(v) Perform such other functions and duties as may be provided for under this Agreement, the PPA, or as may otherwise be appropriate or beneficial to the Project or the Project Participants.

(b) Recommendations to the CCP Board by a Normal Vote.

(i) Budgeting. Review, modify, and approve by a Normal Vote each proposed Annual Budget and proposed Amended Annual Budget for submission to the CCP Board for final approval.

(ii) Early Termination of PPA. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding an early termination of the PPA pursuant to Section 13.3 of the PPA.

(iii) Assignment by Project Developer. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding any assignment by Project Developer pursuant to Section 14.7 of the PPA.

(iv) Buyer Financing Assignment. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding an assignment by CCP to a financing entity.

(v) Change of Control. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding any Change of Control requiring CCP's consent, as specified in Section 14.7 of the PPA.

(vi) Compliance Expenditures. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding Compliance Expenditures, as specified in Section 8.6(c) of the PPA.

(c) Actions Delegated to the Project Committee by this Agreement Subject to a Unanimous Vote.

(i) Project Design. Review, modify, and approve by a Unanimous Vote any recommendations to the Project Developer on the design of the Project.

(ii) [Reserved.]

(iii) Default. Direct CCP to exercise its rights under the PPA if a Default has occurred under Section 13.1 of the PPA.

(d) Actions Delegated to the Project Committee by this Agreement Subject to a Normal Vote.

(i) Make recommendations to the CCP Manager, the CCP Board, the Project Participants or to the Project Developer, as appropriate, with respect to the development, operation, and ongoing administration of the Project.

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(ii) Review, develop, and, if appropriate, modify and approve rules, procedures, and protocols for the administration of the Project, including rules, procedures, and protocols for the management of the costs of the Project and the scheduling, handling, tagging, dispatching, and crediting of the Product, the handling and crediting of Green Attributes associated with the Project and the control and use of the Project.

(iii) Review, develop, and, if appropriate, modify rules, procedures, and protocols for the monitoring, inspection, and the exercise of due diligence activities relating to the operation of the Project.

(iv) Review, and, if appropriate, modify or otherwise act upon, the form or content of any written statistical, administrative, or operational reports, Project-related data and technical information, Project reliability data, transmission information, forecasting, scheduling, dispatching, tagging, parking, firming, exchanging, balancing, movement, or other delivery information, and similar information and records, or matters pertaining to the Project which are furnished to the Project Committee by the CCP Manager, the Project Developer, experts, consultants or others.

(v) Review, formulate, and, if appropriate, modify, or otherwise act upon, practices and procedures to be followed by Project Participants for, among other things, the production, scheduling, tagging, transmission, delivery, firming, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale, or disposition of the Product, including the control and use of the Project.

(vi) Review and act upon any matters involving any arrangements and instruments entered into by the Project Developer or any affiliate thereof to, among other things, secure certain performance requirements, including, but not limited to, the PPA, the Development Security or the Delivery Term Security and any other letter of credit delivered to, or for the benefit of, CCP by the Project Developer and take such actions or make such recommendations as may be appropriate or desirable in connection therewith.

(vii) Review, and, if appropriate, recommend, modify, or approve policies or programs formulated by CCP or Project Developer for determining or estimating the values, quantities, volumes, or costs of the Product from the Project.

(viii) Review, and where appropriate, recommend the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of the Product to the Point of Delivery (directly or through the Project).

(ix) Review, to the extent permitted by this Agreement, the PPA, or any other relevant agreement relating to the Project, modify and approve or disapprove the specifications, vendors' proposals, bid evaluations, or any other matters with respect to the Project.

(x) Reserved.

(xi) Review and approve the submission of the written acknowledgement of the Commercial Operation Date in accordance with Section 3.5 of the PPA.

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(xii) Review and approve the return of the Project Development Security to Project Developer in accordance with Section 5.9(c) of the PPA.

(xiii) Review and approve the return of any unused Delivery Term Security to Project Developer in accordance with Section 5.9(d) of the PPA.

(xiv) Review Progress Reports provided by Project Developer to CCP pursuant to Section 3.6 of the PPA and participate in any associated regularly scheduled meetings with Project Developer to discuss construction progress.

(xv) Direct CCP to collect any liquidated damages owed by Project Developer to CCP under the PPA, and to the extent authorized by PPA, draw upon the Project Development Security or Delivery Term Security.

(xvi) Review invoices received by CCP from the Project Developer and, if appropriate, direct CCP to dispute an invoice pursuant to Section 11.3 of the PPA.

(xvii) Review and confirm that Project Developer has achieved the milestones identified in Appendix I of the PPA.

(xviii) Direct CCP change the Negative LMP Strike Price in pursuant to Appendix A of the PPA.

(xix) Direct CCP to take such actions or implement such measures as may be necessary to facilitate the transfer of Green Attributes from the Project Developer to the Project Participants.

(xx) Direct CCP to give Notice to Project Developer of an election to purchase Energy in excess of Maximum Generation pursuant to Section 3.10 of the PPA

(xxi) Direct CCP to demand payment and collect damages pursuant to Section 3.11 of the PPA.

(xxii) Direct CCP to withhold funds from Project Developer pursuant to Section 6.1(c) of the PPA.

(xxiii) Direct CCP to designate an authorized representative pursuant to Section 14.1 of the PPA.

(xxiv) Within three hundred and sixty-five (365) days of the Effective Date, adopt procedures for all Project Participants to acquire additional import capability rights or other similar rights for each Proposed Facility, and a process for directing CCP to accept or reject each Proposed Facility based on the acquisition of such import capability rights or other similar rights, as specified in Section 3.1 of the PPA. Such procedures may be amended, modified, or supplemented at any time by a subsequent Normal Vote by the Project Committee.

(xxv) Direct CCP to either accept or reject the Notice of Revised Net Capacity, as specified in Section 3.9 and 6.1 of the PPA.

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6.3. Subcommittees. The CCP Manager may establish as needed subcommittees including, but not limited to, auditing, legal, financial, engineering, mechanical, weather, geologic, diurnal, barometric, meteorological, operating, insurance, governmental relations, environmental, and public information subcommittees. The authority, membership, and duties of any subcommittee shall be established by the CCP Manager; provided, however, such authority, membership or duties shall not conflict with the provisions of the PPA or this Agreement.

6.4. Representative's Expenses. Any expenses incurred by any representative of any Project Participant or group of Project Participants serving on the Project Committee or any other committee in connection with their duties on such committee shall be the responsibility of the Project Participant which they represent and shall not be an expense payable under this Agreement.

6.5. Inaction by Committee. It is recognized by CCP and Project Participants that if the Project Committee is unable or fails to agree with respect to any matter or dispute which it is authorized to determine, resolve, approve, disapprove or otherwise act upon after a reasonable opportunity to do so, or within the time specified herein or in the PPA, then CCP may take such commercially reasonable action as CCP determines is necessary for its timely performance under any requirement pursuant to the PPA or this Agreement, pending the resolution of any such inability or failure to agree, but nothing herein shall be construed to allow CCP to act in violation of the express terms of the PPA or this Agreement.

6.6. Delegation. To secure the effective cooperation and interchange of information in a timely manner in connection with various administrative, technical, and other matters which may arise from time to time in connection with administration of the PPA, in appropriate cases, duties and responsibilities of the CCP Board or the Project Committee, as the case may be under this Section 6, may be delegated to the CCP Manager by the CCP Board upon notice to the Project Participants.

ARTICLE 7
[RESERVED]

ARTICLE 8
OPERATING ACCOUNT

8.1. Calculation of Estimated Monthly Project Cost.

(a) No later than one hundred and eighty (180) days after the Effective Date, the CCP Manager shall present to the Project Committee a proposed Estimated Monthly Project Cost, which shall be equal to the single highest forecasted Monthly Cost over the first Contract Year. The Project Committee shall review, and, if appropriate, recommend, modify, or approve through a Normal Vote, the proposed Estimated Monthly Project Cost.

8.2. Operating Account. CCP shall establish an Operating Account for each Project Participant that is accessible to and can be drawn upon by both CCP and the applicable Project Participant. Such Operating Accounts are for the purpose of providing a reliable source of funds for the payment obligations of the Project and, taking into account the variability of costs associated with the Project for the purpose of providing a reliable payment mechanism to address the ongoing costs associated with the Project.

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(a) Operating Account Amount. The Operating Account Amount for each Project Participant shall be an amount equal to the Estimated Monthly Project Cost multiplied by three (3), the product of which is multiplied by such Project Participant's Entitlement Share ("**Operating Account Amount**").

(b) Initial Funding of Operating Account. By no later than three hundred and sixty-five (365) days after the Effective Date, each Project Participant shall deposit into such Project Participant's Operating Account an amount equal to that Project Participant's Operating Account Amount.

(c) Use of Operating Account. CCP shall draw upon each Project Participant's Operating Account each month in an amount equal to the Monthly Costs multiplied by such Project Participant's Entitlement Share. As required by Section 9.5, each Project Participant must deposit sufficient funds into such Project Participant's Operating Account by the deadline specified in Section 9.5.

(d) Final Distribution of Operating Account. Following the expiration or earlier termination of the PPA, and upon payment and satisfaction of any and all liabilities and obligations to make payments of the Project Participants under this Agreement and upon satisfaction of all remaining costs and obligations of CCP under the PPA, any amounts then remaining in any Project Participant's Operating Account shall be paid to the associated Project Participant.

ARTICLE 9
BILLING

9.1. Monthly Costs. The amount of Monthly Costs for a particular Month shall be the sum of the Project Participant's Entitlement Share multiplied by the Monthly Payments for the Product, as specified in Section 11.2 of the PPA for such Month and to the extent such payment is made by CCP to the Project Developer, plus the Project Participant's Entitlement Share multiplied by the Operating Cost for such Month and subtracting the Project Participant's Entitlement Share multiplied by the positive revenue associated with the sale of any Facility Energy, Capacity Attributes, Ancillary Services, and/or Green Attributes, as shown in the following formula:

Monthly Cost = ((Project Participant's Entitlement Share) × (Monthly Payments)) + ((Project Participant's Entitlement Share) × (Operating Costs)) – ((Project Participant's Entitlement Share) × (revenue from sale of Facility Energy, Capacity Attributes, Ancillary Services and/or Green Attributes))

9.2. Billing Statements. By no later than ten (10) calendar days after CCP receives an invoice from Project Developer for the prior Month of each Contract Year pursuant to Section 11.2 of the PPA, CCP shall issue to each Project Participant a copy of the invoice and a "Billing Statement," which specifies such Project Participant's Monthly Costs, itemized by each part of such Monthly Cost. The amount of Monthly Costs attributable to a Project Participant, and specified in such Billing Statement, shall be the "**Invoice Amount**."

9.3. Disputed Monthly Billing Statement. A Project Participant may dispute, by written Notice to CCP, any portion of any Billing Statement submitted to that Project Participant by CCP pursuant to Section 9.2, provided that the Project Participant shall pay the full amount of the Billing Statement when due. If CCP determines that any portion of the Billing Statement is incorrect,

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CCP will deposit the difference between such correct amount and such full amount, if any, including interest at the rate received by CCP on any overpayment into the Project Participant's Operating Account. If CCP and a Project Participant disagree regarding the accuracy of a Billing Statement, CCP will give consideration to such dispute and will advise all Project Participants with regard to CCP's position relative thereto within thirty (30) days following receipt of written Notice by Project Participant of such dispute.

9.4. Payment Adjustments; Billing Errors. If CCP or Project Developer determines that a prior invoice or Billing Statement was inaccurate, CCP shall credit against or increase as appropriate each Project Participant's subsequent Monthly Costs according to such adjustment. The accompanying Billing Statement shall describe the cause of such adjustment and the amount of such adjustment.

9.5. Payment of Invoice Amount. Each Project Participant shall deposit the Invoice Amount for the applicable Month into such Project Participant's Operating Account by no later than the twentieth (20^{th}) calendar day of the following Month after the Billing Statement is issued, unless CCP has failed to issue the Billing Statement by the deadline specified in Section 9.2, in which case, each Project Participant shall deposit the Invoice Amount for the applicable Month by no later than thirty (30) days after the date on which CCP issues the Billing Statement to the Project Participant.

9.6. Withdrawal of Invoice Amount from Operating Account. No sooner than five (5) calendar days after CCP issues a Billing Statement to a Project Participant or a Step-Up Invoice to a Project Participant, CCP shall withdraw the Invoice Amount or the Step-Up Invoice Amount from each Project Participant's Operating Account. If the Monthly Cost attributable to such Project Participant is a negative number, CCP shall deposit such funds into the Operating Account of that Project Participant.

9.7. Late Payments.

(a) If any Project Participant fails to deposit the Invoice Amount into the Project Participant's Operating Account by the deadline specified in Section 9.5, then CCP will issue such Project Participant a Late Payment Notice within five (5) days of the deadline specified in Section 9.5 directing the Project Participant to immediately deposit the Invoice Amount into the Project Participant's Operating Account and informing the Project Participant that such Project Participant must pay a charge (**"Late Payment Charge"**). Upon issuing a Late Payment Notice to any Project Participant, CCP shall promptly provide Notice of such occurrence to all other Project Participants.

(b) The Late Payment Charge shall be equal to the Invoice Amount minus any partial payment that was deposited into such Project Participant's Operating Account multiplied by the Interest Rate specified in Section 11.3 of the PPA for the period from the deadline specified in Section 9.5 until the date on which the Project Participant deposits the Invoice Amount plus the Late Payment Charge into such Project Participant's Operating Account. Upon payment, CCP shall withdraw the full amount of such Late Payment Charge from the Project Participant's Operating Account and deposit any such Late Payment Charge into the Operating Accounts of all

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other Project Participants on a pro rata share, based on such other Project Participants' Entitlement Shares.

ARTICLE 10
UNCONDITIONAL PAYMENT OBLIGATIONS; AUTHORIZATIONS; CONFLICTS; LITIGATION.

10.1. Unconditional Payment Obligation. Beginning with the earliest of (i) the date CCP is obligated to pay any portion of the costs of the Project, (ii) the date of the COD, or (iii) the date of the first delivery of the Product to Project Participants and continuing through the term of this Agreement, Project Participants shall pay CCP the amounts of Monthly Costs set forth in the Billing Statements submitted by CCP to Project Participants in accordance with the provisions of Section 9, whether or not the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output or the provision of Project products are suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever, provided that the obligation of Project Participants to pay amounts associated with the Monthly Payment shall be limited to the amount of Monthly Payment charged by the Project Developer to CCP and paid by CCP to the Project Developer.

10.2. Authorizations. Each Project Participant hereby represents and warrants that no order, approval, consent, or authorization of any governmental or public agency, authority, or person, is required on the part of such Project Participant for the execution and delivery by the Project Participant, or the performance by the Project Participant of its obligations under this Agreement except for such as have been obtained.

10.3. Conflicts. Each Project Participant represents and warrants to CCP as of the Effective Date that, to the Project Participant's knowledge, the execution and delivery of this Agreement by the Project Participants and the Project Participants' performance hereunder will not constitute a default under any agreement or instrument to which it is a party, or any order, judgment, decree or ruling of any court that is binding on the Project Participant, or a violation of any applicable law of any governmental authority, which default or violation would have a material adverse effect on the financial condition of the Project Participant.

10.4. Litigation. Each Project Participant represents and warrants to CCP that, as of the Effective Date, to the Project Participant's knowledge, except as disclosed, there are no actions, suits or proceedings pending against the Project Participant (service of process on the Project Participant having been made) in any court that questions the validity of the authorization, execution or delivery by the Project Participant of this Agreement, or the enforceability on the Project Participant of this Agreement.

10.5. San José Clean Energy.

(a) The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing

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in the Agreement shall constitute an obligation of future legislative bodies of the City of San José to appropriate funds for purposes of the Agreement; provided, however, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) ("**Designated Fund**") for payment of its obligations under this Agreement.

(b) Limited Obligations. The City of San José's payment obligations under this Agreement are special limited obligations of San José Clean Energy payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

10.6. Clean Power San Francisco. With regard to Clean Power San Francisco only, (1) obligations under this Agreement are special limited obligations of Clean Power San Francisco payable solely from the revenues of Clean Power San Francisco, and shall not be a charge upon the revenues or general fund of the San Francisco Public Utilities Commission or the City and County of San Francisco or upon any non-Clean Power San Francisco moneys or other property of the San Francisco Public Utilities Commission or the City and County of San Francisco, (2) cannot exceed the amount certified by the San Francisco City Controller for the purpose and period stated in such certification, and (3) absent an authorized emergency per the San Francisco City Charter or Code, no San Francisco City representative is authorized to offer or promise, nor is San Francisco required to honor, any offered or promised payments under this Agreement for work beyond the agreed upon scope or in excess of the certified maximum amount without the San Francisco City Controller having first certified the additional promised amount.

ARTICLE 11
PROJECT SPECIFIC MATTERS AND PROJECT PARTICIPANTS' RIGHTS AND OBLIGATIONS UNDER THE PPA.

11.1. CCP Rights and Obligations under the PPA. Notwithstanding anything to the contrary contained in this Agreement: (i) the obligation of CCP to cause the delivery of the Project Participants' Entitlement Shares of the Product during the Delivery Term of this Agreement is limited to the Product which CCP receives from the Project (or the Project Developer, as applicable); (ii) the obligation of CCP to pay any amount to Project Participants hereunder or to give credits against amounts due from Project Participants hereunder is limited to amounts CCP receives in connection with the transaction to which the payment or credit relates (or is otherwise available to CCP in connection with this Agreement for which such payment or credit relates); (iii) any purchase costs, operating costs, energy costs, capacity costs, Project costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges for which CCP is responsible under the PPA shall be considered purchase costs, operating costs, energy costs, capacity costs, Project costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges incurred by CCP and payable by Project Participants as provided in this Agreement; (iv) CCP shall carry out its obligations and exercise its rights under the PPA in a commercially reasonable manner; and (v) any Force Majeure under the PPA or other event of force majeure affecting the delivery of Product pursuant to applicable provisions of the PPA shall be considered an event caused by Uncontrollable Forces affecting CCP with respect to the delivery of the Product hereunder and

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CCP forwarding to Project Participants notices and information from the Project Developer concerning an event of Force Majeure upon receipt thereof shall be sufficient to constitute a Notice that Uncontrollable Forces have occurred pursuant to Section 5.1 of this Agreement. Any net proceeds received by CCP from the sale of the Product by the Project Developer to any third-party as a result of a Force Majeure event or failure by CCP to accept delivery of Product pursuant to the PPA and any reimbursement received by CCP for purchase of Replacement RA shall be remitted by CCP to the Project Participants in accordance with their respective Entitlement Shares.

11.2. Obligations of CCP and Project Participants to Maximize the Economic and Compliance Value of the Project.

(a) Each Project Participant shall take all actions that are (i) reasonably necessary to maximize the economic and compliance value of the Project to the Project Participants, and (ii) only capable of being carried out by the Project Participants. Such actions include, but are not limited to, applying for and securing the import capability rights necessary to support the import of Capacity Attributes from the Project into the CAISO in an amount equal to at least its Entitlement Share of all of the import capability rights that are needed to utilize all of the Resource Adequacy Benefits from the Project.

(b) CCP shall take any actions requested by a Project Participant to support the individual Project Participant's obligation under Section 11.2(a) and any actions requested by a Project Participant that are reasonably necessary to maximize the economic and compliance value of the Project to the Project Participants, to the extent that such actions by CCP are feasible and commercially reasonable.

(c) If any individual Project Participant fails to secure import capability rights or other similar rights in an amount equal to at least its Entitlement Share of all of the import capability rights that are needed to utilize all of the Resource Adequacy Benefits available from the Project, then any resulting reduced economic or compliance value of the Project shall not reduce or otherwise modify that Project Participant's payment obligations under Section 10.1.

(d) CCP and the Project Participants agree to take such additional actions in order to help effectuate the transfer of any import capability rights or similar rights from a Defaulting Project Participant to any Non-Defaulting Project Participants that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c). Such actions include but are not limited to executing additional agreements among the Project Participants, amending this Agreement, and/or submitting necessary documents to CAISO and participating in any CAISO process related to the transfer of import capability rights.

ARTICLE 12
NONPERFORMANCE AND PAYMENT DEFAULT.

12.1. Nonperformance by Project Participants. If a Project Participant fails to perform any covenant, agreement, or obligation under this Agreement or shall cause CCP to be in default with respect to any undertaking entered into for the Project or to be in default under the PPA (**"Defaulting Project Participant"**), CCP may, in the event the performance of any such

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obligation remains unsatisfied after thirty (30) days' prior written notice thereof to such Project Participant and a demand to so perform, take any action permitted by law to enforce its rights under this Agreement, including but not limited to termination of such Project Participant's rights under this Agreement including any rights to its Entitlement Share of the Product, and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against such Project Participant with regard to its failure to so perform. Any Project Participant that is not the Defaulting Project Participant (**"Non-Defaulting Project Participant"**) may submit Notice directly to the CCP Board, if such Non-Defaulting Project Participant determines that CCP is or may not be fully taking appropriate actions to enforce CCP's rights under this Agreement against a Defaulting Project Participant. The CCP Board shall consider such Notice and direct CCP to take appropriate action, if any.

12.2. Payment Default. If any Project Participant fails to deposit the Invoice Amount into the Project Participant's Operating Account by the deadline specified in Section 9.5, and if such Participant has not deposited the Invoice Amount plus the Late Payment Charge into such Project Participant's Operating Account within ten (10) calendar days of the issuance of the Late Payment Notice to such Project Participant by CCP, then such occurrence shall constitute a "**Payment Default**."

12.3. Payment Default Notice. Upon the occurrence of a Payment Default, CCP shall issue a Notice of Payment Default to the Project Participant notifying such Project Participant that as a result of a Payment Default, it is in default under this Agreement and has assumed the status of a Defaulting Project Participant and that such Defaulting Project Participant's Project Revenue Rights have been suspended and that such Defaulting Project Participant's Project Rights are subject to termination and disposal in accordance with Sections 12.6 and 12.8 of this Agreement. CCP shall provide a copy of such Notice of Default to all other Project Participants within five (5) calendar days after the issuance of the written Notice of Payment Default by CCP to the Defaulting Project Participant.

12.4. Cured Payment Default. If after a Payment Default, the Defaulting Project Participant cures such Payment Default within forty-five (45) calendar days after the issuance of the Late Payment Notice by CCP, the Defaulting Project Participant's Project Revenue Rights shall be reinstated and its Project Rights shall not be subject to termination and disposal as provided for in Sections 12.6 and 12.8. In order to cure a Payment Default, the Defaulting Project Participant must deposit the full amount of any unpaid Invoice Amounts and any associated Late Payment Penalties into its Operating Account.

12.5. Suspension of Project Participant's Project Revenue Rights and Treatment of Capacity Attributes and Green Attributes.

(i) Upon the occurrence of a Payment Default, the Defaulting Project Participant's Project Revenue Rights shall be suspended until such time as such Defaulting Project Participant cures the Payment Default pursuant to the requirements of Section 12.4. Any revenue associated with the sale of Facility Energy, Capacity Attributes, Ancillary Services, or Green Attributes associated with the Project shall be deposited by CCP into the Step-Up Reserve Account, as specified in Section 12.7.

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(ii) For any Month where the funds remaining in a Defaulting Project Participant's Operating Account are sufficient to pay the entire Invoice Amount, CCP shall withdraw the Invoice Amount from such Defaulting Project Participant's Operating Account and shall cause the delivery of the Defaulting Project Participant's Entitlement Share of the Product, including Capacity Attributes and Green Attributes, associated with the Project or otherwise provided for pursuant to the PPA. For any Month where the funds remaining in a Defaulting Project Participant's Operating Account are less than the amount necessary to pay the entire Invoice Amount, CCP shall withdraw all remaining funds from the Defaulting Project Participant's Operating Account, and to the extent reasonably possible, in CCP's sole discretion, CCP shall cause the delivery of a quantity of Capacity Attributes and Green Attributes proportionate to the portion of the Invoice Amount that the remaining funds were sufficient to pay for. For any Month where the Defaulting Project Participant's Operating Account has no funds remaining, the Defaulting Project Participant shall have no right to any such Capacity Attributes or Green Attributes associated with the Project or otherwise provided for under the PPA.

12.6. Termination and Disposal of Project Participant's Project Rights. If a Defaulting Project Participant has not cured a Payment Default within forty-five (45) calendar days after the payment deadline specified in Section 9.5 by CCP ("**Payment Default Termination Deadline**"), then all Project Rights and Obligations pursuant to this Agreement shall be terminated and disposed in accordance with Sections 12.6 and 12.8 of this Agreement; provided, however, that the Defaulting Project Participant shall be liable for all outstanding payment obligations accrued prior to the Payment Default Termination Deadline and shall remain subject to all rights, obligations, and liabilities of this Agreement, including but not limited to any liabilities for Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts under the PPA. CCP shall provide to the Defaulting Project Participant a separate monthly invoice of any such payment obligations of such Defaulting Project Participant. CCP shall immediately notify the other Project Participants of such termination of the Defaulting Project Participant's Project Rights and Obligations.

12.7. Step-Up Invoices.

(a) Upon the occurrence of a Payment Default, CCP shall, concurrently with the Late Payment Notice issued pursuant to Section 9.7(a), issue a Step-Up Invoice to each Non-Defaulting Project Participant that specifies such Non-Defaulting Project Participant's pro rata payment obligation, calculated based on the Entitlement Share of such Non-Defaulting Project Participant, of the amount of the Payment Default for the Defaulting Project Participant (the "**Step-Up Invoice Amount**"); provided, however, that a Non-Defaulting Project Participant's Step-Up Invoice Amount shall not exceed twenty-five percent (25%) of such Non-Defaulting Project Participant's Invoice Amount for the same month for which the Payment Default occurred (the **"Step-Up Invoice Amount Cap"**).

(i) Each Non-Defaulting Project Participant shall deposit the Step-Up Invoice Amount into such Non-Defaulting Project Participant's Operating Account by the later of the twentieth (20^{th}) calendar day of the following Month or thirty (30) days after the date on which CCP issues the Step-Up Invoice to the other Project Participants. No sooner than five (5) calendar days after CCP issues the Step-Up Invoice, CCP may withdraw the amount of the Step-Up Invoice from each Project Participant's Operating Account and deposit such funds in a separate account

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("**Step-Up Reserve Account**"), which shall be accessible only by CCP, and which CCP may in its sole discretion draw upon in order to ensure that CCP can meet the payment obligations of the PPA. CCP first shall withdraw all funds from a Defaulting Project Participant's Operating Account before withdrawing funds from the Step-Up Reserve Account.

(ii) Application of Moneys Received from a Defaulting Project Participant. If a Defaulting Project Participant cures a Payment Default on or before the Payment Default Termination Deadline, any funds remaining in the Step-Up Reserve Account shall be deposited into the Operating Accounts of the other Project Participants on a pro rata share, based on the Entitlement Share of such other Project Participant. If a Defaulting Project Participant fails to cure a Payment Default and the Defaulting Project Participant's Project Rights and Obligations are terminated and disposed of in accordance with Section 12.8, any funds remaining in the Step-Up Reserve Account shall be deposited into the Operating Accounts of the Non-Defaulting Project Participants on a pro rata share, based on the Entitlement Share, subject to the Step-Up Invoice Amount Cap, of such other Project Participant. If any Non-Defaulting Project Participant has not deposited the full amount of its share of the Step-Up Invoice Amount into its Operating Account by the deadline specified in Section 12.7(a)(i), then such occurrence shall be a Late Payment as specified in Section 9.7(a) and is subject to a Late Payment Charge pursuant to Section 9.7(b), and any such Non-Defaulting Project Participant shall not be entitled to its share of any moneys received from the Defaulting Project Participant or any funds remaining in the Step-Up Reserve Account in accordance with this Section 12.7(a)(ii) until such Non-Defaulting Project Participant has deposited the full amount of its Step-Up Invoice Amount and the Late Payment Charge into its Operating Account.

12.8. Step-Up Allocation of Project Participant's Project Rights. In the event that a Defaulting Project Participant's Project Rights are terminated pursuant to Section 12.6, then such Defaulting Project Participant's Entitlement Share shall be allocated to the other Project Participants (**"Step-Up Allocation"**) pursuant to the process set forth in this Section 12.8.

(a) Step-Up Allocation Cap. If a Defaulting Project Participant's Entitlement Share is allocated to the Non-Defaulting Project Participants pursuant to this Section 12.8, no individual Non-Defaulting Project Participant shall be obligated to assume an allocation that exceeds that Project Participant's Step-Up Allocation Cap set forth in Column E of the Table in Exhibit B of this Agreement. Each Non-Defaulting Project Participant's initial Step-Up Allocation Cap shall be equal to the Non-Defaulting Project Participant Entitlement Share as of the Effective Date and set forth in Column B of the Table in Exhibit B of this Agreement, multiplied by one hundred and twenty-five percent (125%). If a Project Participant modifies its Entitlement Share pursuant to Section 4.2 of this Agreement, then that Project Participant's Step-Up Allocation Cap shall be equal to the Project Participant's Entitlement Share as modified pursuant to Section 4.2 multiplied by one hundred and twenty-five percent (125%). Upon a modification of a Project Participant's Entitlement Share pursuant to Section 4.2, the CCP Manager shall cause the Step-Up Allocation Cap specified in Column E of the Table in Exhibit B of this Agreement to be modified in accordance with this Section 12.8(a). For avoidance of doubt, if a Project Participant's Entitlement Share is increased pursuant to Section 12.8(b) or (c), then such Project Participant's Step-Up Allocation Cap shall not be modified.

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(b) Step-Up Allocation Share. If a Defaulting Project Participant's Project Rights are terminated pursuant to Section 12.6, then such Defaulting Project Participant's Entitlement Share shall be allocated to each Non-Defaulting Project Participant based on such Non-Defaulting Project Participant's pro rata share, calculated based on its Entitlement Share of the entire project minus the Entitlement Share of the Defaulting Project Participant, unless such allocation would cause any individual Non-Defaulting Project Participant to exceed its Step-Up Allocation Cap, in which case Section 12.8(c) shall apply. Upon allocation of a defaulting Project Participant's Entitlement Share pursuant to this Section 12.8(b), the CCP Manager shall cause each affected Project Participant's Entitlement Share specified in Column D of the Table in Exhibit B to be modified in accordance with this Section 12.8.

(c) Voluntary Allocation of Project Rights in Excess of the Step-Up Allocation Caps. If the allocation of a Defaulting Project Participant's Entitlement Share pursuant to Section 12.8(b) would cause any Non-Defaulting Project Participant's Entitlement Share to exceed its Step-Up Allocation Cap, then no allocation shall occur pursuant to Section 12.8(b). In such case, the CCP Manager shall oversee the offering of the total amount of the Defaulting Project Participant's Entitlement Share to the Non-Defaulting Project Participants on a voluntary basis. The initial offering shall be to each Non-Defaulting Project Participant on a pro rata share, based on such Non-Defaulting Project Participant's Entitlement Share. Each Project Participant may accept or reject the portion of the Defaulting Project Participant's Entitlement Share. If any portion of the Defaulting Project Participant's Entitlement Share remains unclaimed after the initial offering, then the remaining portion shall be offered to any Non-Defaulting Project Participant that accepted its full share of the Defaulting Project Participant's Entitlement Share in the initial offering on a pro rata share, based on such Non-Defaulting Project Participant's Entitlement Share as a percentage of the total Entitlement Shares of all Project Participants that are participating in the subsequent round of offerings. The CCP Manager shall conduct subsequent offering rounds until either the total amount of the Defaulting Project Participant's Entitlement Share is accepted by one or more of the Non-Defaulting Project Participants or some portion of the Defaulting Project Participant's Entitlement Share remains, but all Non-Defaulting Project Participants have rejected such remaining amount.

(d) Step-Up Allocation Damage Payment. A Defaulting Project Participant shall owe to each Non-Defaulting Project Participant that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c) a "**Step-Up Allocation Damage Payment**" equal to the Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Project Participant's Costs and Losses exceed its Gains, then the Step-Up Allocation Damage Payment shall be an amount owing to such Non-Defaulting Project Participant. If the Non-Defaulting Project Participant's Gains exceed its Costs and Losses, then the Step-Up Allocation Damage Payment shall be zero dollars ($0). A Defaulting Project Participant shall not be entitled to any Step-Up Allocation Damage Payment or any other damages otherwise authorized under this Agreement from any other Project Participant. The Step-Up Allocation Damage Payment does not include consequential, incidental, punitive, exemplary, or indirect or business interruption damages. Each Non-Defaulting Project Participant that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c) shall calculate, in a commercially reasonable manner, the Step-Up Allocation Damage Payment for the Defaulting Project Participant's Entitlement Share assumed by the Non-Defaulting Project Participant as of the effective date of such Step-Up

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Allocation. 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. If the Defaulting Project Participant disputes the Non-Defaulting Project Participant's calculation of the Step-Up Allocation Damage Payment, in whole or in part, the Defaulting Project Participant shall, within five (5) Business Days of receipt of the Non-Defaulting Project Participant's calculation of the Step-Up Allocation Damage Payment, provide to the Non-Defaulting Project Participant a detailed written explanation of the basis for such dispute. Disputes regarding the Step-Up Allocation Damage Payment shall be determined in accordance with Article 16. Each Party agrees and acknowledges that (i) the actual damages that the other Project Participant would incur in connection with a Step-Up Allocation would be difficult or impossible to predict with certainty, (ii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is a reasonable and appropriate approximation of such damages, and (iii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is the exclusive remedy of a Project Participant in connection with a Step-Up Allocation pursuant to the process set forth in Sections 12.8(b) or 12.8(c) against a Defaulting Project Participant but shall not otherwise act to limit any of the Non-Defaulting Project Participant's rights or remedies under this Agreement.

(e) Import Capacity Rights. If a Defaulting Project Participant's Project Rights are terminated pursuant to Section 12.6, then such Defaulting Project Participant shall transfer all import capacity rights and other similar rights that are associated with the Project and that are held by such Defaulting Project Participant to the Non-Defaulting Project Participants that assume any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c). The Defaulting Project Participant shall take all actions necessary to effectuate the transfer of such rights to the Non-Defaulting Project Participants.

(f) Remarketing of Unclaimed Defaulting Project Participant's Entitlement Share. If after the process set forth in Section 12.8(c), some portion of the Defaulting Project Participant's Entitlement Share remains unclaimed, the CCP Manager, in their discretion or as directed by the Non-Defaulting Project Participants, may take any action to generate revenue from such unclaimed Entitlement Share in order to meet CCP's payment obligation under the PPA. For avoidance of doubt, the CCP Manager shall not be limited by the requirements of Section 4.2 or 5.1(j) of this Agreement in remarketing or generating revenue base on the unclaimed share.

12.9. Elimination or Reduction of Payment Obligations. Notwithstanding anything to the contrary in this Agreement, upon termination of a Defaulting Project Participant's Project Rights pursuant to Section 12.6 and the disposal of such Defaulting Project Participant's Project Rights and Obligations pursuant to Section 12.8, such Defaulting Project Participant's obligation to make payments under this Agreement (notwithstanding anything to the contrary herein) shall not be eliminated or reduced; provided, however, such payment obligations for the Defaulting Project Participant may be eliminated or reduced to the extent permitted by law, through an amendment to this Agreement, which shall be subject to the consent and approval of all Parties to this Agreement.

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ARTICLE 13
LIABILITY

13.1. Project Participants' Obligations Several. No Project Participant shall be liable under this Agreement for the obligations of any other Project Participant or for the obligations of CCP incurred on behalf of other Project Participants. Each Project Participant shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise provided for herein. The obligation of Project Participants to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants.

13.2. No Liability of CCP or Project Participants, Their Directors, Officers, Etc.; CCP, The Project Participants' and CCP Manager's Directors, Officers, Employees Not Individually Liable. Except as provided for under Section 13.5 herein, the Parties agree that neither CCP, Project Participants, nor any of their past, present or future directors, officers, employees, board members, agents, attorneys or advisors (collectively, the "**Released Parties**") shall be liable to any other of the Released Parties for any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of Project Participants, CCP, or third persons) suffered by any Released Party as a result of the action or inaction or performance or non-performance by the Project Developer under the PPA. Except as provided for under Section 13.5 herein, each Party shall release each of the other Released Parties from any claim or liability that such Party may have cause to assert as a result of any actions or inactions or performance or non-performance by any of the other Released Parties under this Agreement (excluding gross negligence and willful misconduct, which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Notwithstanding the foregoing, no such action or inaction or performance or non-performance by any of the Released Parties shall relieve CCP or any Project Participants from their respective obligations under this Agreement, including, without limitation, the Project Participants' obligation to make payments required under Section 9.5 of this Agreement and CCP's obligation to make payments under Section 11.2 of the PPA. The provisions of this Section 13.2 shall not be construed so as to relieve the CCP or the Project Developer from any obligation or liability under this Agreement or the PPA.

13.3. Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 13.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, any Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of any other Party, and each Party shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment, underpayment or other monetary damages owed by the other Party in accordance with the terms of this Agreement.

13.4. No General Liability of CCP. The undertakings under this Agreement by CCP shall not constitute a debt or indebtedness of CCP within the meaning of any provision or limitation of

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the Constitution or statutes of the State of California, and shall not constitute or give rise to a charge against its general credit.

13.5. Indemnification. Each Party (an "**Indemnifying Party**") shall indemnify, defend, protect, hold harmless, and release the other Parties, their directors, board members, officers, employees, agents, attorneys and advisors, past, present or future, from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise, which include, without limitation, death, bodily injury, or personal injury to any person or damage or destruction to any property of Project Participants, CCP, or third persons, that may be imposed on, incurred by or asserted against any Party arising by manner of any breach of this Agreement by the Indemnifying Party, or the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of any such Indemnifying Party or any Indemnifying Party's directors, board members, officers, employees, agents and advisors, past, present or future.

ARTICLE 14
NOTICES

14.1. 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 A or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

14.2. 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, five (5) 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 5:00 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 15
ASSIGNMENT

15.1. General Prohibition on Assignments. No Party may assign this Agreement, or its rights or obligations under this Agreement, without the prior written consent of all other Parties, in each Party's sole discretion.

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ARTICLE 16
GOVERNING LAW AND DISPUTE RESOLUTION

16.1. 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. The Parties agree that any suit, action, or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be brought in the federal or state courts located in the State of California in a location to be mutually chosen by all Parties, or in the absence of mutual agreement, the County of San Francisco.

16.2. Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate, and attempt, in good faith, to resolve the dispute quickly and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law or in equity.

ARTICLE 17
MISCELLANEOUS

17.1. Entire Agreement; Integration; Exhibits. This Agreement, together with the Exhibits attached hereto constitutes the entire agreement and understanding by and among the Parties 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. 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.

17.2. Amendments. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of all Parties; *provided*, this Agreement may not be amended by electronic mail communications. Any revisions to the Entitlement Share specified in Exhibit B pursuant to Section 4.2. or Section 12.8 shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

17.3. No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

17.4. 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

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acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

17.5. 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.

17.6. Electronic Delivery. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

17.7. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

17.8. Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and that the Parties 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.

17.9. City of San Francisco Standard Provisions.

(a) False Claims. Pursuant to San Francisco Administrative Code § 21.35, any Party to this Agreement who submits a false claim shall be liable to the City and County of San Francisco for the statutory penalties set forth in that section. A Party will be deemed to have submitted a false claim to the City and County of San Francisco if the Party: (a) knowingly presents or causes to be presented to an officer or employee of the City and County of San Francisco a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City and County of San Francisco; (c) conspires to defraud the City and County of San Francisco by getting a false claim allowed or paid by the City and County of San Francisco; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City and County of San Francisco; or (e) is a beneficiary of an inadvertent submission of a false claim to the City and County of San Francisco, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City and County of San Francisco within a reasonable time after discovery of the false claim.

(b) Political Activity. In performing its responsibilities under this Agreement, CCP shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City and County of San Francisco for this Agreement from being expended to

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participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure.

(c) Non-discrimination Requirements.

(i) Non-discrimination in Contracts. CCP shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. CCP shall incorporate by reference in all subcontracts the provisions of Sections12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. CCP is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(ii) Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. CCP does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

(d) Consideration of Criminal History in Hiring and Employment Decisions. CCP agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to CCP's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law. MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles.

(e) MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

(f) Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code

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is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, CCP shall not provide any items to the City in performance of this Agreement which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of CCP to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

17.10. City of San José Standard Provisions.

(a) Nondiscrimination/Non-Preference. The Parties shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. The Parties will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Parties from providing a reasonable accommodation to a person with a disability; (ii) the City of San José's Compliance Officer may require the Parties to file, and cause any Party's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

(b) Conflict of Interest. The Parties represent that they are familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Parties certify that, as of the Effective Date, are unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Parties shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Parties have the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and a Party shall immediately notify the City of San José in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. A Party's violation of this Section 17.10(b) is a material breach.

(c) Environmentally Preferable Procurement Policy. Parties shall perform its obligations under this Agreement in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 17.10(c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle the City of San José to terminate this Agreement.

(d) Gifts Prohibited. The Parties represent that they are familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. The Parties shall not offer any City of San José

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officer or designated employee any gift prohibited by Chapter 12.08. A Party's violation of this Section 17.10(d) is a material breach.

(e) Disqualification of Former Employees. The Parties represent that they are familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Parties shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

17.11. 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]

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

California Community Power By: Name: _____ Title: _____ Approved as to form by Counsel By: Name: _____ Title: _____	Central Coast Community Energy By: Name: _____ Title: _____ Approved as to form by Counsel By: Name: _____ Title: _____
Clean Power San Francisco By: Name: _____ Title: _____ Approved as to form by Counsel By: Name: _____ Title: _____	

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Peninsula Clean Energy By: Name: _____ Title: _____ Approved as to form by Counsel By: Name: _____ Title: _____	Redwood Coast Energy Authority By: Name: _____ Title: _____ Approved as to form by Counsel By: Name: _____ Title: _____
San José Clean Energy By: Name: _____ Title: _____ Approved as to form by Counsel By: Name: _____ Title: _____	Silicon Valley Clean Energy By: Name: _____ Title: _____ Approved as to form by Counsel By: Name: _____ Title: _____

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Sonoma Clean Power	Valley Clean Energy
By:	By:
Name: _____	Name: _____
Title: _____	Title: _____
Approved as to form by Counsel	Approved as to form by Counsel
By:	By:
Name: _____	Name: _____
Title: _____	Title: _____

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EXHIBIT A

NOTICES

Party	*All Notices*	*Invoices*
California Community Power	**California Community Power** Tim Haines, Interim General Manager California Community Power 70 Garden Court, 3rd Floor Monterey, CA 93940 timhaines@powergridsymmetry.com	
Central Coast Community Energy	**Central Coast Community Energy** Robert M. Shaw, Chief Operating Officer & General Counsel Central Coast Community Energy 70 Garden Court, 3rd Floor Monterey, CA 93940 rshaw@3ce.org	
Clean Power San Francisco	**Clean Power San Francisco** Barbara Hale, Assistant General Manager, Power San Francisco Public Utilities Commission 525 Golden Gate Ave, 13th Floor San Francisco, CA 94102 bhale@sfwater.org	
Peninsula Clean Energy	**Peninsula Clean Energy** Jan Pepper, CEO Peninsula Clean Energy 2075 Woodside Road Redwood City, California 94061 jpepper@peninsulacleanenergy.com	

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Party	*All Notices*	*Invoices*
Redwood Coast Energy Authority	**Redwood Coast Energy Authority** Matthew Marshall, CEO Redwood Coast Energy Authority 633 3rd Street Eureka, CA 95501 mmarshall@redwoodenergy.org	
San José Clean Energy	**San José Clean Energy** Lori Mitchell, Director cc: Luisa Elkins, Senior Deputy City Attorney San José Clean Energy 200 E. Santa Clara Street, 14th Floor San José, CA 95113 Lori.Mitchell@sanjoseca.gov Luisa.Elkins@sanjoseca.gov	
Silicon Valley Clean Energy	**Silicon Valley Clean Energy** Girish Balachandran, CEO Silicon Valley Clean Energy Authority 333 W. El Camino Real, Suite 330 Sunnyvale, CA 94087 girish@svcleanenergy.org	
Sonoma Clean Power	**Sonoma Clean Power** Geof Syphers, CEO Sonoma Clean Power 50 Santa Rosa Avenue, 5th Floor Santa Rosa, CA 95404 gsyphers@sonomacleanpower.org	

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Party	*All Notices*	*Invoices*
Valley Clean Energy	**Valley Clean Energy** Gordon Samuel Assistant General Manager & Director of Power Resource 604 2nd Street Davis, CA 95616 gordon.samuel@valleycleanenergy.org	

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EXHIBIT B

SCHEDULE OF PROJECT PARTICIPANT ENTITLEMENT SHARES AND STEP-UP ALLOCATION CAPS

*Dated:*_____

A	B	C	D	E
Project Participant	**Entitlement Share** *As of Effective Date*	**Entitlement Share** *As Modified Pursuant to Section 4.2*	**Entitlement Share** *As Modified Pursuant to Section 12.8(b) or 12.8(c)*	**Step-Up Allocation Cap** *125% multiplied by Column B or C as applicable*
Central Coast Community Energy	17.9%			
Clean Power San Francisco	13.9%			
Peninsula Clean Energy	17.1%			
Redwood Coast Energy Authority	3.2%			
San José Clean Energy	19.6%			
Silicon Valley Clean Energy	13.4%			
Sonoma Clean Power	11.2%			
Valley Clean Energy	3.7%			
Total	100%			

Instructions: If the CCP Manager modifies one or more Project Participant's Entitlement Share pursuant to Section 4.2, the CCP Manager shall prepare an updated Exhibit B that shows the prior Entitlement Share (Column B or D) in ~~strikeout~~ and specifies the new Entitlement Share values and the effective date of such modification in Column C. If the CCP Manager modifies one or more Project Participant's Entitlement Share pursuant

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to Section 12.8, the CCP Manager shall prepare an updated Exhibit B that shows the prior Entitlement Share (Column B or Column C) in ~~strikeout~~ and specifies the new Entitlement Share values and the effective date of such modification in Column D.

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EXHIBIT C

PROCEDURE FOR VOLUNTARY REDUCTION OF PROJECT PARTICIPANT'S ENTITLEMENT SHARE

(a) Offer to Other Project Participants. A Project Participant proposing to reduce its Entitlement Share of the Project shall provide Notice to all other Project Participants and CCP specifying the quantity of the proposed reduction of Entitlement Share ("**Entitlement Share Reduction Amount**") and the first Month for which the Project Participant Proposes that the change of Entitlement Share would become effective (such Notice referred to as the "**Entitlement Share Reduction Notice**").

(i) Upon receiving an Entitlement Share Reduction Notice from any Project Participant, the CCP Manager shall promptly do all of the following:

(A) Establish Entitlement Share Reduction Compensation Amount. The CCP Manager shall secure at least one (1), but no more than three (3), valuations of the net present value of the Entitlement Share Reduction Amount over the remaining term of the PPA from one or more qualified firm(s) with the requisite experience to determine such valuation. The valuation, or if more than one valuation is obtained, the average of all valuations received, shall be the "**Proposed Entitlement Share Reduction Compensation Amount**." The CCP Manager shall call a meeting of the Project Committee and present the Proposed Entitlement Share Reduction Compensation Amount to the Project Committee. The Project Committee shall by a Normal Vote either approve the Proposed Entitlement Share Reduction Compensation Amount or direct the CCP Manager to secure additional valuations. The Proposed Entitlement Share Reduction Compensation Amount approved by the Project Committee shall be the "**Entitlement Share Reduction Compensation Amount**." The Project Participant proposing to reduce its Entitlement Share may modify the quantity of the Entitlement Share Reduction Amount associated with its proposal or withdraw its proposal at any time prior to the initiation of the process set forth in paragraph (a)(i)(B).

(B) Oversee the Offering of the Entitlement Share Reduction Amount to Other Project Participants. The CCP Manager shall facilitate the offering of the Entitlement Share Reduction Amount to the other Project Participants through multiple rounds of offerings.

a) The initial offering shall be to each Project Participant on a pro rata share, based on such Project Participant's Entitlement Share. Each Project Participant may accept or reject the portion of the Entitlement Share Reduction Amount offered to the Project Participant through this process. If any portion of the Entitlement Share Reduction Amount remains after the initial offering, then the remaining portion shall be offered to any Project Participant that accepted the share of the Entitlement Share Reduction Amount offered in the initial offering on a pro rata share, based on such Project Participant's Entitlement Share as a percentage of the total Entitlement Shares of all Project Participants that accepted the portion of the Entitlement Share Reduction Amount offered to them in the initial offering.

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b) The CCP Manager shall conduct subsequent offering rounds until either the total Entitlement Share Reduction Amount is accepted by one or more of the other Project Participants or some portion of the Entitlement Share Reduction Amount remains, but all Project Participants have rejected such amount.

c) Any Project Participant accepting a share of the offered Entitlement Share Reduction Amount shall either pay the offering Project Participant or be compensated by the offering Project Participant at the Entitlement Share Reduction Compensation Amount multiplied by the quantity of the portion being accepted.

d) Before a transfer of all or a portion of any Project Participant's Entitlement share to another Project Participant can become effective, the proposed transfer must be submitted to and approved by the Project Committee through a Normal Vote.

e) After acceptance and payment for such portion of the Entitlement Share Reduction Amount, and upon approval of such transfer by the Project Committee, the CCP Manager shall cause the Entitlement Share specified in Exhibit B to be modified accordingly, and such modification shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

(C) Oversee the Offering of the Entitlement Share Reduction Amount to CCP Members that are not Project Participants. If there is any portion of the Entitlement Share Reduction Amount that remains unaccepted after the process specified in paragraph (a)(i)(B) is complete, then the Project Participant proposing to reduce its Entitlement Share may request that the CCP Manager offer the remaining portion of the Entitlement Share Reduction Amount to CCP Members that are not Project Participants. If any CCP Member wishes to accept any or all of the remaining portion of the Entitlement Share Reduction Amount, such action shall require the CCP Member to become a Project Participant through an amendment to this Agreement, which shall be subject to the consent and approval of all Parties to this Agreement and the CCP Member becoming a Project Participant. The compensation amount associated with the CCP Member accepting the remaining portion of the Entitlement Share Reduction Amount shall be negotiated between the CCP Member and the offering Project Participant.

(D) Oversee the Offering of the Entitlement Share Reduction Amount to a Community Choice Aggregator that is not a CCP Member. If there is any portion of the Entitlement Share Reduction Amount that remains unaccepted after the process specified in both paragraphs (a)(i)(B) and (a)(k)(C) is complete, then the Project Participant proposing to reduce its Entitlement Share, may request that the CCP Manager offer the remaining portion of the Entitlement Share Reduction Amount to a community choice aggregator that is not a CCP Member. If any community choice aggregator wishes to accept any or all of the remaining portion of the Entitlement Share Reduction Amount, such action shall require the community choice aggregator to become a CCP Member, and subsequent to becoming a CCP Member, to become a Project Participant through an amendment to this Agreement that is subject to the consent and approval of all Parties to this Agreement and the community choice aggregator becoming a Project Participant. The compensation amount associated with the community choice aggregator accepting the remaining portion of the Entitlement Share Reduction Amount shall be negotiated between the community choice aggregator and the offering Project Participant.

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EXHIBIT D

PROJECT COMMITTEE OPERATIONS, MEETINGS, AND VOTING

(a) Chairperson of Project Committee. The chairperson of the Project Committee ("**Chairperson**") shall be the CCP Manager. The Chairperson shall be responsible for calling and presiding over meetings of the Project Committee in a manner and to the extent permitted by law.

(b) Conducting Meetings. Conducting of Project Committee meetings and actions taken by the Project Committee may be taken by vote given in an assembled meeting, by telephone, by video conferencing, or by any combination thereof, to the extent permitted by law.

(c) Calling of Meetings.

(i) The Chairperson may call a meeting of the Project Committee at their discretion.

(ii) The Chairperson shall promptly call a meeting of the Project Committee at the request of any representative of a Project Participant.

(d) Unanimous Votes. Certain actions, as designated in Section 6.4(c), require a unanimous affirmative vote by all Project Participants (**"Unanimous Vote"**). No such vote may be taken unless a representative from every Project Participant is present at the meeting of the Project Committee. If any Project Participant's Entitlement Share is reduced to zero through the process specified in Exhibit C, such Project Participant shall not be required to be present or be entitled to vote in order for such vote to be a Unanimous Vote.

(e) Normal Votes. All actions not designated as requiring unanimous vote, shall proceed pursuant to the **"Normal Vote"** process set forth in this paragraph (e).

(i) Quorum. No Normal Vote of the Project Committee shall be taken unless a representative is present for at least fifty percent (50%) of the total number of Project Participants, without regard to each Project Participant's Entitlement Share.

(ii) Initial Normal Vote. Unless a representative requests an Alternate Normal Vote, pursuant to paragraph (e)(iii), all actions requiring a Normal Vote, as specified in Section 6.4(b) or 6.4(d), shall require an affirmative vote of at least fifty-one percent (51%) of the total number of Project Participants, without regard to each Project Participant's Entitlement Share.

(iii) Alternate Normal Vote. Any representative may request that any Normal Vote be taken on an Entitlement Share basis (referred to as an "**Alternate Normal Vote**"). If a representative requests an Alternate Normal Vote, then the following vote requirements shall apply:

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(A) If any individual Project Participant has an Entitlement Share exceeding fifty percent (50%), then all actions for which an Alternate Normal Vote is taken shall require that the Project Participant with an Entitlement Share exceeding fifty percent (50%) plus any other Project Participant vote in the affirmative.

(B) If no individual Project Participant has an Entitlement Share exceeding fifty percent (50%), then all actions for which an Alternate Normal Vote is taken shall require an affirmative vote of Project Participants having Entitlement Shares aggregating at least fifty-one percent (51%) of the total Entitlement Shares.

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VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2022- ___

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING THE FOLLOWING AGREEMENTS AND ANY NECESSARY ANCILLARY DOCUMENTS FOR THE ORMAT GEOTHERMAL PORTFOLIO (ORGP, LLC) AND AUTHORIZING THE EXECUTIVE OFFICER IN CONSULTATION WITH LEGAL COUNSEL TO FINALIZE AND EXECUTE THE AGREEMENTS: 1) POWER PURCHASE AGREEMENT BETWEEN ORGP, LLC AND CALIFORNIA COMMUNITY POWER, 2) PROJECT PARTICIPATION SHARE AGREEMENT BETWEEN VALLEY CLEAN ENERGY ALLIANCE, CALIFORNIA COMMUNITY POWER AND OTHER PARTICIPATING CCAs

WHEREAS, the Valley Clean Energy Alliance ("VCE") was formed as a community choice aggregation agency ("CCA") on November 16, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions. The City of Winters, located in Yolo County, was added as a member of VCE and a party to the JPA in December of 2019; and,

WHEREAS, VCE is a member of California Community Power (CC Power) joint powers authority; and

WHEREAS, VCE in coordination with CC Power conducted a request for offers for firm clean resources (FCR) and engaged in negotiations for a portfolio of geothermal projects being developed by Ormat; and

WHEREAS, CC Power seeks to execute agreements to effectuate its purchase of its geothermal resources from ORGP, LLC based on the portfolio's desirable offering of products, pricing and terms; and

WHEREAS, the geothermal portfolio will contribute to the regulatory requirement to procure firm clean resources for each of the CCAs that are participating in this project through CC Power by providing geothermal resources for a term of twenty years starting in 2024; and

WHEREAS, staff is presenting to the Board for its review the Power Purchase Agreement and the Project Participation Share Agreement.

///

///

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

1. Executive Officer is authorized to execute the Agreements and any ancillary documents with the ORGP LLC, California Community Power and participating CCAs with the terms generally consistent with those presented, in a form approved by legal counsel.

PASSED, APPROVED AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____, 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Jesse Loren, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

EXECUTION VERSION

RENEWABLE POWER PURCHASE AGREEMENT

COVERSHEET

Seller: Fish Lake Geothermal LLC ("**Seller**")

Buyer: California Community Power, a California joint powers authority ("**Buyer**")

Description of Facility: Fish Lake Geothermal Project, a 13 MW geothermal power plant, located in Esmeralda County, in the State of Nevada, as further described in Exhibit A.

Milestones:

Milestone	Expected Date for Completion
Evidence of Site Control	Complete
CEC Pre-Certification Obtained	September 1, 2022
Documentation of Conditional Use Permit if required: [ ] CEQA, [ ] Cat Ex, [ ]Neg Dec, [ ] Mitigated Neg Dec, [ ] EIR, [X] NEPA	June 1, 2023
Seller's receipt of facilities study results for Seller's Interconnection Facilities	November 1, 2022
Interconnection Agreement executed	March 1, 2023
Major Equipment procured	June 1, 2023
Federal and State discretionary permits obtained	December 1, 2023
Guaranteed Construction Start Date	January 1, 2024
Initial Synchronization	May 1, 2024
Network Upgrades completed	May 1, 2024
Expected Commercial Operation Date	June 1, 2024
Guaranteed Commercial Operation Date	June 1, 2024

Delivery Term: Twenty (20) Contract Years.

Expected Energy:

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Contract Year	Expected Energy (MWh)
1 – 20	[redacted]

Guaranteed Capacity: 13 MW

Contract Price:

Contract Year	Contract Price
1 – 20	[redacted]

Product:

- ☒ Delivered Energy
- ☒ Green Attributes (Portfolio Content Category 1) associated with Delivered Energy
- ☒ Capacity Attributes
- ☒ Ancillary Services

Scheduling Coordinator: Seller

Security:

CP Security: $[redacted]/kW times the Guaranteed Capacity

Development Security: $[redacted]/kW times the Guaranteed Capacity

Performance Security: $[redacted]/kW times the Installed Capacity

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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, permit, 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(d).

"**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", "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 the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

"**Ancillary Services**" means all ancillary services, products and other attributes, if any, associated with the Installed Capacity of the Facility.

"**Attestation**" has the meaning set forth in Section 4.10.

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"**Available Generating Capacity**" means the capacity of the Facility, expressed in whole MWs, that is mechanically available to generate Energy.

"**Bankrupt**" 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.

"**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. Pacific Prevailing Time ("**PPT**") for the Party sending a Notice, or payment, or performing a specified action.

"**Buyer**" means California Community Power, a California joint powers authority.

"**Buyer Default**" means a failure by Buyer or its agents to perform Buyer's obligations hereunder and includes an Event of Default of Buyer.

"**Buyer Liability Pass Through Agreement**" means an agreement by and between Seller, Buyer and the applicable Project Participant, in the form set forth in Exhibit L.

"**Buyer's WREGIS Account**" has the meaning set forth in Section 4.8(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 Delivered Energy delivered to the Delivery Point.

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

"**CAISO Operating Order**" means the "operating order" defined in Section 37.2.1.1 of 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.

"**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

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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 or 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 Damages**" has the meaning set forth in Exhibit B.

"**CEC**" means the California Energy Commission, or any successor agency performing similar statutory functions.

"**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, as such date may be extended pursuant to Section 3.9) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Delivered 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.

"**CEQA**" means the California Environmental Quality Act.

"**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, at least 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 cash equity and tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

"**CIRA Tool**" means the CAISO Customer Interface for Resource Adequacy.

"**Claim**" has the meaning set forth in Section 16.2.

"**COD Certificate**" has the meaning set forth in Exhibit B.

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"**Commercial Operation**" has the meaning set forth in Exhibit B.

"**Commercial Operation Date**" has the meaning set forth in Exhibit B.

"**Commercial Operation Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) sixty (60).

"**Compliance Action**" has the meaning set forth in Section 3.12(b).

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.12(b).

"**Compliant Project Participant**" means a Project Participant that is not a Defaulted Project Participant.

"**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.

"**Contract Term**" has the meaning set forth in Section 2.1(a).

"**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 this 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.

"**CP Satisfaction Date**" means the date on which the condition precedent described in Section 2.1(b) has been satisfied (or waived in writing by the Parties).

"**CP Security**" means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

"**CPM Soft Offer Cap**" has the meaning set forth in the CAISO Tariff.

"**CPUC**" means the California Public Utilities Commission, or any successor agency performing similar statutory functions.

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"**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.

"**CRS**" has the meaning set forth in Section 4.10.

"**Cure Plan**" has the meaning set forth in Section 11.1(b)(vi).

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

"**Curtailment Order**" means any of the following:

(a) CAISO or Transmission Provider orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Delivered Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's or the Transmission Provider's electric system integrity or the integrity of other systems to which CAISO or the Transmission Provider is connected;

(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 the CAISO or Transmission Provider due to scheduled or unscheduled maintenance on the Transmission Provider's or CAISO's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy to the Delivery Point; 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 generation from the Facility is reduced pursuant to a Curtailment Order; *provided*, the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"**Daily Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

"**Damage Payment**" means the dollar amount that equals the amount of the Development Security.

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

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

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

"**Deemed Delivered Energy**" means the amount of electrical energy above the Curtailment Cap expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Market Curtailment Period, which amount shall be calculated as the difference between (a) the product of (i) the arithmetic average of the Facility's metered output rate, in MW, immediately before and after such Market Curtailment Period, as applicable, by (ii) the duration of such Market Curtailment Period, as applicable, less (b) the amount of Delivered Energy delivered to the Delivery Point during the Market Curtailment Period, if any; *provided*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

"**Deemed Delivered RA**" means the amount of Net Qualifying Capacity expressed in MW that the Facility would have delivered to the Delivery Point, but for (i) the failure of the Project Participants to obtain Import Capability sufficient to allow for the importation of such capacity into the CAISO, or (ii) a Force Majeure Event as provided in Section 3.7(h).

"**Defaulted Liability Share**" means the Liability Share of a Defaulted Project Participant.

"**Defaulted Project Participant**" means a Project Participant that has incurred but not cured a Project Participant Payment Default, including any Project Participant whose rights under the Project Participation Agreement have been suspended or terminated.

"**Defaulting Party**" has the meaning set forth in Section 11.1(a).

"**Deficient Month**" has the meaning set forth in Section 4.8(e).

"**Delivered Energy**" means for each hour, the electric Energy generated by the Facility, net of Electrical Losses and Station Use, and delivered to the Delivery Point.

"**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 (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

"**Disclosing Party**" has the meaning set forth in Section 18.2.

"**Early Termination Date**" has the meaning set forth in Section 11.2(a).

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"**Effective Date**" has the meaning set forth in the Preamble.

"**Effective Flexible Capacity**" means the net capacity of a Resource Adequacy Resource that can be counted towards Flexible Capacity Requirements, as identified from time to time by the CAISO Tariff, the Resource Adequacy Rulings, or by any other Governmental Authority having jurisdiction.

"**Electrical Losses**" means all transmission or transformation losses or gains for the Facility in accordance with CAISO's rules for Pseudo-Tie Resources.

"**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 generated by the Facility.

"**Event of Default**" has the meaning set forth in Section 11.1.

"**Expected Commercial Operation Date**" is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

"**Expected Energy**" means the quantity of Energy attributable to the Installed Capacity that Seller expects to be able to deliver from the Facility during each Contract Year in the quantity specified on the Cover Sheet.

"**Facility**" means the geothermal 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 Energy to the Delivery Point.

"**Facility Meter**" means the CAISO Approved Meter that will measure all electric energy generated by the Facility, including Delivered Energy. Without limiting Seller's obligation to deliver Delivered Energy to the Delivery Point, the Facility Meter may be located at the low voltage or the high voltage side of the main step-up transformer, and Delivered Energy will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

"**FCR Showings**" means the Flexible Capacity Requirement showings (or similar or successor showings) that Project Participants are required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings and the CAISO Tariff.

"**FERC**" means the Federal Energy Regulatory Commission, or any successor government agency.

"**Firm Clean Resource**" means a resource that meets the requirements of CPUC Decision 21-06-035, including that such resource (i) has at least an eighty percent (80%) capacity factor and zero on-site emissions or otherwise qualifies under the California Renewable Portfolio Standard (RPS) program eligibility rules as PCC1, (ii) is incremental to the CPUC's baseline list, and (iii)

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is a Resource Adequacy Resource that is eligible to provide RA Capacity as set forth in the Resource Adequacy Rulings.

"**Firm Transmission**" means transmission that cannot be curtailed within an operating hour for economic reasons or for higher priority transmission within the operating hour.

"**Flexible Capacity Requirements**" means the flexible capacity requirements established by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority having jurisdiction.

"**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 Delivered Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

"**Forced Labor**" has the meaning set forth in Section 13.4(c).

"**Forward Certificate Transfers**" has the meaning set forth in Section 4.8(a).

"**Future Environmental Attributes**" shall mean any and all generation attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations 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) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include investment tax credits or production 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.

"**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,

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or entity with authority to bind a Party at law, including CAISO; *provided, however*, that "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, 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; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Delivered Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production 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, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

"**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.

"**Guaranteed Amount**" has the meaning set forth in each Project Participant's Buyer Liability Pass Through Agreement, which amount may be different for each Project Participant given each Project Participant's Liability Share.

"**Guaranteed Capacity**" means the net dependable generating capacity of the Facility in the amount set forth on the Cover Sheet, as measured in accordance with the CAISO Tariff in MW(AC)at the Interconnection Point, which Seller commits to install pursuant to this Agreement.

"**Guaranteed Commercial Operation Date**" means the date set forth on the Cover Sheet, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B.

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"**Guaranteed Construction Start Date**" means the date set forth on the Cover Sheet, as such date 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.

"**Guaranteed Energy Production**" means for the first (1st) Performance Measurement Period, [redacted] of the total aggregate Expected Energy, measured in MWh, and for the second (2nd) Performance Measurement Period and each Performance Measurement Period thereafter, [redacted] of the total aggregate Expected Energy, measured in MWh, for the applicable Performance Measurement Period.

"**Guaranteed Net Qualifying Capacity**" means, at any point in time, [redacted]

"**Imbalance Energy**" means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

"**Import Capability**" means that portion of the Maximum Import Capability allocated by the CAISO that is necessary to support the importation of Resource Adequacy Benefits from the Facility into the CAISO market in an amount equal to the Guaranteed Net Qualifying Capacity.

"**Indemnifiable Loss(es)**" has the meaning set forth in Section 16.1(a).

"**Indemnified Group**" has the meaning set forth in Section 16.1(a).

"**Indemnified Party**" has the meaning set forth in Section 16.1(a).

"**Indemnifying Party**" has the meaning set forth in Section 16.1(a).

"**Initial Liability Share**" means the Liability Share of each Project Participant shown on Exhibit S as of the Effective Date.

"**Initial Synchronization**" means the initial delivery of Energy to the Delivery Point.

"**Installed Capacity**" means the peak electrical output of the Facility, as measured in MW(AC) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility, and pursuant to which

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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 by the Facility to the Interconnection Point under Seller's Interconnection Agreement, in an amount no less than 19 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.

"**Interconnection Point**" has the meaning set forth in Exhibit A.

"**Interest Rate**" has the meaning set forth in Section 8.2.

"**Inter-SC Trade**" or "**IST**" 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 January 29, 2021, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"**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 (i) 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, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) 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 (a) having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook

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designation of "stable" from Moody's or (b) being reasonably acceptable to Buyer, in a form substantially similar to the letter of credit set forth in Exhibit K.

"**Liability Share**" means the percentage amount set forth for each Project Participant in Exhibit S.

"**Licensed Professional Engineer**" means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of Nevada.

"**Local Capacity Area**" has the meaning set forth in the CAISO Tariff.

"**Local Capacity Area Resource**" has the meaning set forth in the CAISO Tariff.

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

"**Losses**" means, with respect to the Non-Defaulting 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 reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including 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, 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. Seller's lost revenue under this Agreement resulting from a Buyer Default shall not be considered to be consequential, incidental, punitive, exemplary or indirect or business interruption damages for purposes of determining Losses under this Agreement.

"**Lost Output**" means the amount of Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, Curtailment Period, System Emergency, or Buyer Default. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

"**Major Equipment**" means power generation units, the generator step-up transformer, wellfield pumps, pressure vessels, condensing system, and electrical control equipment.

"**Market Curtailment Period**" means the period-of-time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility during a Settlement Period or Settlement Interval in which there is a Negative LMP that is equal to or below the Negative LMP Strike Price; provided, that the duration of any Market Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"**Master File**" has the meaning set forth in the CAISO Tariff.

"**Maximum Import Capability**" has the meaning set forth in the CAISO Tariff, and includes any replacement or successor method implemented by the CAISO with respect to the

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ability of generating units that are external to the CAISO balancing authority area to provide Resource Adequacy Benefits.

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

"**Monthly Delivery Forecast**" has the meaning set forth in Section 4.3(b).

"**Monthly Product Payment**" means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for delivered Product, as calculated in accordance with Exhibit C.

"**Moody's**" means Moody's Investors Service, Inc.

"**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, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Settlement Point is less than zero dollars ($0).

"**Negative LMP Strike Price**" means zero dollars per MWh ($0/MWh), as such price may be revised by Buyer by providing Notice to Seller in accordance with Exhibit C; *provided*, in no event shall the Negative LMP Strike Price be greater than zero dollars per MWh ($0/MWh).

"**Net Qualifying Capacity**" or "**NQC**" means the net capacity of a resource that can be counted towards system Resource Adequacy Requirements, as identified from time to time by the CAISO Tariff, the Resource Adequacy Rulings, or by another Governmental Authority having jurisdiction.

"**Network Upgrades**" has the meaning set forth in the Transmission Provider's open access transmission 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).

"**Notice of Claim**" has the meaning set forth in Section 16.2.

"**Notification Deadline**" for a given Showing Month shall mean twenty (20) Business Days before the earlier of the submission of the CAISO Supply Plan filings applicable to that Showing Month.

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"**NP 15**" means the Existing Zone Generation Trading Hub for Existing Zone region NP l5 as set forth in the CAISO Tariff.

"**Operational Characteristics**" means the minimum performance requirements for the Facility, as set forth in Exhibit O.

"**Party**" or "**Parties**" has the meaning set forth in the Preamble.

"**Payment Demand**" has the meaning set forth in Exhibit L.

"**Performance Measurement Period**" means [redacted]

"**Performance Security**" means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

"**Permitted Transferee**" means (ii) any Affiliate of Seller or (ii) any entity that has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than [redacted] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(b) At least three (3) years of experience in the ownership and operations of power generation 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, subject to and as further described in the CAISO Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Facility that is conducted for the purposes of carrying out routine repair or maintenance of such Facility, or for the purposes of new construction work for such Facility.

"**PMAX**" means the applicable CAISO-certified maximum operating level of the Facility.

"**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

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Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

"**Prevailing Wage Requirement**" has the meaning set forth in Section 13.4(b).

"**Pro Rata**" means, for purposes of calculating a Project Participant's Revised Liability Share, the ratio of (i) such Project Participant's Initial Liability Share to (ii) the sum of the Initial Liability Shares of all of the Compliant Project Participants.

"**Product**" has the meaning set forth on the Cover Sheet.

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

"**Project Labor Agreement**" has the meaning set forth in Section 13.4(b).

"**Project Participant**" means each Person identified in Exhibit S that shall execute a Buyer Liability Pass Through Agreement in the form set forth in Exhibit L.

"**Project Participant Approval**" means each Project Participant has obtained all necessary approvals from its board or governing authority necessary to execute a Buyer Liability Pass Through Agreement for the Liability Shares as set forth in Exhibit S and the Project Participation Agreement, and that Buyer has delivered to Seller Buyer Liability Pass Through Agreements and the Project Participation Agreement executed by each Project Participant and countersigned by Buyer.

"**Project Participant Payment Default**" means any failure by a Project Participant to pay any material amount under the Project Participation Agreement as and when due (without giving effect to any extensions of time, waivers or late notices), including monthly amounts collected to fund, or to reserve funds for, payment of Buyer's obligations under this Agreement or a Project Participant does not show to Seller's reasonable satisfaction that it is able to comply with its obligations under the Project Participation Agreement within sixty (60) days of any Bankruptcy filing and Seller issues notice of its lack of consent within thirty (30) days thereafter.

"**Project Participation Agreement**" means that certain Fish Lake Geothermal Project Participation Agreement executed by and among Buyer and all of the Project Participants relating to their allocation among themselves of Buyer's responsibilities and liabilities under this Agreement, and any successor agreement.

"**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 industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the western United States, or (b) any of the practices, methods and acts which, 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 in the western United States.

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Prudent Operating Practice includes compliance with applicable Laws, applicable safety and 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.

"**Pseudo-Tie Resource**" means a generating facility that is party to a FERC-approved Pseudo-Tie Participating Generator Agreement with the CAISO which allows for Capacity Attributes from the generating facility to be imported into the CAISO as "unit-specific" or "resource specific" import RA Capacity pursuant to applicable decisions of the CPUC.

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

"**Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

"**RA Compliance Showing**" means the (a) RAR compliance or advisory showings (or similar or successor showings), and (b) 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 Commercial Operation Date.

"**RA Penalties**" means the RA penalties assessed against load serving entities by the CPUC for RA deficiencies that are not replaced or cured, as established by the CPUC in the Resource Adequacy Rulings and subsequently incorporated into the annual Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings that is issued by the CPUC Energy Division, if applicable, or any replacement or successor documentation established by the CPUC Energy Division to reflect RA penalties that are established by the CPUC and assessed against load serving entities for RA deficiencies.

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month, commencing with the Showing Month that contains the RA Guarantee Date, during which the Net Qualifying Capacity of the Facility that was able to be included in the Supply Plans of Project Participants for such Showing Month was either (i) not published by or otherwise established with the CAISO by the Notification Deadline for such Showing Month, or (ii) was less than the then applicable Guaranteed Net Qualifying Capacity for such Showing Month minus any Deemed Delivered RA.

"**Real-Time Forecast**" means any Notice of any change to the Available Generating Capacity or hourly expected Delivered Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

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"**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.

"**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 ownership or operation of the Facility; 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.

"**Replacement Green Attributes**" means Renewable Energy Credits that are Portfolio Content Category 1 (PCC1) and of the same type of resource (e.g., wind, solar, etc.) as the Renewable Energy Credits that would have been generated by the Facility.

"**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 or SP 15.

"**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 includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

"**Resource Adequacy Capacity**" or "**RA Capacity**" has the meaning set forth in the CAISO Tariff.

"**Resource Adequacy Plan**" has the meaning specified in the Tariff.

"**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, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy Law,

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however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

"**RETA**" has the meaning set forth in Section 13.4(b).

"**RETA Regulations**" has the meaning set forth in Section 13.4(b).

"**Revised Liability Share**" means the sum of a Project Participant's Initial Liability Share plus its Pro Rata portion of all Defaulted Liability Shares, not to exceed one hundred twenty-five percent (125%) of such Participant's Initial Liability Share.

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.).

"**Schedule**" has the meaning set forth in the CAISO Tariff, and "**Scheduled**" has a corollary meaning.

"**Scheduled Energy**" means the Delivered Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), 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 8.10.

"**Self-Schedule**" has the meaning set forth in the CAISO Tariff.

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Seller's WREGIS Account**" has the meaning set forth in Section 4.8(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; *provided* that the Parties agree that Seller's lost revenue under this Agreement resulting from a Buyer Default may be included in the determination of Losses.

"**Settlement Interval**" has the meaning set forth in the CAISO Tariff.

"**Settlement Period**" has the meaning set forth in the CAISO Tariff.

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"**Settlement Point**" has the meaning set forth in Exhibit A.

"**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 generation and 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.

"**Shared Facilities Agreements**" has the meaning set forth in Section 6.3.

"**Showing Month**" shall be the calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff.

"**Site**" means the real property on which the Facility is or will be located, as further described in Exhibit A, as may 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 with or contiguous with the Site boundaries described in Exhibit A shall be subject to Buyer's approval of such updates in its sole discretion. "Site" does not include any land rights or interests in the real property constituting the Site that relate to or are used by other projects constructed or owned by any party to any Shared Facility Agreements. An update provided by Seller pursuant to this definition shall be automatically incorporated as the new Exhibit A upon its receipt by Buyer unless Buyer's approval is required, then it shall be incorporated automatically as the new Exhibit A upon Buyer's approval.

"**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.

"**Station Use**" means:

(a) The Energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced by the Facility that is consumed within the Facility's electric energy distribution system as losses.

"**Step-Up Event**" means the forty-fifth (45th) day following the occurrence of a Project Participant Payment Default if such Project Participant Payment Default has not been cured by that date, regardless of whether or not notice was given to the Defaulted Project Participant under the Project Participation Agreement or otherwise or by Buyer hereunder.

"**Supply Plan**" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO in order for that RA Capacity to count, as applicable, for RAR Attributes and/or FCR Attributes.

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"**System Emergency**" means any condition that requires, as determined and declared by the CAISO or Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) 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 or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

"**Technology Factor**" means the then-applicable monthly percentage published by the CPUC and used to establish Qualifying Capacity for non-dispatchable geothermal resources that have less than three (3) years of historical production and bidding data. The Parties acknowledge and agree that the Technology Factors vary from year to year and month to month.

"**Terminated Transaction**" has the meaning set forth in Section 11.2(a).

"**Termination Payment**" has the meaning set forth in Section 11.3.

"**Test Energy**" means Delivered Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

"**Test Energy Rate**" has the meaning set forth in Section 3.6.

"**Transmission Provider**" means any entity or entities transmitting or transporting the Delivered Energy on behalf of Seller or Buyer to or from the Delivery Point. For purposes of this Agreement, the Transmission Provider is set forth in Exhibit A.

"**Transmission System**" means the transmission facilities operated by NV Energy, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

"**Ultimate Parent**" means Open Mountain Energy, LLC, a Delaware limited liability company.

"**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.

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"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.8(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 means 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 without limitation" (as applicable) 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;

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(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, including Section 2.1(b) ("**Contract Term**"); *provided, however*, 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) Buyer will provide written Notice to Seller upon receipt of Project Participant Approval of this Agreement. Notwithstanding anything to the contrary in this Agreement, if Project Participant Approval of this Agreement is not obtained within one hundred twenty (120) days following the Effective Date, then either Party may terminate this Agreement upon written Notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(c), and Buyer shall promptly return to Seller any CP Security then held by Buyer, if any, less any amounts drawn in accordance with this Agreement.

(c) 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 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

2.2 **Condition Precedent**. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller has 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

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Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Pseudo-tie Participating Generator Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect and Seller shall have provided Buyer a CAISO Resource ID and a PMAX, if applicable, for the Facility;

(c) If applicable, 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 such agreement delivered to Buyer;

(d) 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;

(e) All applicable regulatory authorizations, approvals and permits for commercial operation of the Facility have been obtained and shall be in full force and effect, and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(f) Seller has obtained Firm Transmission rights sufficient to deliver 13 MW to the Delivery Point and has provided documentation of the same to Buyer;

(g) 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);

(h) 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 under WREGIS rules and reasonably expects to complete all other applicable requirement thereafter), 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;

(i) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;

(j) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1;

(k) Seller has delivered the Performance Security to Buyer in accordance with Section 8.9; and

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(l) 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 (i) 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 agrees 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. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, 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, if known, (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 (including all relevant extensions thereof). 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 will 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, including the last sentence of Section 5.2. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Buyer has no obligation to purchase from Seller any Product for which the associated Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order. For the avoidance of doubt, settlement

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with CAISO shall not be deemed a sale by Seller to a third party of Product in contravention of this Section 3.1.

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 Delivered Energy generated by the Facility.

3.3 **Imbalance Energy**. Buyer and Seller recognize that in any given Settlement Period the amount of Delivered Energy may deviate from the amount of Energy Scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be allocated to the Party that is acting as Scheduling Coordinator for the Facility.

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 operation of the Facility to reduce Delivered Energy unless the Parties have agreed on all necessary terms and conditions relating to such alteration or changes 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*, 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

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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] for the Delivered Energy (the "**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes**.

(a) Prior to the Delivery Term, Seller shall qualify the Facility as a Pseudo-Tie Resource with the CAISO pursuant to the CAISO's New Resource Implementation process (as defined in the CAISO Tariff). Seller shall maintain the Facility as a Pseudo-Tie Resource in compliance with the CAISO Tariff throughout the Delivery Term.

(b) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes and Resource Adequacy Benefits, including Flexible Capacity, if any, available from the Facility. Subject to Section 3.12, Seller shall take all commercially reasonable administrative actions during the Delivery Term, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable the Project Participants to use all the Capacity Attributes and Resource Adequacy Benefits committed by Seller to Buyer pursuant to this Agreement.

(c) Buyer shall cause the Project Participants to use commercially reasonable efforts to obtain the Import Capability at the Delivery Point and at [redacted] necessary to import the Guaranteed Net Qualifying Capacity from the Facility into the CAISO. Seller shall use commercially reasonable efforts to support Buyer and Project Participants in obtaining such Import Capability. To the extent Project Participants do not or cannot maintain Import Capability at the Delivery Point, or at [redacted], if applicable, necessary to support the importation of the Guaranteed Net Qualifying Capacity into the CAISO for reasons other than a Seller failure under this Agreement or the inability of Seller to maintain the Facility as a Pseudo-Tie Resource, the Capacity Attributes that are not imported or that cannot be imported shall constitute Deemed Delivered RA.

(d) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause the Facility's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Resource Adequacy Benefits provided to Project Participants for each Showing Month.

(e) Resource Adequacy Benefits are delivered and received when the CIRA Tool shows that the Supply Plans have been accepted by the CAISO. If CAISO rejects either the Supply Plans or Project Participants' Resource Adequacy Plans with respect to any part of the Resource Adequacy Benefits in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plans or Resource Adequacy Plans for validation before the applicable Notification Deadline for the relevant Showing Month.

(f) If Seller operates the Facility as a dispatchable resource, Seller shall undertake commercially reasonable efforts, subject to Section 3.12, to maximize the quantity of

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Effective Flexible Capacity provided to the Project Participants from the Facility. At least ninety (90) days before the annual FCR Showings filing deadline, Seller shall provide Buyer with written Notice of the quantity of Effective Flexible Capacity the Facility is expected to provide for the following calendar year. No later than the Notification Deadline for each Showing Month of the Delivery Term, Seller shall notify Buyer of the quantity of Effective Flexible Capacity that the Project Participants are permitted to include in the FCR Showings.

(g) If Seller anticipates that it will have an RA Shortfall Month, Seller may, provide Replacement RA in the amount of (i) the Guaranteed Net Qualifying Capacity with respect to such Showing Month, minus (ii) the expected Net Qualifying Capacity that is able to be included in the Supply Plans for Project Participants for such Showing Month plus any Deemed Delivered RA; *provided*, that any Replacement RA is communicated by Seller to Buyer in the form of Exhibit M by Seller to Buyer no later than the Notification Deadline.

(h) Notwithstanding anything to the contrary in this Agreement, Seller shall be permitted to reduce deliveries of Capacity Attributes and Resource Adequacy Benefits during any Force Majeure Event that results in Seller's inability, despite the use of commercially reasonable efforts, to deliver Delivered Energy to the Delivery Point.

3.8 **Resource Adequacy Failure**.

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer as liquidated damages the RA Deficiency Amount, as set forth in Section 3.8(b), and/or provide Replacement RA, as set forth in Section 3.7(g), in each case, as the sole remedy for Capacity Attributes that Seller fails to convey to the Project Participants from the Facility.

(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 (i) the difference, expressed in kW, of the then applicable Guaranteed Net Qualifying Capacity, minus the then-applicable Net Qualifying Capacity included in the Supply Plans for such Showing Month for the Project Participants, which shall be deemed to be zero (0) MW if the Net Qualifying Capacity has not been published by or otherwise established with the CAISO by the Notification Deadline for such RA Shortfall Month, plus any Replacement RA that was able to be included in the Supply Plan for such Showing Month for the Project Participants and any Deemed Delivered RA, multiplied by (ii) [redacted]

3.9 **CEC Certification and Verification**. 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

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Verification, which deadline will be extended on a day-for-day basis if there is a delay in CEC Certification and Verification and that delay is caused by any reason other than an act or omission of Seller. 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 **[Reserved]**.

3.11 **California RPS Standard Terms and Conditions**.

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project'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. [STC 6].

(b) The term "commercially reasonable efforts" as used in this Section 3.11 means efforts consistent with and subject to Section 3.12. The term "Project" as used in Section 3.11(a) means the Facility.

(c) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. 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. [STC REC-1].

(d) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].

(e) The term "the contract" as used in Section 3.11(d) means this Agreement.

3.12 **Compliance Expenditure Cap**.

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation and capacity that meets the requirements of the California Renewables Portfolio Standard and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Seller agrees to use commercially reasonable efforts subject to the provisions of this Section 3.12 to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law to maximize benefits to Buyer, including: (i) the

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modification of the description of Green Attributes and/or Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other actions that may be required to ensure that this Agreement or the Facility is eligible as an ERR and for other benefits under the California Renewables Portfolio Standard; *provided*, Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product pursuant to Sections 3.7(b) and (c), 3.8, 3.9, 3.11, 4.8 and 13.1(h) (any action required to be taken by Seller to comply with such change in Law, a "**Compliance Action**"), 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 [redacted] in aggregate over the Contract Term (the "**Compliance Expenditure Cap**").

(c) 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.

(d) 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 of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), 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 fails to timely respond to any such Notice, it will be deemed to have waived Seller's obligations to take such Compliance Actions. For the avoidance of doubt, Seller is not obligated to take any Compliance Actions during the pendency of Buyer's sixty (60) day evaluation period.

(e) 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.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

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(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, and Buyer shall take delivery of the Product at the Delivery Point 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 Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and 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 Delivered Energy at and after the Delivery Point. The Delivered Energy will be scheduled to the CAISO by Seller (or Seller's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with the Delivered Energy are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, Seller has not sold such Green Attributes to any other person or entity, 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 Delivered 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**. Unless the Parties mutually agree to modified forecasting requirements, Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(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 for every subsequent Contract 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 Delivered Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of Energy and Available Generating Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's SC (if applicable) a non-binding forecast of the hourly expected Delivered

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Energy and Available Generating Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**").

(c) Day-Ahead Forecast. By 5:30 a.m. PPT 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 with a non-binding forecast of (i) Available Generating Capacity, (ii) hourly expected Delivered Energy, 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 immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of (i) the Available Generating Capacity and (ii) the hourly expected Delivered Energy.

(d) Real-Time Forecasts. Seller shall arrange for Buyer to be provided real-time data (i) with respect to the Available Generating Capacity, via an Outage Management System ("**OMS**") based on CAISO protocols, and (ii) with respect to hourly expected Delivered Energy quantities, via the Facility's EMS, in each case of (i) and (ii) in accordance with such procedures (including appropriate back-up procedures) as may be agreed and implemented by Seller and Buyer. Among other information provided through such procedures, Buyer shall be notified if, past the deadlines for Day-Ahead Forecasts provided in Section 4.3(c), there are change(s) in such Day-Ahead Forecasts of one (1) MW/ (1) MWh or more, as applicable, in (i) Available Generating Capacity or (ii) hourly expected Delivered Energy, in each case, whether due to Forced Facility Outage, Transmission System Outage, Force Majeure or other cause including (as appropriate) information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity or hourly expected Delivered 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.

(e) CAISO Tariff Requirements. To the extent such obligations are applicable to the Facility, 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.

4.4 **Dispatch Down/Curtailment**. Seller agrees to reduce the amount of Delivered Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, provided that Seller is not required to reduce such amount to the extent such Curtailment Order or notice is inconsistent with the limitations of the Facility.

4.5 **[Reserved]**

4.6 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.8 or Exhibit G:

(a) Planned Outages. Subject to providing Buyer one-hundred twenty (120) days prior Notice, Seller shall schedule all Planned Outages 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. Seller shall

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reimburse Buyer for any cost Project Participants incur to provide substitute Capacity Attributes, as required by the CAISO, during any Planned Outages (including the cost of procuring replacement Capacity Attributes for a full calendar month during any month in which a Planned Outage is planned or scheduled). Notwithstanding the above, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product other than Capacity Attributes during any Forced Facility Outage. Seller shall promptly 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 other than Capacity Attributes during any period of System Emergency, Market 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 including Capacity Attributes as set forth in Section 3.7(h) 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 other than Capacity Attributes as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Guaranteed Energy Production**. During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Adjusted Energy Production for the Performance Measurement Period, in MWh equal to no less than the Guaranteed Energy Production. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer liquidated damages calculated in accordance with Exhibit G.

4.8 **WREGIS**. Seller shall, 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 Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Project Participants for their sole benefit. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Project Participants and Project Participants shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 3.11(c) provided that Seller fulfills its obligations under Sections 4.8(a) through (f) 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 Project Participants ("**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,

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paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Project Participants' WREGIS Accounts.

(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 Delivered 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 Delivered Energy for such calendar month as evidenced by the Facility's metered data. Subject to Section 3.12, Seller shall comply with any requirements of the CPUC, CEC, WREGIS and/or California Air Resources Board applicable to entities delivering RPS-eligible energy into the CAISO market with respect to documenting and reporting e-tags, including, as applicable, any requirements to match e-tags to WREGIS Certificate creation. Seller agrees to provide Buyer any such information as may be reasonably required by Buyer to comply with any requirements to match e-tags to WREGIS Certificate creation, including the CPUC's *PCC Classification Review Process Handbook* and any additional requirements.

(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 Project Participants in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Project Participants 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 Project Participants for a calendar month as compared to the Delivered Energy except with respect to fractional amounts that are carried forward as otherwise provided in Section 4.8(b) for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and damages, if any, under Exhibit G for the applicable Contract Year; *provided, however*, that such adjustment shall not apply to the extent that Seller resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month. Without limiting Seller's obligations under this Section 4.8, 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 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 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 Delivered Energy in the same calendar month.

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4.9 **Interconnection Capacity**. Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. Seller shall have and maintain interconnection capacity available or allocable to the Facility that is no less than the Interconnection Capacity Limit throughout the Delivery Term.

4.10 **Green-E Certification**. Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("**Attestation**") for Product delivered under this Agreement to the Center for Resource Solutions ("**CRS**") at https://www.tfaforms.com/4652008 or its successor. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted within thirty (30) days of Buyer's request or the last day of the month in which the applicable Delivered Energy was generated, whichever is later.

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 any. 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 Buyer makes such claim. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes 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*, *however*, that 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 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

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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 action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Delivered Energy to Buyer.

6.3 **Shared Facilities**. The Parties acknowledge and agree that the Facility is a phased portion of geothermal resource, and as a result, certain of the Shared Facilities and Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with Transmission Provider may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Shared Facilities, Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements; *provided* that such Shared Facilities Agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Interconnection Capacity Limit, (ii) provide for separate metering and a separate CAISO Resource ID for the Generating Facility, (iii) provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource IDs; and (iv) provide that any curtailment of the full capacity of Shared Facilities that is ordered by Transmission Provider that Seller and its Affiliates have discretion to allocate across generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities. Seller shall not, and shall not permit any Affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement minus the Interconnection Capacity Limit.

ARTICLE 7
METERING

7.1 **Metering**. Seller shall measure the amount of Delivered Energy using the Facility Meter. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for Electrical Losses and Station Use in accordance with CAISO's rules for Pseudo-Tie Resources, and in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram to be set forth as Exhibit P, an updated version of which shall be provided by Seller to Buyer at least thirty (30) days prior to Commercial Operation. Each 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 Seller's Scheduling Coordinator, shall cooperate to allow both Parties to

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retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification**. Seller shall test the Facility Meter at least annually and more frequently than annually if Buyer or Seller reasonably believe there may be a meter malfunction. 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 within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of metered data, including 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 Delivered Energy, Replacement RA, the calculation of Deemed Delivered Energy, Lost Output, and Adjusted Energy Production; (b) include the LMP prices at the Settlement Point for each Settlement Period, the Contract Price applicable to such Product deliveries, and Seller's calculation of the Monthly Product Payment due from Buyer, calculated in accordance with Exhibit C, and including invoices or settlement data from the CAISO, necessary to verify the accuracy of such Monthly Product Payment; and (c) be in a format reasonably specified by Buyer, covering the services 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. The invoice shall be delivered by electronic mail in accordance with Exhibit N.

8.2 **Payment**. Buyer shall make payment to Seller of Monthly Product Payments 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 Seller's 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 the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street

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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 five (5) years or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted 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. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds ten thousand dollars ($10,000).

8.4 **Invoice Adjustments**. Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or (c) there have been meter inaccuracies; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. 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. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

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- (12-) 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.

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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 Exhibit B, 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 CP Security**. To secure its obligations under this Agreement, Seller shall deliver the CP Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the CP Security in full force and effect; *provided*, Seller will have no obligation to replenish the CP Security in the event Buyer collects or draws down any portion of the CP Security for any reason permitted under this Agreement. Except to the extent Seller elects to apply the CP Security to the Development Security, upon the earlier of (i) Seller's delivery of the Development Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the CP Security to Seller, less the amounts drawn in accordance with this Agreement. Seller may at its option exchange one permitted form of CP Security for another permitted form of Development Security.

8.8 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days of the CP Satisfaction Date. Seller shall maintain the Development Security in full force and effect; provided Seller will 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. Except to the extent Seller elects to apply the Development Security to the Performance Security, upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) 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. Seller may at its option exchange one permitted form of Development Security for another permitted form of Development Security.

8.9 **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. 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 then 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. Seller may at its option exchange one permitted form of Performance Security for another permitted form of Performance Security.

8.10 **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,

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and lien on (and right to net against), and assignment of the CP Security, Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7, 8.8 and 8.9 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 and continuation 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 CP Security, 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 8.10):

(a) Exercise any of its rights and remedies with respect to the CP Security, 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 CP Security, Development Security or Performance Security; and

(c) Liquidate all CP Security, 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 these obligations are satisfied in full.

8.11 **Buyer Credit Arrangements**.

(a) To secure its obligations under this Agreement, Buyer shall deliver to Seller within one hundred twenty (120) days after the Effective Date, Buyer Liability Pass Through Agreements from the Project Participants with Liability Shares as set forth on Exhibit S. Seller shall countersign each Buyer Liability Pass Through Agreement within ten (10) days of receipt of Buyer's delivery of each such Buyer Liability Pass Through Agreement executed by Buyer and applicable Project Participant; provided that no delay in countersigning any such Buyer Liability Pass Through Agreement shall affect Seller's, Buyer's or the Project Participant's rights or obligations thereunder once executed. Buyer shall maintain such Buyer Liability Pass Through Agreements in full force and effect until both of the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Buyer due and payable under this Agreement are paid in full (whether directly or indirectly such as through set-off or netting). Buyer may propose amendments to Exhibit S, including with respect to the identity of Project Participants and the amount of each Project Participant's Liability Share. Seller shall have thirty (30) days to evaluate any such proposed amendments to Exhibit S in its sole but good faith discretion and no such proposed amendment will be effective without the prior written consent of

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Seller. If Seller consents to such proposed amendments to Exhibit S, Buyer shall have thirty (30) days to provide Seller with replacement Buyer Liability Pass Through Agreements with Liability Shares executed by Buyer and the applicable Project Participants that incorporate the Liability Shares set forth in the amended Exhibit S. Seller shall use good faith efforts to countersign each such Buyer Liability Pass Through Agreement executed by Buyer and the applicable Project Participant within ten (10) Business Days after Buyer's delivery of such Buyer Liability Pass Through Agreements to Seller; *provided* that no delay in countersigning any such Buyer Liability Pass Through Agreement shall affect Seller's, Buyer's or the Project Participant's rights or obligations thereunder once executed; and further provided that until the modified Buyer Liability Pass Through Agreements with Liability Shares set forth in amended Exhibit S have been executed by Seller and all applicable Project Participants, the prior agreements will remain in effect.

(b) Within sixty (60) days following a Step-Up Event, (A) Buyer shall provide Seller with replacement Buyer Liability Pass Through Agreements from all Compliant Project Participants executed by Buyer and the applicable Compliant Project Participants that reflect each Compliant Project Participant's Revised Liability Share following such Step-Up Event, and, (B) Exhibit S will be amended to reflect the Compliant Project Participants' Revised Liability Shares following such Step-Up Event. Seller shall use good faith efforts to countersign each such Buyer Liability Pass Through Agreement executed by Buyer and the applicable Compliant Project Participant within ten (10) Business Days after Buyer's delivery of such Buyer Liability Pass Through Agreements to Seller; *provided* that that no delay in countersigning any such Buyer Liability Pass Through Agreement shall affect Seller's, Buyer's or the Project Participant's rights or obligations thereunder once executed; and further provided that until the modified Buyer Liability Pass Through Agreements with Liability Shares set forth in amended Exhibit S have been executed by Seller and all applicable Project Participants, the prior agreements will remain in effect. Buyer will enforce the provisions of the Project Participation Agreement relating to nonperformance and payment defaults by Project Participants, including the use of the "Step-Up Allocation" provisions to cure a Project Participant Payment Default, and will give Seller written notice within three (3) Business Days after the occurrence of any of the following: (i) any Project Participant Payment Default by any Project Participant under the Project Participation Agreement, including copies of any notices given to the Defaulted Project Participant, (ii) the cure of any Project Participant Payment Default by a Defaulted Project Participant, (iii) any actions taken to enforce remedies with respect to a Project Participant Payment Default, (iv) the termination of any Project Participant's interest under the Project Participation Agreement, and (v) the reallocation of any terminated Project Participant's rights under the Project Participation Agreement, including the revised "Entitlement Shares" of each remaining Project Participant under the Project Participation Agreement.

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.

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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 5:00 p.m. PPT, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, invoices sent pursuant to Section 8.1 and 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 (excluding impacts of the disease designated COVID-19 or the related virus designated SARS-CoV-2 impacts actually known by the Party claiming the Force Majeure Event as of the Effective Date); 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 that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy electric energy 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

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Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order, except to the extent the Curtailment Order 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 except to the extent such inability is caused by a Force Majeure Event; (vi) 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 **Termination Following Force Majeure Event**. 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, 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(c), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (b) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

10.3 **Notice for Force Majeure**. Within five (5) Business Days of knowledge of the commencement of Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of knowledge of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice constitutes a waiver of the Force Majeure Event only for the time-period prior to the provision of timely notice. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly 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. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

10.4 **No Liability If a Force Majeure Event Occurs**. 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

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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. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Section 4 of Exhibit B or limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

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) days 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 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) days 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 Section 14.2 or 14.3, as appropriate; 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:

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(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 by the Facility except as expressly permitted hereunder;

(ii) the failure by Seller to 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(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan on the timeframe set forth under Section 2.4;

(iv) the failure by Seller to achieve the Construction Start Date on or before the Guaranteed Construction Start Date, as such date 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;

(v) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;

(vi) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount for such period is not at least ten percent (10%) of the Expected Energy amount 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 ten percent (10%) 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 one-hundred eighty (180) days ("**Cure Plan**"); *provided* that if the cause of any such shortfall is a failure of the Facility's main power transformer, and such failure was not caused by Seller and could not have been avoided through the exercise of Prudent Operating Practice, then the Cure Plan may be extended for an additional period of time not to exceed three hundred sixty-five (365) days and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(vii) if, in any Contract Year, beginning with the second (2^{nd}) Contract Year, the Adjusted Energy Production amount for such Contract Year is not at least sixty-five percent (65%) of the Expected Energy amount for such Contract Year; *provided* that if the cause of any such shortfall is a failure of the Facility's main power transformer, and such failure was not caused by Seller and could not have been avoided through the exercise of Prudent Operating Practice, then the energy not generated and delivered during such failure will be treated as Lost Output solely for purposes of this subsection, for a cumulative period not to exceed three hundred sixty-five (365) days during such Contract Year;

(viii) if, in any Performance Measurement Period beginning with the second (2^{nd}) Performance Measurement Period, the Adjusted Energy Production amount is not at

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least eighty percent (80%) of the aggregate Expected Energy amount for such Performance Measurement Period; *provided* that if the cause of any such shortfall is a failure of the Facility's main power transformer, and such failure was not caused by Seller and could not have been avoided through the exercise of Prudent Operating Practice, then the energy not generated and delivered during such failure will be treated as Lost Output solely for purposes of this subsection, for a cumulative period not to exceed three hundred sixty-five (365) days during such Performance Measurement Period;

(ix) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7, 8.8 or 8.9 within five (5) Business Days after Notice, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

(x) 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 BBB by S&P or Baa2 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.

(c) with respect to Buyer as the Defaulting Party, the occurrence of any of the following:

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(i) Buyer fails to deliver executed revised Buyer Liability Pass Through Agreements from all Compliant Project Participants for their respective Revised Liability Shares that total one hundred percent (100%) within sixty (60) days following a Step-Up Event;

(ii) following Project Participant Approval, Buyer fails to maintain Buyer Liability Pass Through Agreements from Project Participants with Liability Shares that total one hundred percent (100%), and such failure is not remedied within thirty (30) days after Notice thereof;

(iii) the breach of or default under any Buyer Liability Pass Through Agreement by the Project Participant party thereto; *provided*, Buyer shall have thirty (30) days after Notice thereof to cure any such breach or default by such Project Participant; or

(iv) the termination or expiration of the Project Participation Agreement.

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) subject to Section 12.3, the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)), or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(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*, 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 **Termination Payment**. The Termination Payment ("**Termination Payment**") for a Terminated Transaction 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

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limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. 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 (a) 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, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) 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**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment 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 Damage Payment or Termination 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**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, 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, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment 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 this 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 unless the Seller Event of Default is pursuant to Sections 11.1(b)(ii) or (iv) and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's actions or failure to take commercially reasonable actions, then excluding 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 approved by Buyer in its reasonable discretion.

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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 an express and exclusive remedy or measure of damages is provided, 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 **Pass Through of Buyer Liability**. Notwithstanding any other provision of this Agreement, if Buyer fails 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, Seller may, without waiving any of its rights with respect to Buyer except as expressly provided herein, pursue remedies under any or all of the Buyer Liability Pass Through Agreements as provided therein. Seller hereby waives the right to recover directly from Buyer any Termination Payment owed by Buyer that is not paid by Buyer pursuant to Sections 11.3 and 11.4, but the foregoing waiver does not apply to any other right or remedy of Seller under this Agreement, including the right to recover accrued Monthly Product Payments, other amounts payable or reimbursable under this Agreement or any other amounts incurred or accrued prior to termination of this Agreement, and the right to terminate the Agreement as the result of an Event of Default by Buyer.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) PART OF A THIRD PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, 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

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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. 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, AND EXHIBIT G, 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.

12.3 **Limitation on Pre-COD Liability.** Notwithstanding anything in this Agreement to the contrary, unless and until the Facility has achieved Commercial Operation, Seller's aggregate liability under this Agreement for any and all reasons, including liabilities for payment of Daily Delay Damages, Commercial Operation Delay Damages and the Damage Payment, shall not exceed [redacted]. For avoidance of doubt, this Section 12.3 shall not be applicable once the Facility has achieved Commercial Operation.

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 Nevada limited liability business, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct

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business in the State of California and 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. 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 will be located in the State of Nevada.

(f) Seller shall maintain Site Control throughout the Contract Term.

(g) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents, if applicable.

(h) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement, subject to Section 3.12, that the Facility is eligible to qualify as a Firm Clean Resource.

(i) Except as set forth in Exhibit A, Seller shall maintain Firm Transmission rights sufficient to deliver 13 MW to the Delivery Point throughout the Delivery Term.

(j) Seller shall comply with all CAISO Tariff requirements applicable to Pseudo-Tie Resources, including Appendix N to the Tariff, throughout the Delivery Term.

(k) As of the Effective Date, Seller represents and warrants to Buyer that it has not received notice from or been advised by any existing or potential supplier or service provider for the Facility that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

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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 validly existing and in good standing under the laws of the State of California, and is qualified to conduct business pursuant to its duly authorized Joint Powers Agreement. All Persons making up the governing body of Buyer are appointed 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, 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 and affirmatively waives 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 (provided that such court is located within a venue permitted in Law and under the Agreement), (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; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.)

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 California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

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(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 **Seller's Covenants**. Seller covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) Compliance with Laws. To the extent applicable to Seller or the Facility, 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 those related to employment discrimination and prevailing wage, non-discrimination and non-preference; conflict of interest; environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees. Seller shall not discriminate against any employee or applicant for employment on the basis of the fact or perception of that person's race, color, religion, ancestry, national origin, age, sex (including pregnancy, childbirth or related medical conditions), legally protected medical condition, family care status, veteran status, sexual orientation, gender identity, transgender status, domestic partner status, marital status, physical or mental disability, or AIDS/HIV status.

(b) Workforce Development. Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including, without limitation, employment discrimination laws and prevailing wage laws. In addition, Seller shall (i) ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages not less than the rate of such wages then prevailing in the region in which the Facility is located, as determined by the Nevada Labor Commissioner in the manner provided in Nevada Revised Statutes Section 338.030 (as may be amended from time to time), and are paid wages in compliance with Nevada Revised Statutes Section 338.020 (as may be amended from time to time) despite the Facility not constituting a public work under Nevada law, and permit no less than annual auditing by Buyer to verify such compliance ("**Prevailing Wage Requirement**"), or (ii) ensure that any construction work contracted by Seller in furtherance of this Agreement shall be conducted using a community workforce agreement, work site or project labor agreement, collective bargaining agreement, or other similar agreement related to construction of the Facility ("**Project Labor Agreement**"). The Facility may be eligible for a State of Nevada Renewable Energy Tax Abatement ("**RETA**") agreement pursuant to Nevada Revised Statutes 701A.300-.390, inclusive, and Nevada Administrative Code Sections 701A.500-660, inclusive (the "**RETA Regulations**"). In lieu of complying with the Prevailing Wage Requirement, should Seller apply for and receive a RETA agreement, Seller may instead opt to comply with the requirements of the RETA Regulations, including the requirements of having a construction workforce comprised of no less than fifty percent (50%) Nevada residents, paying the construction workforce no less than one hundred seventy-five percent (175%) of the statewide average annual wage (as that phrase is defined in the RETA Regulations), and providing a health insurance plan satisfying the applicable requirements of the RETA Regulations. If Seller does not execute a Project Labor Agreement for the construction of the Facility, at the time of Commercial

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Operation, Seller must certify that it has either complied with the Prevailing Wage Requirement or the RETA Regulations, and be able to demonstrate, upon Buyer's request, compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit.

(c) Prohibition Against Forced Labor. Seller represents and warrants that it has not and will not knowingly utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily ("**Forced Labor**"). Seller shall comprehensively implement due diligence procedures for its and its Affiliate's suppliers, subcontractors and other participants in its supply chains, to comply with this prohibition on the use of Forced Labor. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 13.5. Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below, 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. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. The assigning Party shall be responsible for the other Party's reasonable third-party costs, including reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party.

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 without the consent of Buyer. 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**"), which shall be substantially in the form of Exhibit Q. Seller shall pay Buyer's reasonable expenses, including attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing of the Facility. Buyer shall have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify this Agreement.

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14.3 **Permitted Assignment by Seller**.

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (i) an Affiliate of Seller or (ii) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law) if, and only if (A) the assignee is a Permitted Transferee; (B) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and (C) 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 or its successors or assigns under this Section 14.3(a) shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

(b) Buyer may, without the prior written consent of Seller, transfer or assign this Agreement to any member of Buyer that (A) has a Credit Rating of at least BBB- from S&P or Baa3 from Moody's, and (B) is a load serving entity; *provided*, Buyer shall give Seller Notice at least fifteen (15) Business Days before the date of such proposed assignment and provide to Seller a written agreement, reasonably acceptable to Seller, signed by the Person to which Buyer wishes to assign its interests that provides that such Person will assume all of Buyer's obligations and liabilities under this Agreement upon such transfer or assignment. Notwithstanding the foregoing, any assignment by Buyer or its successors or assigns under this Section 14.3(b) shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

14.4 **Buyer Financing Assignment**. Buyer may assign this Agreement to a financing entity that will pre-pay all of Buyer's payment obligations under this Agreement with Seller's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned; *provided* that Seller reasonably determines that the terms and conditions of such pre-payment arrangements are satisfactory to Seller and its Lenders and do not adversely affect Seller or its arrangements with Lenders in any material respect.

ARTICLE 15
DISPUTE RESOLUTION

15.1 **Governing Law; Venue**.

(a) 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. [STC 17].

(b) For avoidance of doubt, although "agreement" is not capitalized in Section 15.1(a), the parties intend for "agreement" to mean this Agreement, and for "party" and "parties" to refer to the Party and Parties as set forth in the preamble to this Agreement.

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(c) The Parties agree that any suit, action or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be brought in the federal or state courts located in the State of California in a location to be mutually chosen by Buyer and Seller, or in the absence of mutual agreement, the County of San Francisco.

15.2 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a 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, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity.

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 **Indemnity**.

(a) Each Party (the "**Indemnifying Party**") agrees to defend, indemnifyand hold harmless the other Party and its directors, officers, agents, attorneys, employees and representatives (each an "**Indemnified Party**" and collectively, the "**Indemnified Group**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees, 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 (collectively, "**Indemnifiable Losses**").

(b) Nothing in this Section 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 obligations to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Notice of Claim**. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly Notify the Indemnifying Party in writing of any damage, claim,loss, liability or expense which Indemnified Party has determined has given or could give rise toan Indemnifiable Loss under Section 16.1 ("**Claim**"). The Notice is referred to as a "**Notice of Claim**". A Notice of Claim will specify, in reasonable detail, the facts known to Indemnified Party regarding the Indemnifiable Loss.

16.3 **Failure to Provide Notice**. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights

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or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure todeliver timely a Notice of Claim.

16.4 **Defense of Claims**. If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; provided, however, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnifying Party that Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.

16.5 **Subrogation of Rights**. Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such third party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party's rights against such third party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

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16.6 **Rights and Remedies are Cumulative**. Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

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 and including Buyer as an additional insured; and (ii) umbrella or excess liability insurance policy with a limit of liability of five million dollars ($5,000,000). If commercially available, 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. Seller, if it has employees, shall maintain Employers' Liability insurance with a limit of one million dollars ($1,000,000) 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 Nevada 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 a combined single limit 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) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of two million dollars ($2,000,000) per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(g) Umbrella Liability Insurance. Seller may choose any combination of primary, excess or umbrella liability policies to meet the insurance requirements under Sections 17.1(a), (b) and (d) above.

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(h) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) commercial general liability insurance with a limit of one million dollars ($1,000,000); (ii) workers' compensation insurance coverage in accordance with applicable requirements of Law; (iii) employer's liability insurance with a limit of one million dollars ($1,000,000) for all coverages; and (iv) business auto insurance for bodily injury and property damage with a combined single limit of one million dollars ($1,000,000) per occurrence. All subcontractors shall include Seller as an additional insured to insurance carried pursuant to clauses (h)(i) and (h)(iv). All subcontractors shall provide a primary and non-contributory endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(h).

(i) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are equal to the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.

(j) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter (except insurance required in 17.1(e), 17.1(f), 17.1(h) and 17.1(i)), Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Regarding insurance required in Sections 17.1(e) and 17.1(f), prior to the Construction Start Date, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Regarding insurance required in Section 17.1(i), within ten (10) days after placement of such insurance 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 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.

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.

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18.2 **Duty to Maintain Confidentiality**. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement.; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. If the Receiving Party becomes legally compelled by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the "**Disclosing Party**"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Records Act (Government Code Section 6250 et seq.).

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 **Disclosure to Lenders, Etc.**. 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) and potential Lender(s)), so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound or is otherwise restricted by confidentiality provisions no less stringent than those in 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. A Party's consent shall not be unreasonably withheld, conditioned or delayed.

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

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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*, that, for the avoidance of doubt, 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) 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 Law.

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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. Except as set forth in Section 11.9 and any Buyer Liability Pass Through Agreements issued by one or more Project Participants pursuant to Section 8.11, Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and 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 or 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 **Further Assurances**. Each of the Parties hereto agree 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 assumption 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]

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

FISH LAKE GEOTHERMAL LLC, a Nevada limited liability company

By: _____
Name: _____
Title: _____

CALIFORNIA COMMUNITY POWER, a California joint powers authority

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

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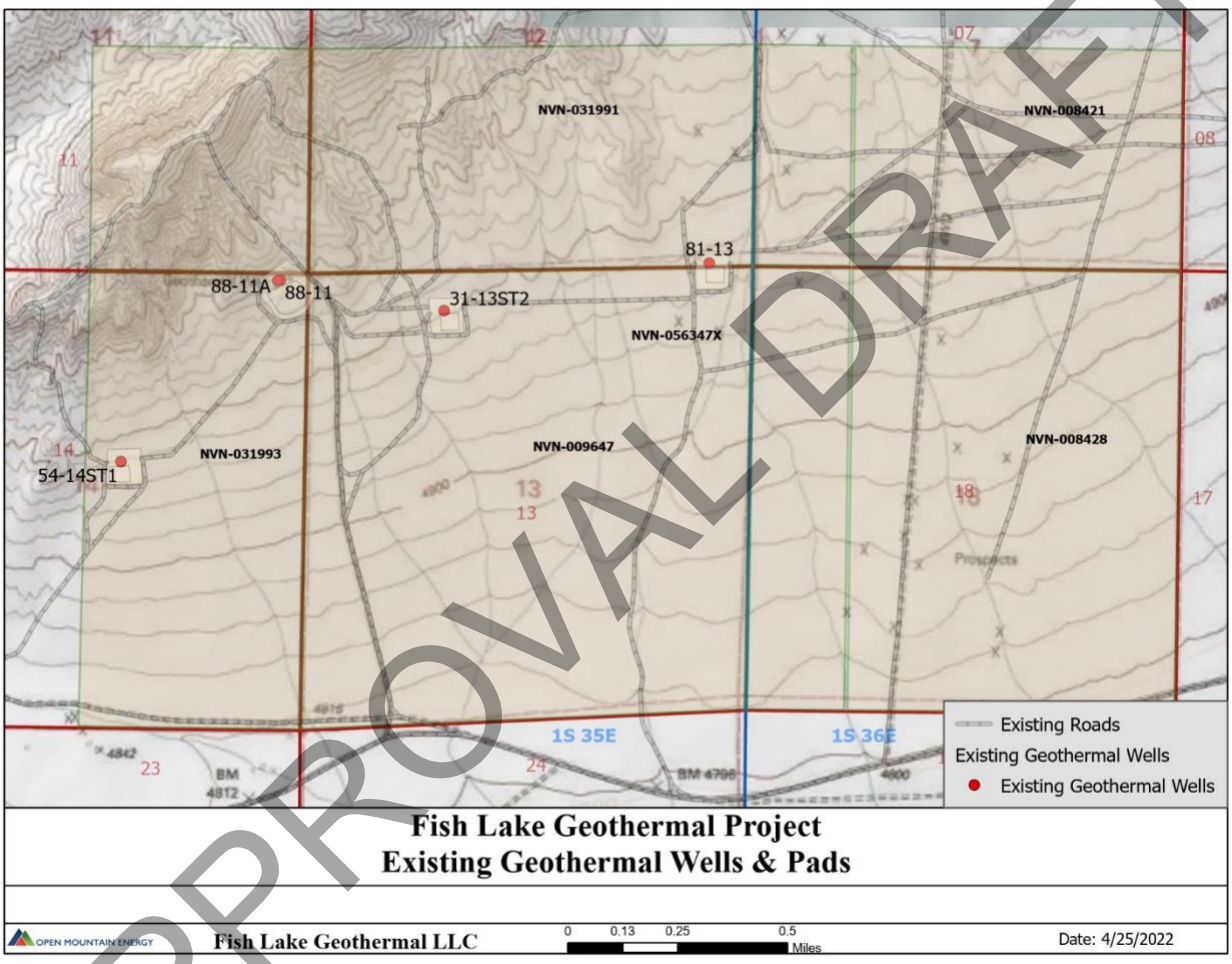
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Fish Lake Geothermal Project

Site includes all or some of the following APNs: BLM: 007-021-10

Site location: T1S, R35E, Sections 11, 12, 13, 14 & T1S R36E, Sections 07 and 18



City: 18 miles north of Dyer, Nevada

County: Esmeralda

Zip Code: 89010

Latitude and Longitude:
37°51'39.33"N
118° 2'2.69"W

Facility Description: A 13 MW geothermal power plant

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Interconnection Point: The Facility shall interconnect to the NV Energy Silver Peak Substation.

Delivery Point: [redacted], which is an Intertie (as defined in the CAISO Tariff); provided that if, pursuant to the provisions of Section 3.7(c), Project Participants are able to obtain Import Capability at [redacted] necessary to import the Guaranteed Net Qualifying Capacity from the Facility into the CAISO, then the Delivery Point will be [redacted] and the Contract Price will be reduced to $[redacted]

[redacted]

Settlement Point: TH_NP15_GEN-APND (or any successor aggregated pricing node for NP-15)

Facility Meter: See Exhibit P

Facility Metering Points: See Exhibit P

Transmission Provider: NV Energy

Additional Information:

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EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. **Construction Start**.

   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. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Construction Start Date for all purposes hereunder, including Section 11.1(b)(iv), by paying Daily Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of ninety (90) 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 (including any previous extensions) Guaranteed Construction Start Date, Seller may provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. For the avoidance of doubt, Seller is not obligated to extend the Guaranteed Construction Start Date by payment of Daily Delay Damages and Buyer will have no right to draw on the Development Security if Seller elects not to pay Daily Delay Damages. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b).

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when (i) 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**"), (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. Seller shall notify Buyer in writing when Seller believes that it has provided

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the required documentation to Buyer and met the conditions for achieving COD. Buyer shall have five (5) Business Days to approve or reject in writing Seller's request for COD. The "**Commercial Operation Date**" shall be the later of (x) one hundred twenty (120) days before the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved.

a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller's payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.

b. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Commercial Operation Date for all purposes hereunder, including Section 11.1(b)(ii), by paying Commercial Operation Delay Damages to Buyer in advance for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of sixty (60) 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 (including any previous extensions) Guaranteed Commercial Operation Date, Seller may 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. For the avoidance of doubt, Seller is not obligated to extend the Guaranteed Commercial Operation Date by payment of Commercial Operation Delay Damages and Buyer will have no right to draw on the Development Security if Seller elects not to pay Commercial Operation Delay Damages. 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 Construction Start and/or Commercial Operation**. If the Facility has not achieved Construction Start on or before the Guaranteed Construction Start Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(iv) and 11.2. 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, both be automatically extended on a day-for-day basis (the

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"**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. a Force Majeure Event occurs; or

b. the Interconnection Facilities or Network Upgrades or any other upgrades or interconnection facilities required under the Interconnection Agreement with NV Energy 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

c. Seller has not acquired 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 Facility to make available and sell Product by the Guaranteed Commercial Operation Date, despite the exercise of best efforts by Seller; or

d. Buyer has not made all necessary arrangements to receive the Delivered 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 one hundred twenty (120) 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 one hundred eighty (180) days. Upon request from Buyer, Seller shall provide documentation reasonably demonstrating that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity**. If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is equal to no less than the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [redacted] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Expected Energy shall be reduced to an amount equal to the product of (a) the amount of Expected Energy in effect prior to such adjustment, multiplied by (b) the ratio of the Installed Capacity as of such date to the Guaranteed Capacity.

6. [Reserved].

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EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) [Reserved].

(b) Delivered Energy. For each MWh of Delivered Energy in each Settlement Period, Buyer shall pay Seller the difference of: (i) the Contract Price; minus (ii) the Day-Ahead Market LMP applicable to the Settlement Point for such Settlement Period; *provided, however*, that (A) if the Day-Ahead Market LMP applicable to the Settlement Point for such Settlement Period is less than the Negative LMP Strike Price, then such Day-Ahead Market LMP value will be deemed to be the Negative LMP Strike Price for purposes of this Exhibit C, and (B) if the result of the difference of (i) minus (ii) above results in a negative value, then Seller shall pay Buyer the absolute value of such result (which payment may be applied as a credit to Buyer on Seller's monthly invoice). Seller, through its Scheduling Coordinator, shall receive (and, except as otherwise provided in subpart (B) above, is entitled to retain) payment for Delivery Energy from CAISO for such delivery based on the applicable Energy price, as published by CAISO. For the avoidance of doubt, Buyer is purchasing a bundled product and Seller's receipt of payment directly via CAISO settlements is for the Parties' mutual convenience.

(c) Deemed Delivered Energy. For each Settlement Period, Buyer shall pay Seller the Contract Price for each MWh of Deemed Delivered Energy above the Curtailment Cap. There shall be no payment for (i) Deemed Delivered Energy amounts below the Curtailment Cap, or (ii) Deemed Delivered Energy amounts accrued during a Market Curtailment Period for energy that the Facility was forecasted to generate in the Day-Ahead Forecast provided under Section 4.3(c) if the Day-Ahead Market LMP corresponding to such Day-Ahead Forecast was greater than the Negative LMP Strike Price.

(d) Excess Contract Year Deliveries. If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy for such Contract Year exceeds [redacted] of the Expected Energy for such Contract Year, the Contract Price applicable to such Delivered Energy and Deemed Delivered Energy, notwithstanding anything to the contrary in this Agreement, shall be [redacted] of the Contract Price. If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy for such Contract Year exceeds [redacted] of the Expected Energy for such Contract Year, the Contract Price applicable to such Delivered Energy and Deemed Delivered Energy, notwithstanding anything to the contrary in this Agreement, shall be zero dollars per MWh ($0/MWh).

(e) Negative LMP Strike Price. Buyer may change the Negative LMP Strike Price by providing written notice to Seller at least five (5) Business Days prior to the effective date of such change, which notice must identify the new Negative LMP Strike Price and the effective date for the new Negative LMP Strike Price; *provided*, *however*, that the Negative LMP Strike Price identified by Buyer must be less than or equal to zero dollars per MWh ($0/MWh).

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(f) Curtailment Payments. Seller shall receive no compensation from Buyer for (i) Delivered Energy or Deemed Delivered Energy during any Curtailment Period and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap as provided above.

(g) Test Energy. Test Energy is compensated at the Test Energy Rate in accordance with Section 3.6.

(h) Tax Credits. The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits; 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 thoseobligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Delivered Energy and Product, shall be effective regardless of whether the sale of Delivered Energy is eligible for, or receives Tax Credits during the Contract Term.

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EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Seller as Scheduling Coordinator for the Facility. Seller 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, and bid the Delivered Energy into the Day-Ahead Market and the Real-Time Market consistent with Prudent Operating Practice. Each Party shall perform all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement. Seller (as the Facility's SC) shall ensure that all Delivered Energy is electronically tagged (E-tagged) in accordance with Generally Accepted Utility Practice.

(b) CAISO Costs and Revenues. As Scheduling Coordinator for the Facility, Seller shall be responsible for all CAISO costs, including without limitation, all penalties, Imbalance Energy charges, and other charges, and shall be entitled to all CAISO revenues, including without limitation, credits, Imbalance Energy payments, and 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. 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, the cost of such sanctions or penalties arising from the scheduling, outage reporting, or generator operation of the Facility shall be Seller's responsibility.

(c) CAISO Settlements. Seller (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility.

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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 likely to potentially 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. A detailed description of all actions taken by Seller to comply with Prevailing Wage Requirement and Project Labor Agreement requirements of this Agreement.

12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

13. 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.

14. Workforce Development reporting (if applicable). Format to be provided by Buyer.

15. Any other documentation reasonably requested by Buyer.

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EXHIBIT F-1

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh 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.

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EXHIBIT F-2

AVAILABLE CAPACITY

[Available Generating Capacity, MWh Per Hour] – [*Insert Month*]

	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
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

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.

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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 lesser of (x) $50.00/MWh and (y) the market value of Replacement Green Attributes based on the average of at least two broker quotes obtained by Buyer from nationally recognized brokers for the purchase of Replacement Green Attributes, or if such quotes are not reasonably available to Buyer, as reasonably determined by Buyer.

D = the Contract Price, in $/MWh

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number. In no event will Buyer owe any payment to Seller pursuant to this Exhibit G.

Within sixty (60) days after a Contract Year which ends each Performance Measurement Period, Buyer shall 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.

As used herein:

"**Adjusted Energy Production**" shall mean the sum of the following: Delivered Energy + Deemed Delivered Energy + Lost Output.

APPROVAL DRAFT

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by [*LICENSED PROFESSIONAL ENGINEER*] ("**Engineer**") to California Community Power, a California joint powers authority **(**"**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*DATE*] ("**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 Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.

3. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.

4. The Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.

5. Authorization to parallel the Facility was obtained from the Transmission Provider on___[DATE]____.

6. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation _____[DATE]_____.

7. 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: _____

Printed Name: _____

Title: _____

APPROVAL DRAFT

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [*LICENSED PROFESSIONAL ENGINEER*] ("**Engineer**") to California Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*DATE*] ("**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.

I hereby certify the following:

(a) The performance test for the Facility demonstrated peak electrical output of __ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

APPROVAL DRAFT

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [SELLER ENTITY] ("**Seller**") to California Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*DATE*] ("**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:
_____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as this _____ day of _____, 20__.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

APPROVAL DRAFT

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]
Expiry Date:

Beneficiary:

[Buyer]

Attn:

[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. [XXXXXXX] (the "Letter of Credit") in favor of California Community Power, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall renew annually until terminated in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by valid 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. [XXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [*bank email address*] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [*bank email address*]]. Transmittal by facsimile or email shall be deemed delivered when received.

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.

APPROVAL DRAFT

We hereby agree with Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to 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.

This Letter of Credit may only be terminated upon one hundred twenty (120) days' prior written notice from Issuer to Beneficiary by registered mail or overnight courier service that Issuer elects 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. [XXXXXXX]. 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: _____. 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]

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(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 California Community Power, a California joint powers authority, [address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (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 Renewable Power Purchase Agreement dated as of _____, 20__ (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) has occurred 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 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 California Community Power 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 California Community Power by wire transfer in immediately available funds to the following account:

[Specify account information]

California Community Power

_____
Name and Title of Authorized Representative

Date_____

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EXHIBIT L

FORM OF BUYER LIABILITY PASS THROUGH AGREMENT

This Buyer Liability Pass Through Agreement (this "**BLPTA**") is entered into as of [_____], 20__ (the "**BLPTA Effective Date**") by and between [_____], a [_____] (together with its successors and permitted assigns "**Project Participant**"), California Community Power, a California joint powers authority ("**CC Power**"), and [_____], a [_____] (together with its successors and permitted assigns "**Seller**"). Seller, CC Power, and Project Participant are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**."

RECITALS

WHEREAS, CC Power and Seller have entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "**PPA**") dated as of [_____], 20__;

WHEREAS, Project Participant is entering into this BLPTA to secure, in part, California Community Power's obligations under the PPA;

WHEREAS, Project Participant is named as a Project Participant under the PPA and will derive substantial direct and indirect benefits from the execution and delivery of the PPA;

WHEREAS, Seller and CC Power will derive substantial and direct benefits from the execution and delivery of this BLPTA; and

WHEREAS, initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

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:

AGREEMENT

1. Project Participant Covenants. For value received, Project Participant does hereby unconditionally, absolutely, and irrevocably guarantee, as obligor and not as a surety, to Seller the complete and prompt payment of [X%] (the "**Liability Share**"), as the same may be adjusted pursuant to Section 4, [Note: Insert percentage from Exhibit S] of all obligations and liabilities for payment now or hereafter owing from CC Power to Seller under the PPA, including liabilities for Monthly Product Payments, any Termination Payment, and any other damage payments or reimbursement amounts (each such obligation or liability of CC Power under the PPA, a "**Guaranteed Amount**"). Any payment made directly from CC Power to Seller under the PPA shall reduce Project Participant's liability hereunder by reducing the total amount that is used to calculate the Guaranteed Amount pursuant to the preceding sentence. This BLPTA is an irrevocable, absolute, unconditional, and continuing guarantee of the punctual payment and performance, and not of collection, of Project Participant's Liability Share of the Guaranteed Amount. In the event CC Power shall fail to duly, completely, or punctually pay any amount owed

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by Buyer pursuant to the terms and conditions of the PPA, and such failure is not remedied within ten (10) Business Days after Notice thereof pursuant to Sections 11.1 or 11.4, as applicable, Project Participant shall promptly pay Project Participant's Liability Share of the Guaranteed Amount, as required herein.

2. **Seller Waiver**. In consideration of the foregoing, Seller unconditionally waives all right to recover directly from CC Power any Termination Payment that is not paid by CC Power pursuant to Sections 11.3 and 11.4 of the PPA, but the foregoing waiver does not apply to any other right or remedy of Seller under the PPA, including the right to recover accrued Monthly Product Payments, other amounts payable or reimbursable under the PPA or any other amounts incurred or accrued prior to termination of the PPA and the right to terminate the PPA as the result of an Event of Default by Buyer.

3. **Demand Notice**. For avoidance of doubt, Seller may demand payment from Project Participant for purposes of this BLPTA only when and if a payment is not duly, completely, or punctually paid by CC Power pursuant to the terms and conditions of the PPA and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof is issued pursuant to Sections 11.1 or 11.4, as applicable. If CC Power fails to pay any amount when due pursuant to the PPA, and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof, then Seller may exercise its rights under this BLPTA and make a payment demand upon Project Participant to pay Project Participant's Liability Share of the unpaid Guaranteed Amount (a "**Payment Demand**"). A Payment Demand shall be in writing and shall reasonably specify (a) what amount CC Power has failed to pay, (b) an explanation of why such payment is due and owing, (c) a calculation of the Guaranteed Amount due from Project Participant, and (d) a specific statement that Seller is requesting that Project Participant pay its Guaranteed Liability Share of the unpaid Guaranteed Amount under this BLPTA. Project Participant shall, within fifteen (15) Business Days following its receipt of the Payment Demand, pay to Seller Project Participant's Liability Share of the unpaid Guaranteed Amount.

4. **Step-Up Events**. Within sixty (60) days after the occurrence of a Step-Up Event, Project Participant and CC Power will tender to Seller a duly executed and binding replacement Buyer Liability Pass Through Agreement in the same form as this Agreement, but for a Liability Share equal to the Project Participant's Revised Liability Share. Upon receipt of such executed replacement Buyer Liability Pass Through Agreement, Seller will cancel this Buyer Liability Pass Through Agreement, effective upon the effectiveness of the replacement Buyer Liability Pass Through Agreement. For the avoidance of doubt, the cancellation of an existing Buyer Liability Pass Through Agreement shall not be effective unless and until the replacement Buyer Liability Pass Through Agreement has become effective and binding. Following delivery of such replacement Buyer Liability Pass Through Agreement and cancellation of this Buyer Liability Pass Through Agreement, Exhibit S to the PPA will be deemed amended to reflect the Project Participant's Revised Liability Share; *provided* that the Project Participant's Revised Liability Share shall not exceed one hundred twenty-five percent (125%) of the Project Participant's Initial Liability Share.

5. **Scope and Duration of BLPTA**. The obligations under this BLPTA are independent of the obligations of CC Power under the PPA, and an action may be brought to enforce this BLPTA whether or not action is brought against CC Power under the PPA. This

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BLPTA shall continue in full force and effect from the BLPTA Effective Date until both of the following have occurred: (a) the Delivery Term of the PPA has expired or terminated early, and (b) either (i) all payment and indemnity obligations of CC Power due and payable under the PPA are paid in full (whether directly or indirectly such as through set-off or netting) or have otherwise expired or (ii) Project Participant has paid the maximum Guaranteed Amount (i.e. based on its maximum Revised Liability Share as provided in Section 4) in full. This BLPTA shall also continue to be effective or be reinstated, as the case may be, if at any time any payment of any Guaranteed Amount by CC Power is rescinded or must otherwise be returned by Seller upon the insolvency, bankruptcy or reorganization of CC Power or similar proceeding, all as though such payment had not been made, and Project Participant's Liability Share of such Guaranteed Amount shall be subject to payment following a Payment Demand issued pursuant to this BLPTA. Without limiting the generality of the foregoing, and to the extent that the Project Participant has not paid its maximum Guaranteed Amount in full, the obligations of the Project Participant hereunder shall not be released, discharged, or otherwise affected, and this BLPTA shall not be invalidated or impaired or otherwise affected for the following reasons:

a) The extension of time for the payment of, or any waiver of, any Guaranteed Amount; or

b) Any amendment, modification or other alteration of the PPA; or

c) Any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount; or

d) Any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting CC Power, or any Project Participant, including but not limited to any rejection or other discharge of CC Power's obligations under the PPA, or such Project Participant's obligations hereunder, imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding; or

e) Any reorganization of CC Power or Project Participant, or any merger or consolidation of CC Power or Project Participant into or with any other Person, or the sale of all or substantially all of the assets of CC Power or Project Participants; or

f) The receipt, release, modification or waiver of, or failure to pursue or seek relief under or with respect to, the PPA, any other BLPTA, guaranty, collateral, pledge or security device whatsoever; or

g) CC Power's, or any Project Participant's inability to pay any Guaranteed Amount or perform its obligations under the PPA or hereunder as the case may be; or

h) Any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, by either CC Power or any Project Participant, including, without limitation, statute of frauds and accord and satisfaction; *provided* that Project Participant reserves the right to assert for itself any defenses, setoffs or counterclaims that CC

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Power is or may be entitled to assert against Seller under the terms of the PPA (but not otherwise), including with respect to disputes regarding the calculation of a Guaranteed Amount.

6. Waivers by Project Participant. Project Participant hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraphs 2 and 3, (a) notice of acceptance, presentment, demand, or protest, notice of any of the events described in Paragraph 5, or any other notice or demand of any kind with respect to the Guaranteed Amounts and this BLPTA, (b) any requirement that Seller pursue or exhaust any right, power or remedy or proceed against California Community Power under the PPA or otherwise or against any other Person, including any obligation to pursue any other BLPTAs, or to marshal assets, (c) any defense based on any of the matters described in Paragraph 4, (d) all rights of subrogation or other rights to pursue CC Power for payments made under this BLPTA until all amounts owing under the PPA have been paid in full, and (e) any duty of Seller to disclose any information or other matters relating to the business, operations or finances or other condition of CC Power, any Project Participant, or any other Person who has provided a BLPTA or other security or guaranty with respect to the PPA now or hereafter known to Seller. Project Participant further acknowledges and agrees that it is and will be bound by actions taken and elections made by CC Power under the PPA and waives any defense based on lack of notice or consent, or CC Power's authority or lack thereof or the validity, regularity or advisability of the actions taken or elections made.

7. Project Participant Representations and Warranties and Covenants. Project Participant hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene Project Participant's organizational documents, any applicable Law or any contractual provisions binding on or affecting Project Participant, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Project Participant, threatened, against or affecting Project Participant or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Project Participant to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any member of the Project Participant), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Project Participant. Project Participant warrants and covenants that with respect to its contractual obligations under this BLPTA, it will not claim and affirmatively waives 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 (provided that such court is located within a venue permitted in Law and under the Agreement), (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; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.); *provided*, this waiver shall not apply to the City of San José acting in its capacity as a Governmental Authority and not solely as the administrator of San José Clean Energy.

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8. **Seller Representations and Warranties**. Seller hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene Seller's organizational documents, any applicable Law or any contractual provisions binding on or affecting Seller, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of Seller, threatened, against or affecting Seller or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Seller to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of Seller), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Seller.

9. **California Community Power Representations and Warranties**. California Community Power hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene California Community Power's organizational documents, any applicable Law or any contractual provisions binding on or affecting California Community Power, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the California Community Power, threatened, against or affecting California Community Power or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of California Community Power to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any member of California Community Power), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by California Community Power.

10. **Notices**. Notices under this BLPTA shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) Business Days after mailing if sent by certified, first-class mail, return receipt requested. Any Party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 10.

If delivered to Seller, to it at:

[____]
Attn: [____]
Fax: [____]

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If delivered to Project Participant, to it at:

[____]
Attn: [____]
Fax: [____]

If delivered to CC Power, to it at:

[____]
Attn: [____]
Fax: [____]

11. Governing Law and Forum Selection. This BLPTA shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this BLPTA shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of _____.

12. Miscellaneous. This BLPTA shall be binding upon the Parties and their respective successors and assigns and shall inure to the benefit of the Parties and their successors and permitted assigns. No provision of this BLPTA may be amended or waived except by a written instrument executed by Seller, CC Power, and Project Participant. No provision of this BLPTA confers, nor is any provision intended to confer, upon any third party (other than the Parties' successors and permitted assigns) any benefit or right enforceable at the option of that third party. This BLPTA embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the Parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this BLPTA is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the Parties hereto, and (ii) such determination shall not affect any other provision of this BLPTA and all other provisions shall remain in full force and effect. This BLPTA may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This BLPTA may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

13. Assignment. Except as provided below in this Paragraph 13, no Party may assign this BLPTA or its rights or obligations under this BLPTA, without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Seller may, without the prior written consent of Project Participant and CC Power, transfer or assign this BLPTA to any Person to whom Seller may assign its rights or obligations under the PPA, including assignments for financing purposes, including a Portfolio Financing; *provided*, Seller use reasonable efforts to give Project Participant and CC Power Notice at least fifteen (15) Business Days before the date of such proposed assignment and, except in the case of a collateral assignment or other assignment for financing purposes, provide Project Participant and CC Power a written agreement signed by the Person to which Seller wishes to assign its interests that provides that

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such Person will fully assume all of Seller's obligations and liabilities under this BLPTA, including obligations and liabilities that arose prior to the date of transfer or assignment, upon such transfer or assignment. Project Participant may not, without the prior written consent of Seller and CC Power, transfer or assign this BLPTA to any member of CC Power or any other load serving entity; provided that such consent shall not be unreasonably withheld, conditioned or delayed; provided further that it shall not be considered unreasonable for Seller to withhold consent if a proposed transfer or assignment would result in a reduction in the overall credit profile of the Project Participants.

14. No Recourse to Members of Project Participant. Project Participant 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. Project Participant shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA. Seller and CC Power shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Project Participant's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

15. No Recourse to Members of CC Power. CC Power 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. Except as expressly set forth in the PPA and this BLPTA, CC Power shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA, and as such, Seller and Project Participant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CC Power's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

16. CleanPowerSF as Project Participant. Paragraph 14 shall not apply with respect to CleanPowerSF as a Project Participant, if CleanPowerSF is a Project Participant, but the following shall apply:

a) Designated Fund. CleanPowerSF payment obligations under this BLPTA are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. CleanPowerSF's payment obligations under this BLPTA are not a charge upon the revenues or general fund of the San Francisco Public Utility Commission ("**SFPUC**") or the City and County of San Francisco or upon any non- CleanPowerSF moneys or other property of the SFPUC or the City and County of San Francisco.

b) Controller Certification. CleanPowerSF's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of CleanPowerSF are not authorized to request, and CleanPowerSF is not required to reimburse Seller for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of CleanPowerSF are not authorized to offer or promise, nor is CleanPowerSF required

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to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

c) Biennial Budget Process. For each City and County of San Francisco biennial budget cycle during the term of this BLPTA, CleanPowerSF agrees to take all necessary action to include the maximum amount of its annual payment obligations under this BLPTA in its budget submitted to the City and County of San Francisco's Board of Supervisors for each year of that budget cycle.

d) Compliance with Laws. Each Party shall keep itself fully informed of all applicable federal, state, and local laws in any manner affecting the performance of its obligations under this BLPTA, and must at all times materially comply with such applicable laws as they may be amended from time to time.

e) Prohibition on Political Activity with City Funds. In performing any services required under this BLPTA, Seller shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this BLPTA from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco.

f) Non-discrimination in Contracts. Seller shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

g) Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Seller does not as of the date of this BLPTA, and will not during the term of this BLPTA, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

h) Submitting False Claims. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (1) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (3) conspires to defraud the City by getting a false claim allowed or paid by the City; (4) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (5) is a beneficiary of an inadvertent submission of a false claim to the

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City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

i) Consideration of Salary History. Seller shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Seller is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this BLPTA or in furtherance of this BLPTA, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property.

j) Consideration of Criminal History in Hiring and Employment Decisions. Seller agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to Seller's operations to the extent those operations are in furtherance of the performance of this BLPTA, shall apply only to applicants and employees who would be or are performing work in furtherance of this BLPTA, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

k) Conflict of Interest. By executing this BLPTA, Seller certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this BLPTA.

l) Campaign Contributions. By executing this BLPTA, Seller acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Seller's board of directors; Seller's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Seller. Seller shall inform the relevant persons of the limitation on contributions imposed by Section 1.126.

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m) MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles.

n) Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, Seller shall not provide any items to the City in performance of this BLPTA which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of Seller to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

o) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 16(d) through 16(n) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 16(d) through 16(n) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

17. City of San José (San José Clean Energy) as Project Participant. Paragraph 14 shall not apply with respect to the City of San José as a Project Participant, if the City of San José, as administrator of San José Clean Energy ("**SJCE**") is a Project Participant, but the following shall apply:

a) Designated Fund. The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; *provided*, *however*, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) ("**Designated Fund**") for payment of its obligations under this BLPTA. Subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the SJCE's obligations, SJCE agrees to establish rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this BLPTA.

b) Limited Obligations. SJCE's payment obligations under this BLPTA are special limited obligations of the SJCE payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

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c) Nondiscrimination/Non-Preference. In performing its obligations under this BLPTA, Seller shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Seller to file, and cause any Seller's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

d) Conflict of Interest. Seller represents that it is familiar with the local and state conflict of interest laws and agrees to comply with those laws in performing this BLPTA. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Seller shall avoid all conflicts of interest or appearances of conflicts of interest in performing this BLPTA. Seller has the obligation of determining if the manner in which it performs any part of this BLPTA results in a conflict of interest or an appearance of a conflict of interest and shall immediately notify SJCE in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Seller's violation of this subsection (ii) is a material breach.

e) Environmentally Preferable Procurement Policy. Seller shall perform its obligations under this BLPTA in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 13.1(g) be a material breach of this BLPTA or otherwise give rise to an Event of Default or entitle SJCE to terminate this BLPTA.

f) Gifts Prohibited. Seller represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Seller's violation of this subsection (iv) is a material breach.

g) Disqualification of Former Employees. Seller represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

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h) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 17(d) through 17(g) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 17(c) through 17(h) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

IN WITNESS WHEREOF, the Parties have caused this BLPTA to be duly executed and delivered by their duly authorized representatives on the date first above written.

[**PROJECT PARTICIPANT**]:

By:_____

Printed Name:_____

Title:_____

CALIFORNIA COMMUNITY POWER, a California joint powers authority:

By:_____

Printed Name:_____

Title:_____

[**SELLER**]:

By:_____

Printed Name:_____

Title:_____

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EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [SELLER ENTITY] ("**Seller**") to California Community Power, 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(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information:[1]

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Dispatchable (yes or no)	
Point of Interconnection with CAISO Controlled Grid (substation or transmission line)	
Path 26 (North or South)	
LCR Area (if any)	
Flexible Capacity (MW) (if any)	
Flexible Capacity category	
Slice of Day category (if applicable)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit CAISO EFC (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.

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[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

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EXHIBIT N

NOTICES

Fish Lake Geothermal LLC, a Nevada Limited Liability Company ("Seller")	**California Community Power, a California joint powers authority** ("Buyer")
All Notices: Street: 3451 N. Triumph Blvd., Suite 201 City: Lehi, UT 84043 Attn: Brady Olson Phone: 385-352-8858 Email: brady@openmountainenergy.com	**All Notices:** Street: 70 Garden Court, Suite 300 City: Monterey, CA 93940 Attn: Tim Haines Phone: 916-207-4078 Email: timhaines@powergridsymmetry.com
Scheduling: Attn: TBD Phone: TBD Email: TBD	**Scheduling:** Attn: TBD Phone: TBD Email: TBD
Confirmations: Attn: TBD Phone: TBD Email: TBD	**Confirmations:** Attn: TBD Phone: TBD Email: TBD
Invoices: Attn: Accounting Phone: 385-352-8858 E-mail: accounting@openmountainenergy.com	**Invoices:** Attn: TBD Phone: TBD E-mail: TBD
Payments: Attn: Accounting Phone: 385-352-8858 E-mail: accounting@openmountainenergy.com	**Payments:** Attn: TBD Phone: TBD E-mail: TBD
Wire Transfer: BNK: [redacted] ABA: [redacted] ACCT: [redacted]	**Wire Transfer:** BNK: TBD ABA: TBD ACCT: TBD
Reference Numbers: Duns: Federal Tax ID Number: 85-4266767	**Reference Numbers:** Duns: Federal Tax ID Number:

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EXHIBIT O

OPERATIONAL CHARACTERISTICS

Each calendar month of the Delivery Term, Seller shall maintain minimum Adjusted Energy Production ("AEP") during the hours of 4-9 p.m. PPT (HE17-HE21) in a quantity no less the following:

Month of Delivery Term	Minimum AEP during HE17-HE21 (in MWh)
JAN	[redacted]
FEB	[redacted]
MAR	[redacted]
APR	[redacted]
MAY	[redacted]
JUN	[redacted]
JUL	[redacted]
AUG	[redacted]
SEP	[redacted]
OCT	[redacted]
NOV	[redacted]
DEC	[redacted]

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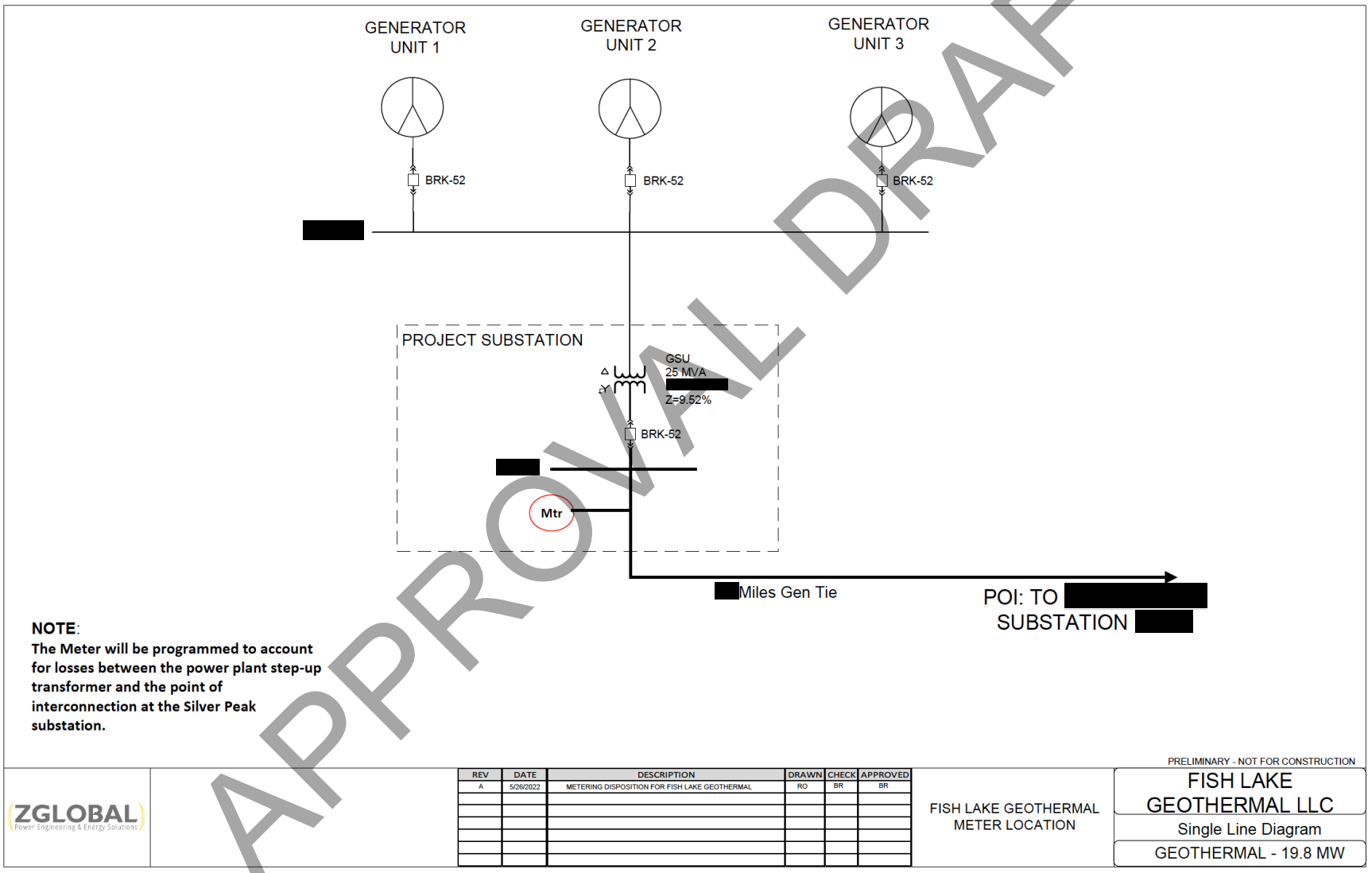
EXHIBIT P

METERING DIAGRAM



NOTE:
The Meter will be programmed to account for losses between the power plant step-up transformer and the point of interconnection at the Silver Peak substation.

PRELIMINARY - NOT FOR CONSTRUCTION

REV	DATE	DESCRIPTION	DRAWN	CHECK	APPROVED
A	5/26/2022	METERING DISPOSITION FOR FISH LAKE GEOTHERMAL	RO	BR	BR

ZGLOBAL
Power Engineering & Energy Solutions

FISH LAKE GEOTHERMAL METER LOCATION

FISH LAKE GEOTHERMAL LLC
Single Line Diagram
GEOTHERMAL - 19.8 MW

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EXHIBIT Q

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this "Consent") is entered into among (i) California Community Power, a California joint powers authority ("CCP"), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (the "Project Company"), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the "Secured Parties", and, such agent, together with its successors in such capacity, the "Collateral Agent"). CCP, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties". Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the PPA (as defined below).

RECITALS

The Parties enter into this Consent with reference to the following facts:

A. Project Company and CCP have entered into that certain Renewable Power Purchase Agreement, dated as of *[Date] [List all amendments as contemplated by Section 3.4]* ("PPA"), pursuant to which Project Company will develop, construct, commission, test and operate the geothermal energy facility (the "Project") and sell the Product to CCP, and CCP will purchase the Product from Project Company;

B. As collateral for Project Company's obligations under the PPA, Project Company has agreed to provide to CCP certain collateral, which may include Performance Security and Development Security and other collateral described in the PPA (collectively, the "PPA Collateral");

C. Project Company has entered into that certain *[Insert description of financing arrangements with Lender]*, dated as of *[Date]*, among Project Company, the Lenders party thereto and the Collateral Agent (the "Financing Agreement"), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;

D. As collateral security for Project Company's obligations under the Financing Agreement and related agreements (collectively, the "Financing Documents"), Project Company has, among other things, assigned all of its right, title and interest in, to and under the PPA and Project Company's owners have pledged their ownership interest in Project Company (collectively, the "Assigned Interest") to the Collateral Agent pursuant to the Financing Documents; and

E. It is a requirement under the Financing Agreement and the PPA that CCP and the other Parties hereto shall have executed and delivered this Consent.

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AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

CCP hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the PPA (subject to CCP's rights and defenses under the PPA and the terms of this Consent) and accepts any such exercise; *provided*, insofar as the Collateral Agent exercises any such rights under the PPA or makes any claims with respect to payments or other obligations under the PPA, the terms and conditions of the PPA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that CCP is authorized to act in accordance with Collateral Agent's instructions, and that CCP shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CCP to terminate or suspend its performance under the PPA (a "PPA Default"), CCP will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives CCP written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent's intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of sixty (60) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CCP which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide

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PPA Collateral, ten (10) Business Days) from the later to occur of (i) Collateral Agent's receipt of the notice of such PPA Default from CCP and (ii) the expiration of the cure periods available to the Project Company in the PPA to cure such PPA Default; *provided*, that (a) if possession of the Project is necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days from the later to occur of (i) Collateral Agent's receipt of the notice of the PPA Default and (ii) the expiration of the cure periods available to the Project Company in the PPA and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days from the later to occur of (i) Collateral Agent's receipt of the notice of the PPA Default and (ii) the expiration of the cure periods available to the Project Company in the PPA, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CCP with reports concerning the status of efforts to cure a PPA Default upon CCP's reasonable request.

1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a "Financing Document Default Notice") CCP that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the PPA, and, subject to Sections 1.7(b) and 1.7(c) below, CCP and Substitute Owner will recognize each other as counterparties under the PPA and will continue to perform their respective obligations (including those obligations accruing to CCP and the Project Company prior to the existence of the Substitute Owner) under the PPA in favor of each other in accordance with the terms thereof; *provided*, before CCP is required to recognize the Substitute Owner, the Substitute Owner must (i) be the Collateral Agent or a permitted assignee under the PPA or (ii) have financial qualifications and operating experience of *[TBD]* (a "Permitted Transferee"). For purposes of the foregoing, CCP shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the PPA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) certify the same.

1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) ("Replacement Owner"), CCP shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the

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terms of the PPA with respect to the remaining Term ("Replacement PPA"); *provided*, before CCP is required to enter into a Replacement PPA, the Replacement Owner shall satisfy the requirements of a Permitted Transferee. For purposes of the foregoing, CCP is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) certify the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent CCP is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA (subject to Section 1.3 hereof), CCP may suspend performance of its obligations under such Replacement PPA, unless and until all PPA Defaults of Project Company under the PPA or Replacement PPA have been cured (subject to Section 1.3 hereof).

1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the PPA and a Replacement PPA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a "Person") to which the Project is transferred; *provided*, the proposed transferee shall be a Permitted Transferee.

1.7 Assumption of Obligations.

(a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing all of the obligations of Project Company, Substitute Owner or Replacement Owner under the PPA or Replacement PPA, as applicable, including posting and collateral assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding PPA Default except for any such defaults that are both personal to the transferor and not curable by the transferee, and payment of all other amounts due and payable to CCP in respect of the PPA or such Replacement PPA, the transferor shall be released from any further liability under the PPA or Replacement PPA, as applicable.

(b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company's obligations under the PPA, including posting and collateral assignment of the PPA Collateral; *provided*, the obligations of such Substitute Owner shall be no more than those of Project Company under the PPA.

(c) No Liability.

CCP acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the PPA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company's obligations under the PPA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing

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Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement PPA, Collateral Agent shall not have any personal liability to CCP under the PPA or Replacement PPA and the sole recourse of CCP in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; *provided*, such limited recourse shall not limit CCP's right to seek equitable or injunctive relief against Collateral Agent, or CCP's rights with respect to any offset rights expressly allowed under the PPA, a Replacement PPA or the PPA Collateral.

1.8 Delivery of Notices.

CCP shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CCP to Project Company pursuant to the PPA relating to (a) a PPA Default by Project Company under the PPA, (b) any claim regarding Force Majeure by CCP under the PPA, (c) any notice of dispute under the PPA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CCP's obligation to give Collateral Agent a notice of PPA Default under Section 1.3. Collateral Agent shall deliver to CCP, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to any indebtedness of Project Company being declared immediately due and payable under the Financing Documents.

1.9 Confirmations.

CCP will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the PPA (including the performance of same by Project Company); *provided*, such confirmation may be limited to matters of which CCP is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CCP under the PPA as between CCP and Project Company.

1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.5, 1.8, 1.9, 1.11 and 2.1, unless and until CCP receives a Financing Document Default Notice, CCP shall deal exclusively with Project Company in connection with the performance of CCP's obligations under the PPA. From and after such time as CCP receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement PPA is entered into or the PPA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, CCP shall, until Collateral Agent confirms to CCP in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CCP's obligations under the PPA, and CCP may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

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1.11 No Amendments.

To the extent permitted by Laws, CCP agrees that it will not, without the Project Company obtaining prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the PPA (b) terminate or suspend its performance under the PPA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the PPA by Project Company.

SECTION 2. PAYMENTS UNDER THE PPA

2.1 Payments.

Unless and until CCP receives written notice to the contrary from Collateral Agent, CCP will make all payments to be made by it to Project Company under or by reason of the PPA directly to Project Company at the following account: [_____] or, to such other Person or at such other address or account as Collateral Agent may from time to time specify in writing to CCP. CCP, Project Company, and Collateral Agent acknowledge that CCP will be deemed to be in compliance with the payment terms of the PPA to the extent that CCP makes payments in accordance with Collateral Agent's instructions.

2.2 No Offset, Etc.

All payments required to be made by CCP under the PPA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF CCP

CCP makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

3.1 Organization.

CCP is a joint powers authority and community choice aggregator duly organized and validly existing 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. CCP has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

3.2 Authorization.

The execution, delivery and performance by CCP of this Consent and the PPA have been duly authorized by all necessary corporate or other action on the part of CCP and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CCP which, if not obtained, will prevent CCP from performing its obligations

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hereunder or under the PPA except approvals or consents which have previously been obtained and which are in full force and effect.

3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the PPA is in full force and effect, have been duly executed and delivered on behalf of CCP by the appropriate officers of CCP, and constitutes the legal, valid and binding obligation of CCP, enforceable against CCP in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) neither CCP nor, to CCP's actual knowledge, Project Company, is in default of any of its obligations under the PPA; (b) CCP and, to CCP's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to CCP's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CCP or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

3.5 No Previous Assignments.

CCP has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the PPA.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and CCP:

4.1 Organization.

Project Company is a *[Legal Status of Seller]* duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the PPA to the Collateral

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Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, CCP, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, CCP, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CCP or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the PPA.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of CCP and Project Company:

5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent.

5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

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SECTION 6. MISCELLANEOUS

6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the PPA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to CCP or Project Company, in accordance with *[Notice Section of the PPA]* of the PPA, (b) if to Collateral Agent, to *[Collateral Agent Name]*, *[Collateral Agent Address]*, Attn: *[Collateral Agent Contact Information]*, Telephone: *[___]*, Fax: *[___]*, and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the PPA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

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6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may be (a) terminated, amended, supplemented or modified, except by an instrument in writing signed by CCP, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party's obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until CCP has been notified by Collateral Agent that all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the PPA or any Replacement PPA, its obligations under such PPA or Replacement PPA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assigns permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

CCP hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

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6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

[Remainder of Page Left Intentionally Blank.]

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IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

[NAME OF PROJECT COMPANY], *[Legal Status of Project Company]*.		CALIFORNIA COMMUNITY POWER, a California joint powers authority.
By: _____ *[Name]* *[Title]* Date: _____		**By:** _____ *[Name]* *[Title]* Date: _____
[NAME OF COLLATERAL AGENT], *[Legal Status of Collateral Agent]*. By: _____ *[Name]* *[Title]* Date: _____		

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SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

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EXHIBIT R

[RESERVED]

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EXHIBIT S

PROJECT PARTICIPANTS AND LIABILITY SHARES

Project Participant	Liability Share
Central Coast Community Energy	18.6%
CleanPowerSF	14.5%
Peninsula Clean Energy	17.8%
Redwood Coast Energy Authority	2.8%
City of San José, as administrator of San José Clean Energy	17.4%
Silicon Valley Clean Energy	14.0%
Sonoma Clean Power Authority	11.7%
Valley Clean Energy	3.2%

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FISH LAKE GEOTHERMAL
PROJECT PARTICIPATION SHARE AGREEMENT

among

CENTRAL COAST COMMUNITY ENERGY

and

CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH ITS PUBLIC UTILITIES COMMISSION CLEANPOWERSF

and

PENINSULA CLEAN ENERGY

and

REDWOOD COAST ENERGY AUTHORITY

and

CITY OF SAN JOSÉ, ADMINISTRATOR OF SAN JOSÉ CLEAN ENERGY

and

SILICON VALLEY CLEAN ENERGY

and

SONOMA CLEAN POWER

and

VALLEY CLEAN ENERGY

and

CALIFORNIA COMMUNITY POWER

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FISH LAKE GEOTHERMAL

PROJECT PARTICIPATION SHARE AGREEMENT

PREAMBLE

This Project Participation Share Agreement ("**Agreement**") is entered into as of _____ (the "**Effective Date**"), by and among Central Coast Clean Energy, a California joint powers authority, the City and County of San Francisco acting by and through its Public Utilities Commission, CleanPowerSF, Peninsula Clean Energy, a California joint powers authority, Redwood Coast Energy Authority, a California joint powers authority, City of San José, a California municipality, Silicon Valley Clean Energy, a California joint powers authority, Sonoma Clean Power, a California joint powers authority, and Valley Clean Energy, a California joint powers authority (each individually a "**Project Participant**" and collectively referred to as the "**Project Participants**") and California Community Power ("CCP"), a California joint powers authority. CCP and the Project Participants 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 CCP is a Joint Powers Authority, was formed for the purpose of developing, acquiring, constructing, owning, managing, contracting for, engaging in, or financing electric energy generation and storage projects, and for other purposes; and

WHEREAS, the Project Participants have participated with CCP in the negotiation of an agreement for purchase of the electric output of the Fish Lake Geothermal Project (the "**Project**" as defined in Exhibit A of the PPA), and CCP is to enter into a Renewable Power Purchase Agreement ("**PPA**"), which is incorporated herein by this reference, with Fish Lake Geothermal LLC, a Nevada limited liability company ("**Project Developer**"), providing for purchase of the electric output, and associated rights, benefits, and credits from the Project on behalf of the Project Participants.

WHEREAS, pursuant to this Agreement, CCP shall cause to deliver to each Project Participant the Project Participant's associated share of the electric output and associated rights, benefits, and credits of the Project.

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:

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ARTICLE 1
DEFINITIONS

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

"**AC**" means alternating current.

"**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 any Exhibits, schedules, and any written supplements hereto.

"Amended Annual Budget" means the budget approved by the Project Committee and adopted by the CCP Board pursuant to Section 5.1(c) of this Agreement.

"**Ancillary Services**" means all ancillary services, products and other attributes, if any, associated with the Installed Capacity of the Facility.

"**Annual Budget**" means the budget approved by the Project Committee and adopted by the CCP Board pursuant to Section 5.1(c) of this Agreement.

"**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.

"**Billing Statement**" has the meaning set forth in Section 9.2 of this Agreement.

"**Buyer Liability Pass Through Agreement**" **or** "**BLPTA**" means, for each Project Participant, the form set forth in Exhibit L of the PPA, as executed by such Project Participant, countersigned by CCP, and delivered to the Project Developer.

"**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.

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

"**CAISO Balancing Authority Area**" has the meaning set forth in the CAISO Tariff.

"**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.

"**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.

"Capital Improvements" means any unit of property, property right, land or land right which is a replacement, repair, addition, improvement or betterment to the Project or any transmission facilities relating to, or for the benefit of, the Project, the betterment of land or land rights or the enlargement or betterment of any such unit of property constituting a part of the Project or related transmission facilities which is (i) consistent with Prudent Utility Practices and determined necessary and/or desirable by the CCP Board or (ii) required by any governmental agency having jurisdiction over the Project.

"CCP Board" means the Board of Directors of California Community Power.

"CCP Manager" means the General Manager of California Community Power.

"**CEC**" means the California Energy Commission, or any successor agency performing similar statutory functions.

"**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 or deliver to the Delivery Point at a particular moment and that can be purchased, sold, or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

"**Capacity Damages**" means any liquidated damages paid by the Project Developer to CCP pursuant to Exhibit B of the PPA.

"**CEQA**" means the California Environmental Quality Act, as amended or supplemented from time to time.

"Chairperson" has the meaning set forth in Exhibit D.

"**Change of Control**" has the meaning set forth in Section 1.1 of the PPA.

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"**Commercial Operation**" has the meaning set forth in Section 1.1 of the PPA.

"**Commercial Operation Date**" or "**COD**" has the meaning set forth in Section 1.1 of the PPA.

"**Commercial Operation Delay Damages**" has the meaning set forth in Section 1.1 of the PPA.

"**Community Choice Aggregator**" has the meaning set forth in California Public Utilities Code § 331.1.

"**Confidential Information**" has the meaning set forth in Section 18.1 of the PPA.

"**Construction Start**" has the meaning set forth in Exhibit B of the PPA.

"**Construction Start Date**" has the meaning set forth in Exhibit B of the PPA.

"**Contract Price**" has the meaning set forth on the Cover Sheet of the PPA.

"**Contract Term**" has the meaning set forth in Section 2.1 of the PPA.

"**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 a Project Participant assuming all or a portion of a Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Project Participant in terminating any arrangement pursuant to which it has hedged its obligations; and all reasonable attorneys' fees and expenses incurred by the Project Participant in connection with the Step-Up Allocation.

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

"Cured Payment Default" means a Payment Default that has been cured in accordance with Section 12.4 of this Agreement.

"**Daily Delay Damages**" has the meaning set forth in Section 1.1 of the PPA.

"**Damage Payment**" has the meaning set forth in Section 1.1 of the PPA.

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

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

"Defaulting Project Participant" has the meaning set forth in Section 12.1.

"**Delivery Point**" means the Facility Pnode on the CAISO grid.

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"**Delivery Term**" means the period of Contract Years set forth on the Cover Sheet of the PPA beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of the PPA.

"Designated Fund" has the meaning set forth in Section 10.5.

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

"**Effective Date**" has the meaning set forth in the Preamble.

"**Electrical Losses**" has the meaning set forth in Section 1.1 of the PPA.

"**Emission Reduction Credits**" or "**ERCs**" means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

"**Energy**" means electrical energy, measured in kilowatt-hours or Megawatt-hours or multiple units thereof.

"**Energy Management System**" or "**EMS**" means the Facility's energy management system.

"**Entitlement Share**" means the percentage entitlement of each Project Participant as set forth in Exhibit B of this Agreement (entitled "Schedule of Project Participant Entitlement Shares and Step-Up Allocation Caps") attributable to each such Project Participant, as may be amended pursuant to Section 4.2 or 12.8.

"**Entitlement Share Reduction Amount**" has the meaning set forth in Exhibit C.

"**Entitlement Share Reduction Compensation Amount**" has the meaning set forth in Exhibit C.

"**Entitlement Share Reduction Notice**" has the meaning set forth in Exhibit C.

"**Environmental Attributes**" shall mean any and all attributes under the RPS regulations 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) that are attributable now, or in the future to the Facility and its displacement of conventional energy generation.

"**Estimated Monthly Project Cost**" has the meaning set forth in Section 8.1.

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"**Event of Default**" has the meaning set forth in Section 11.1 of the PPA.

"**Expected Commercial Operation Date**" means the date set forth on the Cover Sheet of the PPA.

"**Expected Energy**" means the quantity of Energy specified on the Cover Sheet of the PPA.

"**Facility**" means the geothermal generating facility described on the Cover Sheet of the PPA and in Exhibit A of the PPA, located at the Site, and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point.

"**Facility Energy**" means the Energy delivered from the Facility to the Delivery Point during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

"**Facility Meter**" has the meaning set forth in Section 1.1 of the PPA.

"**Facility Metering Point**" means the location(s) of the Facility Meter shown in Exhibit P of the PPA.

"**FERC**" means the Federal Energy Regulatory Commission or any successor government agency.

"**Flexible Capacity**" means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

"**Flexible RAR**" means the flexible capacity 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.

"**Force Majeure Event**" has the meaning set forth in Section 10.1 of the PPA.

"**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.

"**Gains**" means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from such Step-Up Allocation for the remaining Contract Term of the PPA, determined in a commercially reasonable manner. Factors used in determining the economic benefit to such Project Participant may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of such Project Participant, including without limitation, quotations (either firm or indicative) of relevant rates,

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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 Environmental Attributes and Capacity Attributes.

"**GHG Regulations**" means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

"**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, except to the extent that the Party is acting solely in its governmental capacity.

"**Greenhouse Gas**" or "**GHG**" has the meaning set forth in the GHG Regulations or in any other applicable Laws.

"**Guaranteed Commercial Operation Date**" means the date set forth on the Cover Sheet of the PPA, as such date may be extended pursuant to Exhibit B of the PPA.

"**Guaranteed Construction Start Date**" means the date set forth on the Cover Sheet of the PPA, as such date may be extended pursuant to Exhibit B of the PPA.

"**Guaranteed Energy Production Damages**" means any liquidated damages paid by the Project Developer to CCP pursuant to Section 4.7 of the PPA.

"**Indemnifying Party**" has the meaning set forth in Section 13.5.

"**Installed Capacity**" means the lesser of (a) Facility PMAX, and (b) the peak electrical output of the Facility, as measured in MW(AC) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test.

"**Interconnection Agreement**" means the interconnection agreement entered into by Project Developer pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Project Developer's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated, and maintained during the PPA Contract Term.

"**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 of the PPA.

"**Invoice Amount**" has the meaning set forth in Section 9.2.

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"**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 January 29, 2021, as amended from time to time, under which CCP 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.

"**Late Payment Notice**" means a notice issued by CCP to a Project Participant pursuant to Section 9.7.

"**Late Payment Charge**" has the meaning set forth in Section 9.7.

"**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.

"**Letter(s) of Credit**" has the meaning set forth in Section 1.1 the PPA.

"**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 requirements in other regulatory proceedings or legislative actions.

"**Losses**" means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from such Step-Up Allocation for the remaining Contract Term of the PPA, determined in a commercially reasonable manner. Factors used in determining economic loss to such Project Participant may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Project Participant, 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 of the PPA and must include the value of Environmental Attributes and Capacity Attributes.

"**Marketable Emission Trading Credits**" means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code

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Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

"**Month**" means a calendar month.

"**Monthly Costs**" has the meaning set forth in Section 9.1.

"**Monthly Product Payment**" means the payment required to be made by CCP to Project Developer each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C of the PPA.

"**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 Strike Price**" has the meaning set forth in Section 1.1 of the PPA.

"**NERC**" means the North American Electric Reliability Corporation.

"**Net Qualifying Capacity**" or "**NQC**" has the meaning set forth in the CAISO Tariff.

"**Non-Defaulting Project Participant**" has the meaning set forth in Section 12.1.

"**Normal Vote**" has the meaning set forth in Exhibit D.

"**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).

"**Operating Account**" means an account established by CCP for each Project Participant pursuant to Section 8.2.

"**Operating Cost**" means the share of the Annual Budget or Amended Annual Budget attributable to the applicable Month for a Billing Statement plus any Accepted Compliance Costs approved by the CCP Board pursuant to Section 5.2(a)(xiii).

"**Party**" has the meaning set forth in the Preamble.

"**Payment Default**" has the meaning set forth in Section 12.2.

"**Payment Default Termination Deadline**" has the meaning set forth in Section 12.6.

"**Performance Security**" means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet of the PPA.

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"**Permitted Transferee**" has the meaning set forth in Section 1.1 of the PPA.

"**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.

"**Power Purchase Agreement**" or "**PPA**" means the agreement between CCP and Project Developer for the purchase of the electric output of the Fish Lake Geothermal Project, executed on May 31, 2022.

"**PPA Defaulting Party**" has the meaning set forth in Section 11.1(a) of the PPA.

"**PPA Non-Defaulting Party**" has the meaning set forth in Section 11.2 of the PPA.

"**PMAX**" means the applicable CAISO-certified maximum operating level of the Facility.

"**PMIN**" means the applicable CAISO-certified minimum operating level of the Facility.

"**PNode**" has the meaning set forth in the CAISO Tariff.

"**Product**" has the meaning set forth in Section 3.1

"**Progress Report**" means a progress report including the items set forth in Exhibit E of the PPA.

"**Project**" shall be broadly construed to entail the aggregate of rights, liabilities, interests, and obligations of CCP pursuant to the PPA, including but not limited to all rights, liabilities, interests, and obligations associated with the Product, all rights, liabilities, interests and obligations associated with the Facility, and including all aspects of the operation and administration of the Facility and the PPA and the rights, liabilities, interests and obligations associated therewith.

"**Project Committee**" means the committee established in accordance with Section6.1.

"**Project Developer**" means Fish Lake Geothermal LLC or assignee as permitted under the PPA.

"**Project Participants**" means those entities executing this Agreement, as identified in the Preamble, together in each case with each entity's successors or assigns.

"**Project Revenue Rights**" means all rights of a Project Participant under this Agreement to any revenue associated with the Facility Energy, Capacity Attributes, Ancillary Services, or Environmental Attributes associated with the Facility.

"**Project Rights**" means all rights and privileges of a Project Participant under this Agreement, including but not limited to its Entitlement Share, its right to receive the Product from the Facility, and its right to vote on Project Committee matters.

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"**Project Rights and Obligations**" means the Project Participants' Project Rights and obligations under the terms of this Agreement.

"**Proposed Entitlement Share Reduction Compensation Amount**" has the meaning set forth in Exhibit C.

"**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 industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States, and (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 in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and 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.

"**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**" has the meaning set forth in Section 1.1 of the PPA.

"**RA Guarantee Date**" means the date by which the Facility is expected to achieve Full Capacity Deliverability Status, which is the Commercial Operation Date.

"**RA Shortfall Month**" has the meaning set forth in Section 1.1 of the PPA.

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**Reliability Network Upgrades**" has the meaning set forth in the CAISO Tariff.

"**Remedial Action Plan**" has the meaning set forth in Section 2.4 of the PPA.

"**Replacement RA**" has the meaning set forth in Section 1.1 of the PPA.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's Resource Adequacy Requirements, as those obligations are set forth in any

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ruling issue by a Governmental Authority, including the Resource Adequacy Rulings and shall include Flexible Capacity, and 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**" has 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, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006, 21-06-035 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.

"**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(s), FMM Schedule(s) (as defined in the CAISO Tariff), and/or any other financially binding Schedule(s), 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.

"**Scheduling Coordinator Services Agreement**" means the agreement between CCP and a Scheduling Coordinator that was approved by the CCP Board pursuant to Section 5.2(a)(xiii).

"**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.

"**Shared Facilities Agreements**" has the meaning set forth in Section 6.3 PPA.

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"**Showing Month**" means the calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, 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**" has the meaning set forth in Section 1.1 of the PPA, as further described in Exhibit A of the PPA.

"**Station Use**" means the Energy 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.

"**Step-Up Allocation Cap**" has the meaning set forth in Section 12.8(a).

"**Step-Up Invoice**" means an invoice sent to a Non-Defaulting Project Participant as a result of a Defaulting Project Participant's Payment Default, which invoice shall separately identify any amount owed with respect to the monthly Billing Statement of the Defaulting Project Participant, as the case may be, pursuant to Section 12.7.

"Step-Up Invoice Amount" has the meaning set forth in Section 12.7.

"Step-Up Invoice Amount Cap" has the meaning set forth in Section 12.7.

"**Step-Up Reserve Account**" has the meaning set forth in Section 12.7(a)(i).

"**System Emergency**" means any condition that requires, as determined, and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) 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 any state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit, including the ITC, specific to investments in renewable energy facilities and/or energy storage facilities.

"**Terminated Transaction**" has the meaning set forth in Section 11.2(a) the PPA.

"**Termination Payment**" has the meaning set forth in Section 11.3 of the PPA.

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"**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.

"**Unanimous Vote**" has the meaning set forth in Exhibit D.

"**Uncontrollable Forces**" means any Force Majeure event and any cause beyond the control of any Party, which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, epidemic or pandemic (excluding impacts of the disease designated COVID-19 or the related virus designated SARS-CoV-2 impacts actually known by the Party claiming the Force Majeure Event as of the Effective Date), an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, licenseor permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the PPA, as defined therein.

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;

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(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;

(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; and

(n) in the event of any conflict or inconsistency between the terms of this Agreement and the terms of the PPA, the terms and provisions of this Agreement shall control.

ARTICLE 2
EFFECTIVE DATE AND TERM

2.1. Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the occurrence of all of the following: (i) the termination of the PPA and (ii) the termination of the Buyer Liability Pass Through Agreement for all the Project Participants, and (iii) all Parties have met their obligations under this Agreement ("**Term**").

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(b) Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. All indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

ARTICLE 3
AGREEMENT

3.1. Transaction. Subject to the terms and conditions of this Agreement, the Project Participants authorize CCP to purchase all Facility Energy, Capacity Attributes, Ancillary Services, and Environmental Attributes associated with the Facility and any Replacement RA provided pursuant to the PPA (collectively the "**Product**"), on behalf of the Project Participants. CCP shall cause Project Developer to deliver each Project Participant's Entitlement Share of the Product to such Project Participant, including but not limited to (i) any revenue associated with the Facility Energy, Capacity Attributes, Ancillary Services, or Environmental Attributes associated with the Facility, and (ii) the Capacity Attributes and Environmental Attributes associated with the Facility or otherwise provided to CCP pursuant to the PPA. To the extent that any Facility Energy, Capacity Attributes, Ancillary Services, or Environmental Attributes associated with the Project or any Replacement RA are delivered to CCP, then CCP shall transfer each Project Participant's Entitlement Share of such Facility Energy, Capacity Attributes, Ancillary Services, or Environmental Attributes to the Project Participants. CCP shall cause all Facility Energy and associated Environmental Attributes delivered to the Project Participants by the Project Developer, and shall deliver to the Project Participants all Facility Energy and associated Environmental Attributes that CCP receives from the Project Developer, on a fully bundled basis in order to meet the requirements of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1). CCP shall administer the PPA and oversee the operation of the Project. CCP shall not sell, assign, or otherwise transfer any Product, or any portion thereof, to any third party other than to the Project Participants, unless authorized by the Project Participants pursuant to this Agreement.

3.2. RPS Compliance.

(a) CCP represents and warrants that:

(i) the Product purchased by CCP on behalf of the Project Participants consists of Energy and Environmental Attributes from only Eligible Renewable Energy Resources of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1);

(ii) the Energy and Environmental Attributes that are delivered to Project Participants by Project Developer, or delivered to Project Participants by CCP to the extent Project Developer delivers Energy and Environmental Attributes to CCP, consists only of Energy and Environmental Attributes that have not yet been generated prior to the commencement of the term of the PPA or the Effective Date of this Agreement;

(iii) the Energy that is delivered to Project Participants by Project Developer, or delivered to Project Participants by CCP to the extent Project Developer delivers Energy to CCP, shall be transferred to each Project Participant in real time; and

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(b) If the PPA includes an agreement to dynamically transfer electricity to a California balancing authority, then any transactions implemented under this Agreement are not contrary to any condition imposed by a balancing authority participating in the dynamic transfer arrangement.

ARTICLE 4
ENTITLEMENT SHARE

4.1. Initial Entitlement Share. Each Project Participant's initial Entitlement Share as of the Effective Date shall be set forth in Column B of the Table provided in Exhibit B of this Agreement (entitled "Schedule of Project Participant Entitlement Shares and Step-Up Allocation Caps"). Any revisions to the Entitlement Share specified in Exhibit B pursuant to Section 4.2. or Section 12.8 shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

4.1. Change of Entitlement Share. Any Project Participant may reduce its Entitlement Share of the Project pursuant to the process set forth in Exhibit C.

4.2. Reduction of Entitlement Share to Zero. If any Project Participant's Entitlement Share is reduced to zero through any process specified in Exhibit C, such Project Participant shall remain a Party to this Agreement and shall be subject to all rights, obligations, and liabilities of this Agreement, including but not limited to any liabilities for Monthly Product Payments, Damage Payment, or Termination Payment, as applicable, and any other damage payments or reimbursement amounts under the PPA.

ARTICLE 5
OBLIGATIONS OF CCP; ROLE OF CCP BOARD AND CCP MANAGER

5.1. Obligations of CCP.

(a) CCP shall take such commercially reasonable actions or implement such commercially reasonable measures as may be necessary or desirable for the utilization, maintenance, or preservation of the rights and interests of the Project Participants in the Project including, if appropriate, such enforcement actions or other measures as the Project Committee or CCP Board deems to be in the Project Participants' best interests. To the extent not inconsistent with the PPA or other applicable agreements, CCP may also be authorized by the Project Participants to assume responsibilities for planning, designing, financing, developing, acquiring, insuring, contracting for, administering, operating, and maintaining the Project to effectuate the conveyance of the Product to Project Participants in accordance with Project Participants' Entitlement Shares.

(b) To the extent such services are available and can be carried forth in accordance with the PPA, CCP shall also provide such other services, as approved by the Project Committee or CCP Board, as may be deemed necessary to secure the benefits and/or satisfy the obligations associated with the PPA.

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(c) Adoption of Annual Budget. The Annual Budget and any amendments to the Annual Budget shall be prepared and approved in accordance with this Section 5.1(c).

(i) The CCP Manager will prepare and submit to the Project Committee a proposed Annual Budget at least ninety (90) days prior to the beginning of each Contract Year during the term of this Agreement. The proposed Annual Budget shall be based on the prior Contract Year's actual costs and shall include reasonable estimates of the costs CCP expects to incur during the applicable Contract Year in association with the administration of the PPA, including the cost of insurance coverages that are determined to be attributable to the Project by action of the CCP Board. Upon approval of the proposed Annual Budget by a Normal Vote of the Project Committee, the CCP Manager shall present the proposed Annual Budget to the CCP Board. The CCP Board shall adopt the Annual Budget no later than thirty (30) days prior to the beginning of such Contract Year and shall cause copies of such adopted Annual Budget to be delivered to each Project Participant.

(ii) At any time after the adoption of the Annual Budget for a Contract Year, the CCP Manager may prepare and submit to the Project Committee a proposed Amended Annual Budget for and applicable to the remainder of such Contract Year. The proposal shall (A) explain why an amendment to the Annual Budget is needed, (B) compare estimated costs against actual costs, and (C) describe the events that triggered the need for additional funding. Upon approval of the proposed Amended Annual Budget by a Normal Vote of the Project Committee, the CCP Manager shall present the proposed Amended Annual Budget to the CCP Board. Upon adoption of the Amended Annual Budget by the CCP Board, such Amended Annual Budget shall apply to the remainder of the Contract Year and the CCP Board shall cause copies of such adopted Amended Annual Budget to be delivered to each Project Participant.

(iii) Reports. CCP will prepare and issue to Project Participants the following reports each quarter of a year during the Term:

(A) Financial and operating statement relating to the Project.

(B) Variance report comparing the costs in the Annual Budget versus actual costs, and the status of other cost-related issues with respect to the Project.

(d) Records and Accounts. CCP will keep, or cause to be kept, accurate records and accounts of the Project as well as of the operations relating to the Project, all in a manner similar to accepted accounting methodologies associated with similar projects. All transactions of CCP relating to the Project with respect to each Contract Year shall be subject to an annual audit. Each Project Participant shall have the right at its own expense to examine and copy the records and accounts referred to above on reasonable notice during regular business hours.

(e) Information Sharing. Upon CCP's request, each Project Participant agrees to coordinate with CCP to provide such information, documentation, and certifications that are reasonably necessary for the design, financing, refinancing, development, operation, administration, maintenance, and ongoing activities of the Project, including information required to respond to requests for such information from any federal, state, or local regulatory body or other authority.

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(f) Consultants and Advisors Available. CCP shall make available to the Project Committee all consultants and advisors, including financial advisors and legal counsel that are retained by CCP, and such consultants, counsel and advisors shall be authorized to consult with and advise the Project Committee on Project matters. CCP agrees to waive any conflicts of interest or any other applicable professional standards or rules as required by consultants, counsel, and advisors to advise the Project Committee on Project matters.

(g) Deposit of Insurance Proceeds. CCP shall promptly deposit any insurance proceeds received by CCP from any insurance obtained pursuant to this Agreement or otherwise associated with the Project into the Operating Accounts of the Project Participants based on each Project Participants' Entitlement Shares.

(h) Liquidated and Other Damages. Any amounts paid to CCP, or applied against payments otherwise due by CCP pursuant to the PPA or each Project Participant's respective BLPTA, by the Project Developer shall be deposited on a pro rata share, based on each Project Participant's Entitlement Share into each Project Participant's Operating Account. Liquidated damages include, but are not limited to Daily Delay Damages, RA Deficiency Amount, Capacity Damages, Guaranteed Energy Production Damages, Damage Payment, and Termination Payment.

(i) Environmental Attributes. CCP shall take such actions or implement such measures as may be necessary to facilitate the transfer of Environmental Attributes from the Project Developer to the Project Participants.

(j) Resale of Product. Any Project Participant may direct CCP to remarket such Project Participant's Entitlement Share of the Product, or such Project Participant's Entitlement Share of any part of the Product. If CCP incurs any expenses associated with the remarketing activities pursuant to this Section 5.1(j), then CCP shall include the total amount of such expenses as a Monthly Cost on the Project Participant's next Billing Statement. Prior to offering the Project Participant's Entitlement Share of the Product, or the Project Participant's Entitlement Share of any part of the Product to any third party, CCP shall first offer the Product or portion of the Product to the other Project Participants. The amount of compensation paid to the selling Project Participant shall be negotiated and agreed to between the selling Project Participant and the purchasing Project Participant or third party. Any payments for any resold Product pursuant to this Section 5.1(j) shall be transmitted directly from the purchasing Project Participant or purchasing third party to the reselling Project Participant. Any such resale to a third party shall not convey any rights or authority over the operation of the Project, and the Project Participant shall not make a representation to the third party that the resale conveys any rights or authority over the operation of the Project.

(k) Uncontrollable Forces. CCP shall not be required to provide, and CCP shall not be liable for failure to provide, the Product, Replacement RA, or other service under this Agreement when such failure, or the cessation or curtailment of, or interference with, the service is caused by Uncontrollable Forces or by the failure of the Project Developer, or its successors or assigns, to obtain any required governmental permits, licenses, or approvals to acquire, administer, or operate the Project; provided, however, that the Project Participants shall not thereby be relieved of their obligations to make payments under this Agreement except to the

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extent CCP is so relieved pursuant to the PPA, and provided further that CCP shall pursue all applicable remedies against the Project Developer under the PPA and distribute any remedies obtained pursuant to Section 5.1(h).

(l) Insurance. Within one hundred and eighty days (180) of the Effective Date of this Agreement, CCP shall secure and maintain, during the Term, insurance coverage as follows:

(i) Commercial General Liability. CCP shall maintain, or cause to be maintained, 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 CCP's obligations under this Agreement and including each Project Participant as an additional insured.

(ii) Employer's Liability Insurance. CCP, if it has employees, shall maintain Employers' Liability insurance with limits of not 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.

(iii) Workers' Compensation Insurance. CCP, if it has employees, shall also maintain at all times during the Term workers' compensation and employers' liability insurance coverage in accordance with statutory amounts, with employer's liability limits of not less than One Million Dollars ($1,000,000.00) for each accident, injury, or illness; and include a blanket waiver of subrogation.

(iv) Business Auto Insurance. CCP shall maintain at all times during the 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 CCP's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name each Project Participant as an additional insured and contain standard cross-liability and severability of interest provisions.

(v) Public Entity Liability Insurance. CCP shall maintain public entity liability insurance, including public officials' liability insurance, public entity reimbursement insurance, and employment practices liability insurance in an amount not less than One Million Dollars ($1,000,000) per claim, and an annual aggregate of not less than One Million Dollars ($1,000,000) and CCP shall maintain such coverage for at least two (2) years from the termination of this Agreement.

(m) Evidence of Insurance. Within ten (10) days after the deadline for securing insurance coverage specified in Section 5.1(l), and upon annual renewal thereafter, CCP shall deliver to each Project Participant certificates of insurance evidencing such coverage with insurers with ratings comparable to A-VII or higher, and that are authorized to do business in the State of California, in a form evidencing all coverages set forth above. Such certificates shall specify that each Project Participant shall be given at least thirty (30) days prior Notice by CCP in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of each Project Participant. Any other insurance maintained by

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CCP not associated with this Agreement is for the exclusive benefit of CCP and shall not in any manner inure to the benefit of Project Participants. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of each Project Participant for all work performed by CCP, its employees, agents and sub-contractors.

5.2. Role of CCP Board.

(a) The rights and obligations of CCP under the PPA shall be subject to the ultimate control at all times of the CCP Board. The CCP Board, shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:

(i) Dispute Resolution. The CCP Board shall review, discuss and attempt to resolve any disputes among CCP, any of the Project Participants, and the Project Developer relating to the Project, the operation and management of the Facility, and CCP's rights and interests in the Facility.

(ii) PPA. The CCP Board shall have the authority to review, modify, and approve, as appropriate, all amendments, modifications, and supplements to the PPA.

(iii) Capital Improvements. The CCP Board shall review, modify, and approve, if appropriate, all Capital Improvements undertaken with respect to the Project and all financing arrangements for such Capital Improvements. The CCP Board shall approve those budgets or other provisions for the payments associated with the Project and the financing for any development associated with the Project.

(iv) Committees. The CCP Board shall exercise such review, direction, or oversight as may be appropriate with respect to the Project Committee and any other committees established pursuant to this Agreement.

(v) Budgeting. Upon the submission of a proposed Annual Budget or proposed Amended Annual Budget, approved by a Normal Vote of the Project Committee, the CCP Board shall review, modify, and approve each Annual Budget and Amended Annual Budget in accordance with Section 5.1(c) of this Agreement.

(vi) Early Termination of PPA. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(ii) of this Agreement, as to an early termination of the PPA pursuant to Section 11.2 of the PPA.

(vii) Assignment by Project Developer. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(iii) of this Agreement, as to any assignment by Project Developer pursuant to Section 14.1 of the PPA other than any assignment pursuant to Sections 14.2 or 14.3 of the PPA.

(viii) Buyer Financing Assignment. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(iv) of this Agreement, as to an assignment by CCP to a financing entity.

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(ix) Change of Control. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(v) of this Agreement, as to any Change of Control requiring CCP's consent, as specified in Section 14.1 of the PPA.

(x) Supervening Authority of the Board. The CCP Board has complete and plenary supervening power and authority to act upon any matter which is capable of being acted upon by the Project Committee or which is specified as being within the authority of the Project Committee pursuant to the provisions of this Agreement.

(xi) Other Matters. The CCP Board is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Project Committee or CCP Manager as may be provided for under this Agreement and under the PPA, or as may otherwise be appropriate.

(xii) Periodic Audits. The CCP Board or the Project Committee may arrange for the annual audit by certified accountants, selected by the CCP Board and experienced in electric generation or electric utility accounting, of the books and accounting records of CCP, the Project Developer to the extent authorized under the PPA, and any other counterparty under any agreement to the extent allowable, and such audit shall be completed and submitted to the CCP Board as soon as reasonably practicable after the close of the Contract Year. CCP shall promptly furnish to the Project Participant copies of all audits. No more frequently than once every calendar year, each Project Participant may, at its sole cost and expense, audit, or cause to be audited the books and cost records of CCP, and/or the Project Developer to the extent authorized under the PPA.

(xiii) Compliance Expenditures. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(vi) of this Agreement, as to Compliance Expenditures, as specified in Section 3.12(c), (d), and (e) of the PPA. If the CCP Board authorizes CCP to agree to reimburse Project Developer for Accepted Compliance Costs, then such amount shall be added to the amount of Operating Costs included in the Monthly Cost calculation for the subsequent month.

(b) Pursuant to Section 5.06 of the Joint Powers Agreement, this Agreement modifies the voting rules of the CCP Board for purposes of approving or acting on any matter identified in this Agreement, as follows:

(i) Quorum. A quorum shall consist of a majority of the CCP Board members that represent Project Participants.

(ii) Voting. Each CCP Board member that represents a Project Participant shall have one vote for any matter identified in this Agreement. Any CCP Board member representing a CCP member that is not a Project Participant shall abstain from voting on any matter identified in this Agreement. A vote of the majority of the CCP Board members representing Project Participants that are in attendance shall be sufficient to constitute action, provided a quorum is established and maintained.

5.3. Role of CCP Manager.

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(a) In addition to the duties and responsibilities set forth elsewhere in this Agreement, the CCP Manager is delegated the following authorities and responsibilities:

(i) Request for Tax Documentation. Respond to any requests for tax-related documentation by the Project Developer.

(ii) Request for Financial Statements. Provide the Project Developer with Financial Statements as may be required by the PPA.

(iii) Request for Information by Project Participant. Respond to any request by a Project Participant for information or documents that are reasonably available to allow the Project Participant to respond to requests for such information from any federal, state, or local regulatory body or other authority.

(iv) Coordinate Response to a Request for Confidential Information. Upon a request or demand by any third person that is not a Party to the PPA or a Project Participant, for Confidential Information as described in Section 18.2 of the PPA, the CCP Manager shall notify the Project Developer and coordinate the response of CCP and Project Participants.

(v) Invoices. The CCP Manager shall review each invoice submitted by Project Developer and shall request such other data necessary to support the review of such invoices.

ARTICLE 6
PROJECT COMMITTEE

6.1. Establishment and Authorization of the Project Committee. The Project Committee is hereby established and duly authorized to act on behalf of the Project Participants as provided for in this Section 6 for the purpose of (a) providing coordination among, and information to, the Project Participants and CCP, (b) making any recommendations to the CCP Board regarding the administration of the Project, and (c) execution of the Project Committee responsibilities set forth in Section 6.4.

6.2. Project Committee Membership. The Project Committee shall consist of one representative from each Project Participant. The CCP Manager shall be a non-voting member of the Project Committee. Within thirty (30) days after the Effective Date, each Project Participant shall provide notice to each other of such Project Participant's representative on the Project Committee. Alternate representatives may be appointed by similar written notice to act on the Project Committee, or on any subcommittee established by the Project Committee, in the absence of the regular representative. An alternate representative may attend all meetings of the Project Committee but may vote only if the representative for whom they serve as alternate for is absent. No Project Participant's representative shall exercise any greater authority than permitted by the Project Participant which they represent.

6.1. Project Committee Operations, Meetings, and Voting. Project Committee operations, meetings, and voting shall be in accordance with the procedures and requirements specified in Exhibit D.

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6.2. Project Committee Responsibilities. The Project Committee shall have the following responsibilities:

(a) General Responsibilities of the Project Committee.

(i) Provide a liaison between CCP and the Project Participants with respect to the ongoing administration of the Project.

(ii) Exercise general supervision over any subcommittee established pursuant to Section 6.5.

(iii) Oversee, as appropriate, the completion of any Project design, feasibility, or planning studies or activities.

(iv) Review, discuss, and attempt to resolve any disputes among the Project Participants relating to this Agreement or the PPA.

(v) Perform such other functions and duties as may be provided for under this Agreement, the PPA, or as may otherwise be appropriate or beneficial to the Project or the Project Participants.

(b) Recommendations to the CCP Board by a Normal Vote.

(i) Budgeting. Review, modify, and approve by a Normal Vote each proposed Annual Budget and proposed Amended Annual Budget for submission to the CCP Board for final approval.

(ii) Early Termination of PPA. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding an early termination of the PPA pursuant to Section 11.2 of the PPA.

(iii) Assignment by Project Developer. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding any assignment by Project Developer pursuant to Section 14.1 of the PPA other than any assignment pursuant to Sections 14.2 or 14.3 of the PPA.

(iv) Buyer Financing Assignment. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding an assignment by CCP to a financing entity.

(v) Change of Control. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding any Change of Control requiring CCP's consent, as specified in Section 14.1 of the PPA.

(vi) Compliance Expenditures. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding Compliance Expenditures, as specified in Section 3.12(c), (d), and (e) of the PPA.

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(c) Actions Delegated to the Project Committee by this Agreement Subject to a Unanimous Vote.

(i) Project Design. Review, modify, and approve by a Unanimous Vote any recommendations to the Project Developer on the design of the Project.

(ii) Extension of Guaranteed Construction Start Date and Guaranteed Commercial Operation Date. Review and confirm that requirements of Exhibit B of the PPA have been satisfied, such that the Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date has been extended.

(iii) Event of Default. Direct CCP to exercise its rights under the PPA if an Event of Default has occurred under Section 11.1 of the PPA.

(d) Actions Delegated to the Project Committee by this Agreement Subject to a Normal Vote.

(i) Make recommendations to the CCP Manager, the CCP Board, the Project Participants or to the Project Developer, as appropriate, with respect to the development, operation, and ongoing administration of the Project.

(ii) Review, develop, and, if appropriate, modify and approve rules, procedures, and protocols for the administration of the Project, including rules, procedures, and protocols for the management of the costs of the Facility and the scheduling, handling, tagging, dispatching, and crediting of the Product, the handling and crediting of Environmental Attributes associated with the Facility and the control and use of the Facility.

(iii) Review, develop, and, if appropriate, modify rules, procedures, and protocols for the monitoring, inspection, and the exercise of due diligence activities relating to the operation of the Facility.

(iv) Review, and, if appropriate, modify or otherwise act upon, the form or content of any written statistical, administrative, or operational reports, Facility-related data and technical information, facility reliability data, transmission information, forecasting, scheduling, dispatching, tagging, parking, firming, exchanging, balancing, movement, or other delivery information, and similar information and records, or matters pertaining to the Project which are furnished to the Project Committee by the CCP Manager, the Project Developer, experts, consultants or others.

(v) Review, formulate, and, if appropriate, modify, or otherwise act upon, practices and procedures to be followed by Project Participants for, among other things, the production, scheduling, tagging, transmission, delivery, firming, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale, or disposition of the Product, including the control and use of the Facility.

(vi) Review and act upon any matters involving any arrangements and instruments entered into by the Project Developer or any affiliate thereof to, among other things, secure certain performance requirements, including, but not limited to, the PPA, the Development

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Security or the Performance Security and any other letter of credit delivered to, or for the benefit of, CCP by the Project Developer and take such actions or make such recommendations as may be appropriate or desirable in connection therewith.

(vii) Review, and, if appropriate, recommend, modify, or approve policies or programs formulated by CCP or Project Developer for determining or estimating the values, quantities, volumes, or costs of the Product from the Facility.

(viii) Review, and where appropriate, recommend the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of the Product to the Point of Delivery (directly or through the Facility).

(ix) Review, to the extent permitted by this Agreement, the PPA, or any other relevant agreement relating to the Project, modify and approve or disapprove the specifications, vendors' proposals, bid evaluations, or any other matters with respect to the Facility.

(x) Review and approve any Remedial Action Plan submitted by Project Developer to CCP pursuant to Section 2.4 of the PPA.

(xi) Review and approve the submission of the written acknowledgement of the Commercial Operation Date in accordance with Section 2.2 of the PPA.

(xii) Review and approve the return of the Development Security to Project Developer in accordance with Section 8.8 of the PPA.

(xiii) Review and approve the return of any unused Performance Security to Project Developer in accordance with Section 8.9 of the PPA.

(xiv) Review Progress Reports provided by Project Developer to CCP pursuant to Section 2.3 of the PPA and participate in any associated regularly scheduled meetings with Project Developer to discuss construction progress.

(xv) Direct CCP to collect any liquidated damages owed by Project Developer to CCP under the PPA, and to the extent authorized by PPA, draw upon the Development Security or Performance Security.

(xvi) Review invoices received by CCP from the Project Developer and, if appropriate, direct CCP to dispute an invoice pursuant to Section 8.5 of the PPA.

(xvii) Review and approve the return of the CP Security to Project Developer in accordance with Section 8.7 of the PPA.

(xviii) Review and approve the submission of the Pseudo-tie Participating Generator Agreement in accordance with Section 2.2(b) of the PPA.

(xix) Review and approve the submission of the Meter Service Agreement in accordance with Section 2.2(c) of the PPA.

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(xx) Review and approve the submission of the Interconnection Agreement in accordance with Section 2.2(d) of the PPA.

(xxi) Review and confirm that Project Developer has secured the required Firm Transmission Rights in accordance with Section 2.2(f) of the PPA.

(xxii) Review and confirm that Project Developer has received CEC Precertification for the Facility in accordance with Section 2.2(g) of the PPA.

(xxiii) Direct CCP request that Project Developer submit a Green-e® Energy Tracking Attestation Form the Product delivered under the PPA to the Center for Resource Solutions pursuant to Section 4.10 of the PPA.

(xxiv) Direct CCP change the Negative LMP Strike Price in pursuant to subdivisions (e) of Exhibit C of the PPA.

(xxv) Direct CCP to take such actions or implement such measures as may be necessary to facilitate the transfer of Environmental Attributes from the Project Developer to the Project Participants.

6.3. Subcommittees. The CCP Manager may establish as needed subcommittees including, but not limited to, auditing, legal, financial, engineering, mechanical, weather, geologic, diurnal, barometric, meteorological, operating, insurance, governmental relations, environmental, and public information subcommittees. The authority, membership, and duties of any subcommittee shall be established by the CCP Manager; provided, however, such authority, membership or duties shall not conflict with the provisions of the PPA or this Agreement.

6.4. Representative's Expenses. Any expenses incurred by any representative of any Project Participant or group of Project Participants serving on the Project Committee or any other committee in connection with their duties on such committee shall be the responsibility of the Project Participant which they represent and shall not be an expense payable under this Agreement.

6.5. Inaction by Committee. It is recognized by CCP and Project Participants that if the Project Committee is unable or fails to agree with respect to any matter or dispute which it is authorized to determine, resolve, approve, disapprove or otherwise act upon after a reasonable opportunity to do so, or within the time specified herein or in the PPA, then CCP may take such commercially reasonable action as CCP determines is necessary for its timely performance under any requirement pursuant to the PPA or this Agreement, pending the resolution of any such inability or failure to agree, but nothing herein shall be construed to allow CCP to act in violation of the express terms of the PPA or this Agreement.

6.6. Delegation. To secure the effective cooperation and interchange of information in a timely manner in connection with various administrative, technical, and other matters which may arise from time to time in connection with administration of the PPA, in appropriate cases, duties and responsibilities of the CCP Board or the Project Committee, as the case may be under this Section 6, may be delegated to the CCP Manager by the CCP Board upon notice to the Project Participants.

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ARTICLE 7
[RESERVED]

ARTICLE 8
OPERATING ACCOUNT

8.1. Calculation of Estimated Monthly Project Cost.

(a) No later than one hundred and eighty (180) days after the Effective Date, the CCP Manager shall present to the Project Committee a proposed Estimated Monthly Project Cost, which shall be equal to the single highest forecasted Monthly Cost over the first Contract Year. The Project Committee shall review, and, if appropriate, recommend, modify, or approve through a Normal Vote, the proposed Estimated Monthly Project Cost.

8.2. Operating Account. CCP shall establish an Operating Account for each Project Participant that is accessible to and can be drawn upon by both CCP and the applicable Project Participant. Such Operating Accounts are for the purpose of providing a reliable source of funds for the payment obligations of the Project and, taking into account the variability of costs associated with the Project for the purpose of providing a reliable payment mechanism to address the ongoing costs associated with the Project.

(a) Operating Account Amount. The Operating Account Amount for each Project Participant shall be an amount equal to the Estimated Monthly Project Cost multiplied by three (3), the product of which is multiplied by such Project Participant's Entitlement Share ("**Operating Account Amount**").

(b) Initial Funding of Operating Account. By no later than three hundred and sixty-five (365) days after the Effective Date, each Project Participant shall deposit into such Project Participant's Operating Account an amount equal to that Project Participant's Operating Account Amount.

(c) Use of Operating Account. CCP shall draw upon each Project Participant's Operating Account each month in an amount equal to the Monthly Costs multiplied by such Project Participant's Entitlement Share. As required by Section 9.5, each Project Participant must deposit sufficient funds into such Project Participant's Operating Account by the deadline specified in Section 9.5.

(d) Final Distribution of Operating Account. Following the expiration or earlier termination of the PPA, and upon payment and satisfaction of any and all liabilities and obligations to make payments of the Project Participants under this Agreement and upon satisfaction of all remaining costs and obligations of CCP under the PPA, any amounts then remaining in any Project Participant's Operating Account shall be paid to the associated Project Participant.

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ARTICLE 9
BILLING

9.1. Monthly Costs. The amount of Monthly Costs for a particular Month shall be the sum of the Project Participant's Entitlement Share multiplied by the Monthly Product Payments for the Product, as specified in Section 8.2 of the PPA for such Month and to the extent such payment is made by CCP to the Project Developer, plus the Project Participant's Entitlement Share multiplied by the Operating Cost for such Month and subtracting the Project Participant's Entitlement Share multiplied by the positive revenue associated with the sale of any Facility Energy, Capacity Attributes, Ancillary Services, and/or Environmental Attributes, as shown in the following formula:

Monthly Cost = ((Project Participant's Entitlement Share) × (Monthly Product Payments)) + ((Project Participant's Entitlement Share) × (Operating Costs)) – ((Project Participant's Entitlement Share) × (revenue from sale of Facility Energy, Capacity Attributes, Ancillary Services and/or Environmental Attributes))

9.2. Billing Statements. By no later than ten (10) calendar days after CCP receives an invoice from Project Developer for the prior Month of each Contract Year pursuant to Section 8.1 of the PPA, CCP shall issue to each Project Participant a copy of the invoice and a "Billing Statement," which specifies such Project Participant's Monthly Costs, itemized by each part of such Monthly Cost. The amount of Monthly Costs attributable to a Project Participant, and specified in such Billing Statement, shall be the "**Invoice Amount**."

9.3. Disputed Monthly Billing Statement. A Project Participant may dispute, by written Notice to CCP, any portion of any Billing Statement submitted to that Project Participant by CCP pursuant to Section 9.2, provided that the Project Participant shall pay the full amount of the Billing Statement when due. If CCP determines that any portion of the Billing Statement is incorrect, CCP will deposit the difference between such correct amount and such full amount, if any, including interest at the rate received by CCP on any overpayment into the Project Participant's Operating Account. If CCP and a Project Participant disagree regarding the accuracy of a Billing Statement, CCP will give consideration to such dispute and will advise all Project Participants with regard to CCP's position relative thereto within thirty (30) days following receipt of written Notice by Project Participant of such dispute.

9.4. Payment Adjustments; Billing Errors. If CCP or Project Developer determines that a prior invoice or Billing Statement was inaccurate, CCP shall credit against or increase as appropriate each Project Participant's subsequent Monthly Costs according to such adjustment. The accompanying Billing Statement shall describe the cause of such adjustment and the amount of such adjustment.

9.5. Payment of Invoice Amount. Each Project Participant shall deposit the Invoice Amount for the applicable Month into such Project Participant's Operating Account by no later than the twentieth (20^{th}) calendar day of the following Month after the Billing Statement is issued, unless CCP has failed to issue the Billing Statement by the deadline specified in Section 9.2, in which case, each Project Participant shall deposit the Invoice Amount for the applicable Month by no later than thirty (30) days after the date on which CCP issues the Billing Statement to the Project Participant.

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9.6. Withdrawal of Invoice Amount from Operating Account. No sooner than five (5) calendar days after CCP issues a Billing Statement to a Project Participant or a Step-Up Invoice to a Project Participant, CCP shall withdraw the Invoice Amount or the Step-Up Invoice Amount from each Project Participant's Operating Account. If the Monthly Cost attributable to such Project Participant is a negative number, CCP shall deposit such funds into the Operating Account of that Project Participant.

9.7. Late Payments.

(a) If any Project Participant fails to deposit the Invoice Amount into the Project Participant's Operating Account by the deadline specified in Section 9.5, then CCP will issue such Project Participant a Late Payment Notice within five (5) days of the deadline specified in Section 9.5 directing the Project Participant to immediately deposit the Invoice Amount into the Project Participant's Operating Account and informing the Project Participant that such Project Participant must pay a charge (**"Late Payment Charge"**). Upon issuing a Late Payment Notice to any Project Participant, CCP shall promptly provide Notice of such occurrence to all other Project Participants.

(b) The Late Payment Charge shall be equal to the Invoice Amount minus any partial payment that was deposited into such Project Participant's Operating Account multiplied by the Interest Rate specified in Section 8.2 of the PPA for the period from the deadline specified in Section 9.5 until the date on which the Project Participant deposits the Invoice Amount plus the Late Payment Charge into such Project Participant's Operating Account. Upon payment, CCP shall withdraw the full amount of such Late Payment Charge from the Project Participant's Operating Account and deposit any such Late Payment Charge into the Operating Accounts of all other Project Participants on a pro rata share, based on such other Project Participants' Entitlement Shares.

ARTICLE 10
UNCONDITIONAL PAYMENT OBLIGATIONS; AUTHORIZATIONS; CONFLICTS; LITIGATION.

10.1. Unconditional Payment Obligation. Beginning with the earliest of (i) the date CCP is obligated to pay any portion of the costs of the Project, (ii) the date of the COD, or (iii) the date of the first delivery of the Product to Project Participants and continuing through the term of this Agreement, Project Participants shall pay CCP the amounts of Monthly Costs set forth in the Billing Statements submitted by CCP to Project Participants in accordance with the provisions of Section 9, whether or not the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output or the provision of Facility products are suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever, provided that the obligation of Project Participants to pay amounts associated with the Monthly Product Payment shall be limited to the amount of Monthly Product Payment charged by the Project Developer to CCP and paid by CCP to the Project Developer.

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10.2. Authorizations. Each Project Participant hereby represents and warrants that no order, approval, consent, or authorization of any governmental or public agency, authority, or person, is required on the part of such Project Participant for the execution and delivery by the Project Participant, or the performance by the Project Participant of its obligations under this Agreement except for such as have been obtained.

10.3. Conflicts. Each Project Participant represents and warrants to CCP as of the Effective Date that, to the Project Participant's knowledge, the execution and delivery of this Agreement by the Project Participants and the Project Participants' performance hereunder will not constitute a default under any agreement or instrument to which it is a party, or any order, judgment, decree or ruling of any court that is binding on the Project Participant, or a violation of any applicable law of any governmental authority, which default or violation would have a material adverse effect on the financial condition of the Project Participant.

10.4. Litigation. Each Project Participant represents and warrants to CCP that, as of the Effective Date, to the Project Participant's knowledge, except as disclosed, there are no actions, suits or proceedings pending against the Project Participant (service of process on the Project Participant having been made) in any court that questions the validity of the authorization, execution or delivery by the Project Participant of this Agreement, or the enforceability on the Project Participant of this Agreement.

10.5. San José Clean Energy.

(a) The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City of San José to appropriate funds for purposes of the Agreement; provided, however, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) ("**Designated Fund**") for payment of its obligations under this Agreement.

(b) Limited Obligations. The City of San José's payment obligations under this Agreement are special limited obligations of San José Clean Energy payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

10.6. Clean Power San Francisco. With regard to Clean Power San Francisco only, (1) obligations under this Agreement are special limited obligations of Clean Power San Francisco payable solely from the revenues of Clean Power San Francisco, and shall not be a charge upon the revenues or general fund of the San Francisco Public Utilities Commission or the City and County of San Francisco or upon any non-Clean Power San Francisco moneys or other property of the San Francisco Public Utilities Commission or the City and County of San Francisco, (2) cannot exceed the amount certified by the San Francisco City Controller for the purpose and period stated in such certification, and (3) absent an authorized emergency per the San Francisco City Charter or Code, no San Francisco City representative is authorized to offer or promise, nor is San

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Francisco required to honor, any offered or promised payments under this Agreement for work beyond the agreed upon scope or in excess of the certified maximum amount without the San Francisco City Controller having first certified the additional promised amount.

ARTICLE 11
PROJECT SPECIFIC MATTERS AND PROJECT PARTICIPANTS' RIGHTS AND OBLIGATIONS.

11.1. CCP Rights and Obligations under the PPA. Notwithstanding anything to the contrary contained in this Agreement: (i) the obligation of CCP to cause the delivery of the Project Participants' Entitlement Shares of the Product during the Delivery Term of this Agreement is limited to the Product which CCP receives from the Facility (or the Project Developer, as applicable); (ii) the obligation of CCP to pay any amount to Project Participants hereunder or to give credits against amounts due from Project Participants hereunder is limited to amounts CCP receives in connection with the transaction to which the payment or credit relates (or is otherwise available to CCP in connection with this Agreement for which such payment or credit relates); (iii) any purchase costs, operating costs, energy costs, capacity costs, Facility costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges for which CCP is responsible under the PPA shall be considered purchase costs, operating costs, energy costs, capacity costs, Facility costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges incurred by CCP and payable by Project Participants as provided in this Agreement; (iv) CCP shall carry out its obligations and exercise its rights under the PPA in a commercially reasonable manner; (v) all remedies provided to CCP pursuant to the PPA or the Scheduling Coordinator Services Agreement shall be provided to Project Participants in accordance with Section 5.1(h); and (vi) any Force Majeure under the PPA or other event of force majeure affecting the delivery of Product pursuant to applicable provisions of the PPA shall be considered an event caused by Uncontrollable Forces affecting CCP with respect to the delivery of the Product hereunder and CCP forwarding to Project Participants notices and information from the Project Developer concerning an event of Force Majeure upon receipt thereof shall be sufficient to constitute a Notice that Uncontrollable Forces have occurred pursuant to Section 5.1 of this Agreement. Any net proceeds received by CCP from the sale of the Product by the Project Developer to any third-party as a result of a Force Majeure event or failure by CCP to accept delivery of Product pursuant to the PPA and any reimbursement received by CCP for purchase of Replacement RA shall be remitted by CCP to the Project Participants in accordance with their respective Entitlement Shares.

11.2. Obligations of CCP and Project Participants to Maximize the Economic and Compliance Value of the Project.

(a) Each Project Participant shall take all actions that are (i) reasonably necessary to maximize the economic and compliance value of the Project to the Project Participants, and (ii) only capable of being carried out by the Project Participants. Such actions include, but are not limited to, applying for and securing the import capability rights necessary to support the import of Capacity Attributes from the Project into the CAISO in an amount equal to at least its Entitlement Share of all of the import capability rights that are needed to utilize all of the Resource Adequacy Benefits from the Project.

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(b) CCP shall take any actions requested by a Project Participant to support the individual Project Participant's obligation under Section 11.2(a) and any actions requested by a Project Participant that are reasonably necessary to maximize the economic and compliance value of the Project to the Project Participants, to the extent that such actions by CCP are feasible and commercially reasonable.

(c) If any individual Project Participant fails to secure import capability rights or other similar rights in an amount equal to at least its Entitlement Share of all of the import capability rights that are needed to utilize all of the Resource Adequacy Benefits available from the Project, then any resulting reduced economic or compliance value of the Project shall not reduce or otherwise modify that Project Participant's payment obligations under Section 10.1.

(d) CCP and the Project Participants agree to take such additional actions in order to help effectuate the transfer of any import capability rights or similar rights from a Defaulting Project Participant to any Non-Defaulting Project Participants that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c). Such actions include but are not limited to executing additional agreements among the Project Participants, amending this Agreement, and/or submitting necessary documents to CAISO and participating in any CAISO process related to the transfer of import capability rights.

ARTICLE 12
NONPERFORMANCE AND PAYMENT DEFAULT.

12.1. Nonperformance by Project Participants. If a Project Participant fails to perform any covenant, agreement, or obligation under this Agreement or shall cause CCP to be in default with respect to any undertaking entered into for the Project or to be in default under the PPA (**"Defaulting Project Participant"**), CCP may, in the event the performance of any such obligation remains unsatisfied after thirty (30) days' prior written notice thereof to such Project Participant and a demand to so perform, take any action permitted by law to enforce its rights under this Agreement, including but not limited to termination of such Project Participant's rights under this Agreement including any rights to its Entitlement Share of the Product, and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against such Project Participant with regard to its failure to so perform. Any Project Participant that is not the Defaulting Project Participant (**"Non-Defaulting Project Participant"**) may submit Notice directly to the CCP Board, if such Non-Defaulting Project Participant determines that CCP is or may not be fully taking appropriate actions to enforce CCP's rights under this Agreement against a Defaulting Project Participant. The CCP Board shall consider such Notice and direct CCP to take appropriate action, if any.

12.2. Payment Default. If either of the following occurs, then such occurrence shall constitute a "**Payment Default**":

(a) any Project Participant fails to deposit the Invoice Amount into the Project Participant's Operating Account by the deadline specified in Section 9.5, and if such Participant has not deposited the Invoice Amount plus the Late Payment Charge into such Project Participant's

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Operating Account within ten (10) calendar days of the issuance of the Late Payment Notice to such Project Participant by CCP; or

(b) any Project Participant files a petition for Bankruptcy or has a petition for Bankruptcy filed against it, and such Project Participant has not shown that it is able to comply with its obligations under this Agreement to the reasonable satisfaction of Project Developer within sixty (60) days of such Bankruptcy filing, in which case a Payment Default shall occur upon the date that CCP receives a notice regarding such determination from Project Developer.

12.3. Payment Default Notice. Upon the occurrence of a Payment Default, CCP shall issue a Notice of Payment Default to the Project Participant notifying such Project Participant that as a result of a Payment Default, it is in default under this Agreement and has assumed the status of a Defaulting Project Participant and that such Defaulting Project Participant's Project Revenue Rights have been suspended and that such Defaulting Project Participant's Project Rights are subject to termination and disposal in accordance with Sections 12.6 and 12.8 of this Agreement. CCP shall provide a copy of such Notice of Default to all other Project Participants within five (5) calendar days after the issuance of the written Notice of Payment Default by CCP to the Defaulting Project Participant.

12.4. Cured Payment Default. If after a Payment Default, the Defaulting Project Participant cures such Payment Default within forty-five (45) calendar days after the issuance of the Late Payment Notice by CCP, the Defaulting Project Participant's Project Revenue Rights shall be reinstated and its Project Rights shall not be subject to termination and disposal as provided for in Sections 12.6 and 12.8. In order to cure a Payment Default occurring under Section 12.2(a), the Defaulting Project Participant must deposit the full amount of any unpaid Invoice Amounts and any associated Late Payment Penalties into its Operating Account. In order to cure a Payment Default occurring under Section 12.2(b), the Bankruptcy proceeding against the Defaulting Project Participant must be dismissed or Project Developer must issue a Notice to CCP stating that Project Developer has determined that the Defaulting Project Participant has demonstrated that it is able to comply with its obligations under the Agreement.

12.5. Suspension of Project Participant's Project Revenue Rights and Treatment of Capacity Attributes and Environmental Attributes.

(i) Upon the occurrence of a Payment Default, the Defaulting Project Participant's Project Revenue Rights shall be suspended until such time as such Defaulting Project Participant cures the Payment Default pursuant to the requirements of Section 12.4. Any revenue associated with the sale of Facility Energy, Capacity Attributes, Ancillary Services, or Environmental Attributes associated with the Facility shall be deposited by CCP into the Step-Up Reserve Account, as specified in Section 12.7.

(ii) For any Month where the funds remaining in a Defaulting Project Participant's Operating Account are sufficient to pay the entire Invoice Amount, CCP shall withdraw the Invoice Amount from such Defaulting Project Participant's Operating Account and shall cause the delivery of the Defaulting Project Participant's Entitlement Share of the Product, including Capacity Attributes and Environmental Attributes, associated with the Facility or otherwise provided for pursuant to the PPA. For any Month where the funds remaining in a

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Defaulting Project Participant's Operating Account are less than the amount necessary to pay the entire Invoice Amount, CCP shall withdraw all remaining funds from the Defaulting Project Participant's Operating Account, and to the extent reasonably possible, in CCP's sole discretion, CCP shall cause the delivery of a quantity of Capacity Attributes and Environmental Attributes proportionate to the portion of the Invoice Amount that the remaining funds were sufficient to pay for. For any Month where the Defaulting Project Participant's Operating Account has no funds remaining, the Defaulting Project Participant shall have no right to any such Capacity Attributes or Environmental Attributes associated with the Facility or otherwise provided for under the PPA.

12.6. Termination and Disposal of Project Participant's Project Rights. If a Defaulting Project Participant has not cured a Payment Default within forty-five (45) calendar days after the payment deadline specified in Section 9.5 by CCP ("**Payment Default Termination Deadline**"), then all Project Rights and Obligations pursuant to this Agreement shall be terminated and disposed in accordance with Sections 12.6 and 12.8 of this Agreement; provided, however, that the Defaulting Project Participant shall be liable for all outstanding payment obligations accrued prior to the Payment Default Termination Deadline and shall remain subject to all rights, obligations, and liabilities of this Agreement, including but not limited to any liabilities for Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts under the PPA. CCP shall provide to the Defaulting Project Participant a separate monthly invoice of any such payment obligations of such Defaulting Project Participant. CCP shall immediately notify the other Project Participants of such termination of the Defaulting Project Participant's Project Rights and Obligations.

12.7. Step-Up Invoices.

(a) Upon the occurrence of a Payment Default, CCP shall, concurrently with the Late Payment Notice issued pursuant to Section 9.7(a), issue a Step-Up Invoice to each Non-Defaulting Project Participant that specifies such Non-Defaulting Project Participant's pro rata payment obligation, calculated based on the Entitlement Share of such Non-Defaulting Project Participant, of the amount of the Payment Default for the Defaulting Project Participant (the "**Step-Up Invoice Amount**"); provided, however, that a Non-Defaulting Project Participant's Step-Up Invoice Amount shall not exceed twenty-five percent (25%) of such Non-Defaulting Project Participant's Invoice Amount for the same month for which the Payment Default occurred (the **"Step-Up Invoice Amount Cap"**).

(i) Each Non-Defaulting Project Participant shall deposit the Step-Up Invoice Amount into such Non-Defaulting Project Participant's Operating Account by the later of the twentieth (20^{th}) calendar day of the following Month or thirty (30) days after the date on which CCP issues the Step-Up Invoice to the other Project Participants. No sooner than five (5) calendar days after CCP issues the Step-Up Invoice, CCP may withdraw the amount of the Step-Up Invoice from each Project Participant's Operating Account and deposit such funds in a separate account ("**Step-Up Reserve Account**"), which shall be accessible only by CCP, and which CCP may in its sole discretion draw upon in order to ensure that CCP can meet the payment obligations of the PPA. CCP first shall withdraw all funds from a Defaulting Project Participant's Operating Account before withdrawing funds from the Step-Up Reserve Account.

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(ii) Application of Moneys Received from a Defaulting Project Participant. If a Defaulting Project Participant cures a Payment Default on or before the Payment Default Termination Deadline, any funds remaining in the Step-Up Reserve Account shall be deposited into the Operating Accounts of the other Project Participants on a pro rata share, based on the Entitlement Share of such other Project Participant. If a Defaulting Project Participant fails to cure a Payment Default and the Defaulting Project Participant's Project Rights and Obligations are terminated and disposed of in accordance with Section 12.8, any funds remaining in the Step-Up Reserve Account shall be deposited into the Operating Accounts of the Non-Defaulting Project Participants on a pro rata share, based on the Entitlement Share, subject to the Step-Up Invoice Amount Cap, of such other Project Participant. If any Non-Defaulting Project Participant has not deposited the full amount of its share of the Step-Up Invoice Amount into its Operating Account by the deadline specified in Section 12.7(a)(i), then such occurrence shall be a Late Payment as specified in Section 9.7(a) and is subject to a Late Payment Charge pursuant to Section 9.7(b), and any such Non-Defaulting Project Participant shall not be entitled to its share of any moneys received from the Defaulting Project Participant or any funds remaining in the Step-Up Reserve Account in accordance with this Section 12.7(a)(ii) until such Non-Defaulting Project Participant has deposited the full amount of its Step-Up Invoice Amount and the Late Payment Charge into its Operating Account.

12.8. Step-Up Allocation of Project Participant's Project Rights. In the event that a Defaulting Project Participant's Project Rights are terminated pursuant to Section 12.6, then such Defaulting Project Participant's Entitlement Share shall be allocated to the other Project Participants (**"Step-Up Allocation"**) pursuant to the process set forth in this Section 12.8.

(a) Step-Up Allocation Cap. If a Defaulting Project Participant's Entitlement Share is allocated to the Non-Defaulting Project Participants pursuant to this Section 12.8, no individual Non-Defaulting Project Participant shall be obligated to assume an allocation that exceeds that Project Participant's Step-Up Allocation Cap set forth in Column E of the Table in Exhibit B of this Agreement. Each Non-Defaulting Project Participant's initial Step-Up Allocation Cap shall be equal to the Non-Defaulting Project Participant Entitlement Share as of the Effective Date and set forth in Column B of the Table in Exhibit B of this Agreement, multiplied by one hundred and twenty-five percent (125%). If a Project Participant modifies its Entitlement Share pursuant to Section 4.2 of this Agreement, then that Project Participant's Step-Up Allocation Cap shall be equal to the Project Participant's Entitlement Share as modified pursuant to Section 4.2 multiplied by one hundred and twenty-five percent (125%). Upon a modification of a Project Participant's Entitlement Share pursuant to Section 4.2, the CCP Manager shall cause the Step-Up Allocation Cap specified in Column E of the Table in Exhibit B of this Agreement to be modified in accordance with this Section 12.8(a). For avoidance of doubt, if a Project Participant's Entitlement Share is increased pursuant to Section 12.8(b) or (c), then such Project Participant's Step-Up Allocation Cap shall not be modified.

(b) Step-Up Allocation Share. If a Defaulting Project Participant's Project Rights are terminated pursuant to Section 12.6, then such Defaulting Project Participant's Entitlement Share shall be allocated to each Non-Defaulting Project Participant based on such Non-Defaulting Project Participant's pro rata share, calculated based on its Entitlement Share of the entire project minus the Entitlement Share of the Defaulting Project Participant, unless such allocation would cause any individual Non-Defaulting Project Participant to exceed its Step-Up

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Allocation Cap, in which case Section 12.8(c) shall apply. Upon allocation of a defaulting Project Participant's Entitlement Share pursuant to this Section 12.8(b), the CCP Manager shall cause each affected Project Participant's Entitlement Share specified in Column D of the Table in Exhibit B to be modified in accordance with this Section 12.8.

(c) Voluntary Allocation of Project Rights in Excess of the Step-Up Allocation Caps. If the allocation of a Defaulting Project Participant's Entitlement Share pursuant to Section 12.8(b) would cause any Non-Defaulting Project Participant's Entitlement Share to exceed its Step-Up Allocation Cap, then no allocation shall occur pursuant to Section 12.8(b). In such case, the CCP Manager shall oversee the offering of the total amount of the Defaulting Project Participant's Entitlement Share to the Non-Defaulting Project Participants on a voluntary basis. The initial offering shall be to each Non-Defaulting Project Participant on a pro rata share, based on such Non-Defaulting Project Participant's Entitlement Share. Each Project Participant may accept or reject the portion of the Defaulting Project Participant's Entitlement Share. If any portion of the Defaulting Project Participant's Entitlement Share remains unclaimed after the initial offering, then the remaining portion shall be offered to any Non-Defaulting Project Participant that accepted its full share of the Defaulting Project Participant's Entitlement Share in the initial offering on a pro rata share, based on such Non-Defaulting Project Participant's Entitlement Share as a percentage of the total Entitlement Shares of all Project Participants that are participating in the subsequent round of offerings. The CCP Manager shall conduct subsequent offering rounds until either the total amount of the Defaulting Project Participant's Entitlement Share is accepted by one or more of the Non-Defaulting Project Participants or some portion of the Defaulting Project Participant's Entitlement Share remains, but all Non-Defaulting Project Participants have rejected such remaining amount.

(d) Step-Up Allocation Damage Payment. A Defaulting Project Participant shall owe to each Non-Defaulting Project Participant that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c) a "**Step-Up Allocation Damage Payment**" equal to the Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Project Participant's Costs and Losses exceed its Gains, then the Step-Up Allocation Damage Payment shall be an amount owing to such Non-Defaulting Project Participant. If the Non-Defaulting Project Participant's Gains exceed its Costs and Losses, then the Step-Up Allocation Damage Payment shall be zero dollars ($0). A Defaulting Project Participant shall not be entitled to any Step-Up Allocation Damage Payment or any other damages otherwise authorized under this Agreement from any other Project Participant. The Step-Up Allocation Damage Payment does not include consequential, incidental, punitive, exemplary, or indirect or business interruption damages. Each Non-Defaulting Project Participant that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c) shall calculate, in a commercially reasonable manner, the Step-Up Allocation Damage Payment for the Defaulting Project Participant's Entitlement Share assumed by the Non-Defaulting Project Participant as of the effective date of such Step-Up Allocation. 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. If the Defaulting Project Participant disputes the Non-Defaulting Project Participant's calculation of the Step-Up Allocation Damage Payment, in whole or in part, the Defaulting Project Participant shall, within five (5) Business Days of receipt of the Non-Defaulting Project Participant's calculation of the Step-Up Allocation

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Damage Payment, provide to the Non-Defaulting Project Participant a detailed written explanation of the basis for such dispute. Disputes regarding the Step-Up Allocation Damage Payment shall be determined in accordance with Article 16. Each Party agrees and acknowledges that (i) the actual damages that the other Project Participant would incur in connection with a Step-Up Allocation would be difficult or impossible to predict with certainty, (ii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is a reasonable and appropriate approximation of such damages, and (iii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is the exclusive remedy of a Project Participant in connection with a Step-Up Allocation pursuant to the process set forth in Sections 12.8(b) or 12.8(c) against a Defaulting Project Participant but shall not otherwise act to limit any of the Non-Defaulting Project Participant's rights or remedies under this Agreement.

(e) Import Capacity Rights. If a Defaulting Project Participant's Project Rights are terminated pursuant to Section 12.6, then such Defaulting Project Participant shall transfer all import capacity rights and other similar rights that are associated with the Project and that are held by such Defaulting Project Participant to the Non-Defaulting Project Participants that assume any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c). The Defaulting Project Participant shall take all actions necessary to effectuate the transfer of such rights to the Non-Defaulting Project Participants.

(f) Remarketing of Unclaimed Defaulting Project Participant's Entitlement Share. If after the process set forth in Section 12.8(c), some portion of the Defaulting Project Participant's Entitlement Share remains unclaimed, the CCP Manager, in their discretion or as directed by the Non-Defaulting Project Participants, may take any action to generate revenue from such unclaimed Entitlement Share in order to meet CCP's payment obligation under the PPA. For avoidance of doubt, the CCP Manager shall not be limited by the requirements of Section 4.2 or 5.1(j) of this Agreement in remarketing or generating revenue base on the unclaimed share.

12.9. Elimination or Reduction of Payment Obligations. Notwithstanding anything to the contrary in this Agreement, upon termination of a Defaulting Project Participant's Project Rights pursuant to Section 12.6 and the disposal of such Defaulting Project Participant's Project Rights and Obligations pursuant to Section 12.8, such Defaulting Project Participant's obligation to make payments under this Agreement (notwithstanding anything to the contrary herein) shall not be eliminated or reduced; provided, however, such payment obligations for the Defaulting Project Participant may be eliminated or reduced to the extent permitted by law, through an amendment to this Agreement, which shall be subject to the consent and approval of all Parties to this Agreement.

ARTICLE 13
LIABILITY

13.1. Project Participants' Obligations Several. No Project Participant shall be liable under this Agreement for the obligations of any other Project Participant or for the obligations of CCP incurred on behalf of other Project Participants. Each Project Participant shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise provided for herein. The obligation of Project Participants to make payments under this

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Agreement is a several obligation and not a joint obligation with those of the other Project Participants.

13.2. No Liability of CCP or Project Participants, Their Directors, Officers, Etc.; CCP, The Project Participants' and CCP Manager's Directors, Officers, Employees Not Individually Liable. Except as provided for under Section 13.5 herein, the Parties agree that neither CCP, Project Participants, nor any of their past, present or future directors, officers, employees, board members, agents, attorneys or advisors (collectively, the "**Released Parties**") shall be liable to any other of the Released Parties for any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of Project Participants, CCP, or third persons) suffered by any Released Party as a result of the action or inaction or performance or non-performance by the Project Developer under the PPA. Except as provided for under Section 13.5 herein, each Party shall release each of the other Released Parties from any claim or liability that such Party may have cause to assert as a result of any actions or inactions or performance or non-performance by any of the other Released Parties under this Agreement (excluding gross negligence and willful misconduct, which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Notwithstanding the foregoing, no such action or inaction or performance or non-performance by any of the Released Parties shall relieve CCP or any Project Participants from their respective obligations under this Agreement, including, without limitation, the Project Participants' obligation to make payments required under Section 9.5 of this Agreement and CCP's obligation to make payments under Section 8.2 of the PPA. The provisions of this Section 13.2 shall not be construed so as to relieve the CCP or the Project Developer from any obligation or liability under this Agreement or the PPA.

13.3. Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 13.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, any Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of any other Party, and each Party shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment, underpayment or other monetary damages owed by the other Party in accordance with the terms of this Agreement.

13.4. No General Liability of CCP. The undertakings under this Agreement by CCP shall not constitute a debt or indebtedness of CCP within the meaning of any provision or limitation of the Constitution or statutes of the State of California, and shall not constitute or give rise to a charge against its general credit.

13.5. Indemnification. Each Party (an "**Indemnifying Party**") shall indemnify, defend, protect, hold harmless, and release the other Parties, their directors, board members, officers, employees, agents, attorneys and advisors, past, present or future, from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses

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(including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise, which include, without limitation, death, bodily injury, or personal injury to any person or damage or destruction to any property of Project Participants, CCP, or third persons, that may be imposed on, incurred by or asserted against any Party arising by manner of any breach of this Agreement by the Indemnifying Party, or the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of any such Indemnifying Party or any Indemnifying Party's directors, board members, officers, employees, agents and advisors, past, present or future.

ARTICLE 14
NOTICES

14.1. 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 A or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

14.2. 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, five (5) 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 5:00 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 15
ASSIGNMENT

15.1. General Prohibition on Assignments. No Party may assign this Agreement, or its rights or obligations under this Agreement, without the prior written consent of all other Parties, in each Party's sole discretion.

ARTICLE 16
GOVERNING LAW AND DISPUTE RESOLUTION

16.1. 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. The Parties agree that any suit, action, or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be

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brought in the federal or state courts located in the State of California in a location to be mutually chosen by all Parties, or in the absence of mutual agreement, the County of San Francisco.

16.2. Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate, and attempt, in good faith, to resolve the dispute quickly and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law or in equity.

ARTICLE 17
MISCELLANEOUS

17.1. Entire Agreement; Integration; Exhibits. This Agreement, together with the Exhibits attached hereto constitutes the entire agreement and understanding by and among the Parties 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. 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.

17.2. Amendments. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of all Parties; *provided*, this Agreement may not be amended by electronic mail communications. Any revisions to the Entitlement Share specified in Exhibit B pursuant to Section 4.2. or Section 12.8 shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

17.3. No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

17.4. 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.

17.5. 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.

17.6. Electronic Delivery. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to

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include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

17.7. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

17.8. Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and that the Parties 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.

17.9. City of San Francisco Standard Provisions.

(a) False Claims. Pursuant to San Francisco Administrative Code § 21.35, any Party to this Agreement who submits a false claim shall be liable to the City and County of San Francisco for the statutory penalties set forth in that section. A Party will be deemed to have submitted a false claim to the City and County of San Francisco if the Party: (a) knowingly presents or causes to be presented to an officer or employee of the City and County of San Francisco a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City and County of San Francisco; (c) conspires to defraud the City and County of San Francisco by getting a false claim allowed or paid by the City and County of San Francisco; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City and County of San Francisco; or (e) is a beneficiary of an inadvertent submission of a false claim to the City and County of San Francisco, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City and County of San Francisco within a reasonable time after discovery of the false claim.

(b) Political Activity. In performing its responsibilities under this Agreement, CCP shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City and County of San Francisco for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure.

(c) Non-discrimination Requirements.

(i) Non-discrimination in Contracts. CCP shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. CCP shall incorporate by reference in all subcontracts the provisions of Sections12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. CCP is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

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(ii) Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. CCP does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

(d) Consideration of Criminal History in Hiring and Employment Decisions. CCP agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to CCP's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law. MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles.

(e) MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

(f) Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, CCP shall not provide any items to the City in performance of this Agreement which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of CCP to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

17.10. City of San José Standard Provisions.

(a) Nondiscrimination/Non-Preference. The Parties shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender

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identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. The Parties will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Parties from providing a reasonable accommodation to a person with a disability; (ii) the City of San José's Compliance Officer may require the Parties to file, and cause any Party's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

(b) Conflict of Interest. The Parties represent that they are familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Parties certify that, as of the Effective Date, are unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Parties shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Parties have the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and a Party shall immediately notify the City of San José in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. A Party's violation of this Section 17.10(b) is a material breach.

(c) Environmentally Preferable Procurement Policy. Parties shall perform its obligations under this Agreement in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 17.10(c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle the City of San José to terminate this Agreement.

(d) Gifts Prohibited. The Parties represent that they are familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. The Parties shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. A Party's violation of this Section 17.10(d) is a material breach.

(e) Disqualification of Former Employees. The Parties represent that they are familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Parties shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

17.11. 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

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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]

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

California Community Power By: Name: _____ Title: _____ Approved as to form by Counsel By: Name: _____ Title: _____	Central Coast Community Energy By: Name: _____ Title: _____ Approved as to form by Counsel By: Name: _____ Title: _____
Clean Power San Francisco By: Name: _____ Title: _____ Approved as to form by Counsel By: Name: _____ Title: _____	

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Peninsula Clean Energy By: Name: _____ Title: _____ Approved as to form by Counsel By: Name: _____ Title: _____	Redwood Coast Energy Authority By: Name: _____ Title: _____ Approved as to form by Counsel By: Name: _____ Title: _____
San José Clean Energy By: Name: _____ Title: _____ Approved as to form by Counsel By: Name: _____ Title: _____	Silicon Valley Clean Energy By: Name: _____ Title: _____ Approved as to form by Counsel By: Name: _____ Title: _____

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Sonoma Clean Power	Valley Clean Energy
By:	By:
Name: _____	Name: _____
Title: _____	Title: _____
Approved as to form by Counsel	Approved as to form by Counsel
By:	By:
Name: _____	Name: _____
Title: _____	Title: _____

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EXHIBIT A

NOTICES

Party	*All Notices*	*Invoices*
California Community Power	**California Community Power** Tim Haines, Interim General Manager California Community Power 70 Garden Court, 3rd Floor Monterey, CA 93940 timhaines@powergridsymmetry.com	
Central Coast Community Energy	**Central Coast Community Energy** Robert M. Shaw, Chief Operating Officer & General Counsel Central Coast Community Energy 70 Garden Court, 3rd Floor Monterey, CA 93940 rshaw@3ce.org	
Clean Power San Francisco	**Clean Power San Francisco** Barbara Hale, Assistant General Manager, Power San Francisco Public Utilities Commission 525 Golden Gate Ave, 13th Floor San Francisco, CA 94102 bhale@sfwater.org	
Peninsula Clean Energy	**Peninsula Clean Energy** Jan Pepper, CEO Peninsula Clean Energy 2075 Woodside Road Redwood City, California 94061 jpepper@peninsulacleanenergy.com	

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Party	*All Notices*	*Invoices*
Redwood Coast Energy Authority	**Redwood Coast Energy Authority** Matthew Marshall, CEO Redwood Coast Energy Authority 633 3rd Street Eureka, CA 95501 mmarshall@redwoodenergy.org	
San José Clean Energy	**San José Clean Energy** Lori Mitchell, Director cc: Luisa Elkins, Senior Deputy City Attorney San José Clean Energy 200 E. Santa Clara Street, 14th Floor San José, CA 95113 Lori.Mitchell@sanjoseca.gov Luisa.Elkins@sanjoseca.gov	
Silicon Valley Clean Energy	**Silicon Valley Clean Energy** Girish Balachandran, CEO Silicon Valley Clean Energy Authority 333 W. El Camino Real, Suite 330 Sunnyvale, CA 94087 girish@svcleanenergy.org	
Sonoma Clean Power	**Sonoma Clean Power** Geof Syphers, CEO Sonoma Clean Power 50 Santa Rosa Avenue, 5th Floor Santa Rosa, CA 95404 gsyphers@sonomacleanpower.org	

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Party	*All Notices*	*Invoices*
Valley Clean Energy	**Valley Clean Energy** Gordon Samuel Assistant General Manager & Director of Power Resource 604 2nd Street Davis, CA 95616 gordon.samuel@valleycleanenergy.org	

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EXHIBIT B

SCHEDULE OF PROJECT PARTICIPANT ENTITLEMENT SHARES AND STEP-UP ALLOCATION CAPS

*Dated:*_____

A	B	C	D	E
Project Participant	**Entitlement Share** *As of Effective Date*	**Entitlement Share** *As Modified Pursuant to Section 4.2*	**Entitlement Share** *As Modified Pursuant to Section 12.8(b) or 12.8(c)*	**Step-Up Allocation Cap** *125% multiplied by Column B or C as applicable*
Central Coast Community Energy	18.6%			
Clean Power San Francisco	14.5%			
Peninsula Clean Energy	17.8%			
Redwood Coast Energy Authority	2.8%			
San José Clean Energy	17.4%			
Silicon Valley Clean Energy	14.0%			
Sonoma Clean Power	11.7%			
Valley Clean Energy	3.2%			
Total	100%			

Instructions: If the CCP Manager modifies one or more Project Participant's Entitlement Share pursuant to Section 4.2, the CCP Manager shall prepare an updated Exhibit B that shows the prior Entitlement Share (Column B or D) in ~~strikeout~~ and specifies the new Entitlement Share values and the effective date of such modification in Column C. If the CCP Manager modifies one or more Project Participant's Entitlement Share pursuant

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to Section 12.8, the CCP Manager shall prepare an updated Exhibit B that shows the prior Entitlement Share (Column B or Column C) in ~~strikeout~~ and specifies the new Entitlement Share values and the effective date of such modification in Column D.

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EXHIBIT C

PROCEDURE FOR VOLUNTARY REDUCTION OF PROJECT PARTICIPANT'S ENTITLEMENT SHARE

(a) Offer to Other Project Participants. A Project Participant proposing to reduce its Entitlement Share of the Project shall provide Notice to all other Project Participants and CCP specifying the quantity of the proposed reduction of Entitlement Share ("**Entitlement Share Reduction Amount**") and the first Month for which the Project Participant Proposes that the change of Entitlement Share would become effective (such Notice referred to as the "**Entitlement Share Reduction Notice**").

(i) Upon receiving an Entitlement Share Reduction Notice from any Project Participant, the CCP Manager shall promptly do all of the following:

(A) Establish Entitlement Share Reduction Compensation Amount. The CCP Manager shall secure at least one (1), but no more than three (3), valuations of the net present value of the Entitlement Share Reduction Amount over the remaining term of the PPA from one or more qualified firm(s) with the requisite experience to determine such valuation. The valuation, or if more than one valuation is obtained, the average of all valuations received, shall be the "**Proposed Entitlement Share Reduction Compensation Amount**." The CCP Manager shall call a meeting of the Project Committee and present the Proposed Entitlement Share Reduction Compensation Amount to the Project Committee. The Project Committee shall by a Normal Vote either approve the Proposed Entitlement Share Reduction Compensation Amount or direct the CCP Manager to secure additional valuations. The Proposed Entitlement Share Reduction Compensation Amount approved by the Project Committee shall be the "**Entitlement Share Reduction Compensation Amount**." The Project Participant proposing to reduce its Entitlement Share may modify the quantity of the Entitlement Share Reduction Amount associated with its proposal or withdraw its proposal at any time prior to the initiation of the process set forth in paragraph (a)(i)(B).

(B) Oversee the Offering of the Entitlement Share Reduction Amount to Other Project Participants. The CCP Manager shall facilitate the offering of the Entitlement Share Reduction Amount to the other Project Participants through multiple rounds of offerings.

a) The initial offering shall be to each Project Participant on a pro rata share, based on such Project Participant's Entitlement Share. Each Project Participant may accept or reject the portion of the Entitlement Share Reduction Amount offered to the Project Participant through this process. If any portion of the Entitlement Share Reduction Amount remains after the initial offering, then the remaining portion shall be offered to any Project Participant that accepted the share of the Entitlement Share Reduction Amount offered in the initial offering on a pro rata share, based on such Project Participant's Entitlement Share as a percentage of the total Entitlement Shares of all Project Participants that accepted the portion of the Entitlement Share Reduction Amount offered to them in the initial offering.

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b) The CCP Manager shall conduct subsequent offering rounds until either the total Entitlement Share Reduction Amount is accepted by one or more of the other Project Participants or some portion of the Entitlement Share Reduction Amount remains, but all Project Participants have rejected such amount.

c) Any Project Participant accepting a share of the offered Entitlement Share Reduction Amount shall either pay the offering Project Participant or be compensated by the offering Project Participant at the Entitlement Share Reduction Compensation Amount multiplied by the quantity of the portion being accepted.

d) Before a transfer of all or a portion of any Project Participant's Entitlement share to another Project Participant can become effective, the proposed transfer must be submitted to and approved by the Project Committee through a Normal Vote.

e) After acceptance and payment for such portion of the Entitlement Share Reduction Amount, and upon approval of such transfer by the Project Committee, the CCP Manager shall cause the Entitlement Share specified in Exhibit B to be modified accordingly, and such modification shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

(C) Oversee the Offering of the Entitlement Share Reduction Amount to CCP Members that are not Project Participants. If there is any portion of the Entitlement Share Reduction Amount that remains unaccepted after the process specified in paragraph (a)(i)(B) is complete, then the Project Participant proposing to reduce its Entitlement Share may request that the CCP Manager offer the remaining portion of the Entitlement Share Reduction Amount to CCP Members that are not Project Participants. If any CCP Member wishes to accept any or all of the remaining portion of the Entitlement Share Reduction Amount, such action shall require the CCP Member to become a Project Participant through an amendment to this Agreement, which shall be subject to the consent and approval of all Parties to this Agreement and the CCP Member becoming a Project Participant. The compensation amount associated with the CCP Member accepting the remaining portion of the Entitlement Share Reduction Amount shall be negotiated between the CCP Member and the offering Project Participant.

(D) Oversee the Offering of the Entitlement Share Reduction Amount to a Community Choice Aggregator that is not a CCP Member. If there is any portion of the Entitlement Share Reduction Amount that remains unaccepted after the process specified in both paragraphs (a)(i)(B) and (a)(k)(C) is complete, then the Project Participant proposing to reduce its Entitlement Share, may request that the CCP Manager offer the remaining portion of the Entitlement Share Reduction Amount to a community choice aggregator that is not a CCP Member. If any community choice aggregator wishes to accept any or all of the remaining portion of the Entitlement Share Reduction Amount, such action shall require the community choice aggregator to become a CCP Member, and subsequent to becoming a CCP Member, to become a Project Participant through an amendment to this Agreement that is subject to the consent and approval of all Parties to this Agreement and the community choice aggregator becoming a Project Participant. The compensation amount associated with the community choice aggregator accepting the remaining portion of the Entitlement Share Reduction Amount shall be negotiated between the community choice aggregator and the offering Project Participant.

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EXHIBIT D

PROJECT COMMITTEE OPERATIONS, MEETINGS, AND VOTING

(a) Chairperson of Project Committee. The chairperson of the Project Committee ("**Chairperson**") shall be the CCP Manager. The Chairperson shall be responsible for calling and presiding over meetings of the Project Committee in a manner and to the extent permitted by law.

(b) Conducting Meetings. Conducting of Project Committee meetings and actions taken by the Project Committee may be taken by vote given in an assembled meeting, by telephone, by video conferencing, or by any combination thereof, to the extent permitted by law.

(c) Calling of Meetings.

(i) The Chairperson may call a meeting of the Project Committee at their discretion.

(ii) The Chairperson shall promptly call a meeting of the Project Committee at the request of any representative of a Project Participant.

(d) Unanimous Votes. Certain actions, as designated in Section 6.4(c), require a unanimous affirmative vote by all Project Participants (**"Unanimous Vote"**). No such vote may be taken unless a representative from every Project Participant is present at the meeting of the Project Committee. If any Project Participant's Entitlement Share is reduced to zero through the process specified in Exhibit C, such Project Participant shall not be required to be present or be entitled to vote in order for such vote to be a Unanimous Vote.

(e) Normal Votes. All actions not designated as requiring unanimous vote, shall proceed pursuant to the **"Normal Vote"** process set forth in this paragraph (e).

(i) Quorum. No Normal Vote of the Project Committee shall be taken unless a representative is present for at least fifty percent (50%) of the total number of Project Participants, without regard to each Project Participant's Entitlement Share.

(ii) Initial Normal Vote. Unless a representative requests an Alternate Normal Vote, pursuant to paragraph (e)(iii), all actions requiring a Normal Vote, as specified in Section 6.4(b) or 6.4(d), shall require an affirmative vote of at least fifty-one percent (51%) of the total number of Project Participants, without regard to each Project Participant's Entitlement Share.

(iii) Alternate Normal Vote. Any representative may request that any Normal Vote be taken on an Entitlement Share basis (referred to as an "**Alternate Normal Vote**"). If a representative requests an Alternate Normal Vote, then the following vote requirements shall apply:

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(A) If any individual Project Participant has an Entitlement Share exceeding fifty percent (50%), then all actions for which an Alternate Normal Vote is taken shall require that the Project Participant with an Entitlement Share exceeding fifty percent (50%) plus any other Project Participant vote in the affirmative.

(B) If no individual Project Participant has an Entitlement Share exceeding fifty percent (50%), then all actions for which an Alternate Normal Vote is taken shall require an affirmative vote of Project Participants having Entitlement Shares aggregating at least fifty-one percent (51%) of the total Entitlement Shares.

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VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2022- ___

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING THE FOLLOWING AGREEMENTS AND ANY NECESSARY ANCILLARY DOCUMENTS FOR THE FISH LAKE GEOTHERMAL PROJECT AND AUTHORIZING THE EXECUTIVE OFFICER IN CONSULTATION WITH LEGAL COUNSEL TO FINALIZE AND EXECUTE THE AGREEMENTS: 1) POWER PURCHASE AGREEMENT BETWEEN FISH LAKE GEOTHERMAL, LLC AND CALIFORNIA COMMUNITY POWER, 2) PROJECT PARTICIPATION SHARE AGREEMENT BETWEEN VALLEY CLEAN ENERGY ALLIANCE, CALIFORNIA COMMUNITY POWER AND OTHER PARTICIPATING CCAs

WHEREAS, the Valley Clean Energy Alliance ("VCE") was formed as a community choice aggregation agency ("CCA") on November 16, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions. The City of Winters, located in Yolo County, was added as a member of VCE and a party to the JPA in December of 2019; and,

WHEREAS, VCE is a member of California Community Power (CC Power) joint powers authority; and

WHEREAS, VCE in coordination with CC Power conducted a request for offers for firm clean resources (FCR) and engaged in negotiations for the Fish Lake Geothermal project being developed by Open Mountain Energy; and

WHEREAS, CC Power seeks to execute agreements to effectuate its purchase of a geothermal project from Fish Lake Geothermal LLC based on the project's desirable offering of products, pricing and terms; and

WHEREAS, the geothermal project will contribute to the regulatory requirement to procure firm clean resources for each of the CCAs that are participating in this project through CC Power by providing a geothermal resource for a term of twenty years starting in 2024; and

WHEREAS, staff is presenting to the Board for its review the Power Purchase Agreement and the Project Participation Share Agreement.

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

1. Executive Officer is authorized to execute the Agreements and any ancillary documents with the Fish Lake Geothermal LLC, California Community Power and participating CCAs with the terms generally consistent with those presented, in a form approved by legal counsel.

PASSED, APPROVED AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____, 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Jesse Loren, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 21

TO: Board of Directors

FROM: Mitch Sears, Executive Officer
Edward Burnham, Director of Finance & Internal Operations

SUBJECT: Customer Rate/Product Options

DATE: July 14, 2022

RECOMMENDATIONS

1. Approve the attached resolution adopting a new three-tiered customer rate structure adding a new least cost "Base Green" option in 2023 to the existing "Standard Green" (default rate) and "UltraGreen" (existing 100% renewable rate) customer rate options;
2. Approve enrolling California Alternative Rates for Energy (CARE) and Family Electric Rates Assistance (FERA) customers in the Base Green option with Standard Green features as described in the staff report.
3. Direct staff incorporate recommendations 1 and 2 into the 2023 Customer Rate Setting process.

OVERVIEW

Beginning in June 2020, Staff introduced the topic of an expanded customer rate/product structure to the Board and CAC as a potential tool to help address ongoing fiscal challenges associated with power market and regulatory volatility. In November 2021, the Board considered expanding customer rate options as part of a package of measures related to the adoption of VCE's 2022 customer rates and annual budget. The Board deferred consideration of an additional customer rate option to focus on rate adjustments to stabilize VCE's 2022 budget.

The Board directed Staff to return in mid-2022 to continue the examination of a potential additional customer rate option. On May 26, 2022, Staff presented the updated customer rate option for additional feedback from the CAC. Staff re-introduced the possible expansion of customer rate options to the Board on June 9, 2022. A brief summary of key feedback/issues identified by the Board and CAC is included in the discussion below. Staff returned to the CAC on June 23, 2022 to present a proposed new rate structure with three customer options and received a unanimous CAC recommendation shown below. For reference, please see the most recent Staff report to the CAC located here and the Board located here.

This report and recommendation serve to expand VCE's customer rate/product structure consistent with recent Board direction. The proposed expanded rate/product structure, if adopted by the Board, will increase VCE's ability to set rates calibrated to actual cost and reserve requirements while providing a discounted price option compared to PG&E.

BACKGROUND

As discussed in past staff reports, VCE has seen high volatility in the energy sector and overall economy, primarily driven by the uncertainty during the COVID-19 pandemic, international energy market turmoil, and weather/drought impacts. In addition, increases to the 2021 Power Charge Indifference Adjustment (PCIA), resource adequacy (RA), and power market costs have required VCE to draw against reserves to stabilize customer rates and maintain its rate policies to be competitive with PG&E generation rates. As part of evaluating options to overcome cost pressures, VCE has explored rate, product, and financial practices to help address factors influencing reserves accumulation, rate stability, establishing a credit rating, and expanding longer-term power purchase agreements.

The volatility of PCIA, RA mandates, and power prices are the primary drivers affecting costs and revenues for the CCA's. Additionally, the recent regulatory efforts focusing on fiscal standards for CCA's, implementation of programs, geopolitical climate, solar energy supply chain interruptions, and VCE rate and reserves stabilization are factors that have been incorporated into VCE's assessment of rate structures.

The current VCE customer rate/product option structure constrains VCE's flexibility in maintaining competitive rates with PG&E without using cash reserves. Since VCE's launch in 2018, customers have been offered two rate options: (1) Standard Green default and (2) 100% renewable UltraGreen.

In late 2021, the Board adopted a cost-recovery rate policy approach to help support a more stable financial foundation, especially given ongoing regulatory (PCIA, RA) and power market conditions largely outside VCE's direct control. As part of the consideration of the adopted cost-recovery rate policy 2021, and in the context of spiking power and PCIA costs, the Board postponed consideration of additional rate options until mid-2022.

<u>Community Advisory Committee Recommendation</u>

At its last two meetings the Community Advisory Committee (CAC) has received staff presentations on the draft three-tiered customer rate structure. In May the CAC received a background report and provided feedback on the proposed rate structure. On June 23, 2022 the Committee received a presentation on the updated draft customer rate/product options and considered additional staff analysis based on feedback received at the previous CAC meeting. This updated analysis addressed the following:

- Product Differentiation – The need for distinct renewable power content differences between the default Standard Green and new "Base Green" products has been recommended to start at 5% to establish value differentiation. Additionally, Standard Green customers would be eligible for customer dividends and community programs – Base Green customers would not.
- Organizational Cost/Benefit – Examination of the value added by additional customer choice vs. the effort/value added and the risk of customer "opt down." The additional customer rate/product option provides: (1) additional customer choice, (2) additional affordability options, and (3) a CARE and FERA rate for lower income customers. The additional customer rate/product option also ensures competitive rates for current and future member jurisdictions if VCE is required to raise the Standard Green product rate above PG&E's bundled rate for full cost-recovery, including reserves and programs.

Research of other CCA's with similar rate structures indicates a low risk of significant number of customers opting down.

- Analysis of the duration needed to provide this additional rate option as VCE moves toward a 100% renewable future. Staff recommends that this option be re-evaluated in 2028 or upon annual participation greater than 5%, which ever occurs first.
- Outreach framework – The primary focus of this additional rate option is for customer retention. The outreach focus would be tailored to fit circumstances where the customer is actively seeking options (e.g. contacting customer service call center to opt out).

The CAC discussion, feedback, and ultimate recommendation have been incorporated into the Staff recommended VCE rate/option structure. The CAC voted to recommend the adoption of the expanded rate structure. Additionally, the CAC supported the Staff recommendation that California Alternative Rates for Energy (CARE) and Family Electric Rates Assistance (FERA) customers be enrolled in the Base Green option while retaining the higher renewable content associated with VCE's Standard Green portfolio.

The CAC recommended that the Board adopt the following:

a. Adopt a new rate structure with three customer options starting in 2023: (1) Standard Green (default) and (2) UltraGreen (100% renewable) with rates based on cost-recovery and (3) Base Green option with rates at or below PG&E rates (on a total bill comparison);
b. Automatically enroll California Alternative Rates for Energy (CARE) and Family Electric Rates Assistance (FERA) customers in the Base Green option as described in the staff report; CARE/FERA customers will not have access to the Customer Dividend program but will retain access to all other programs.

DISCUSSION & ANALYSIS

Since launch four years ago, VCE has systematically analyzed policy options and implemented strategies to control costs and manage reserves in response to the fiscal challenges and related factors noted earlier in this report. The primary fiscal policy tool controlled by VCE is likely its most potent: the ability to design products and set customer rates. Adding a third customer rate option employs this policy tool to establish a competitive rate with PG&E, allowing VCE's existing default and opt-up rates to more actively reflect market and regulatory conditions. This is consistent with VCE's policy to set rates to meet costs, build/maintain reserves, and execue local programs.

<u>Proposed Customer Product Structure</u>

The proposed three-tier customer product structure would be established by implementing a new "Base Green" option while retaining VCE's existing two customer product choices (Standard Green and Ultra Green). The Base Green option is designed to offer competitive/slightly lower rates to PG&E with renewable energy content that matches or slightly exceeds State standards (Renewable Portfoilio Standard - RPS).

Figure 1 below summarizes the recommended customer product options.

Figure 1 – Draft Customer Rate Structure (Design)

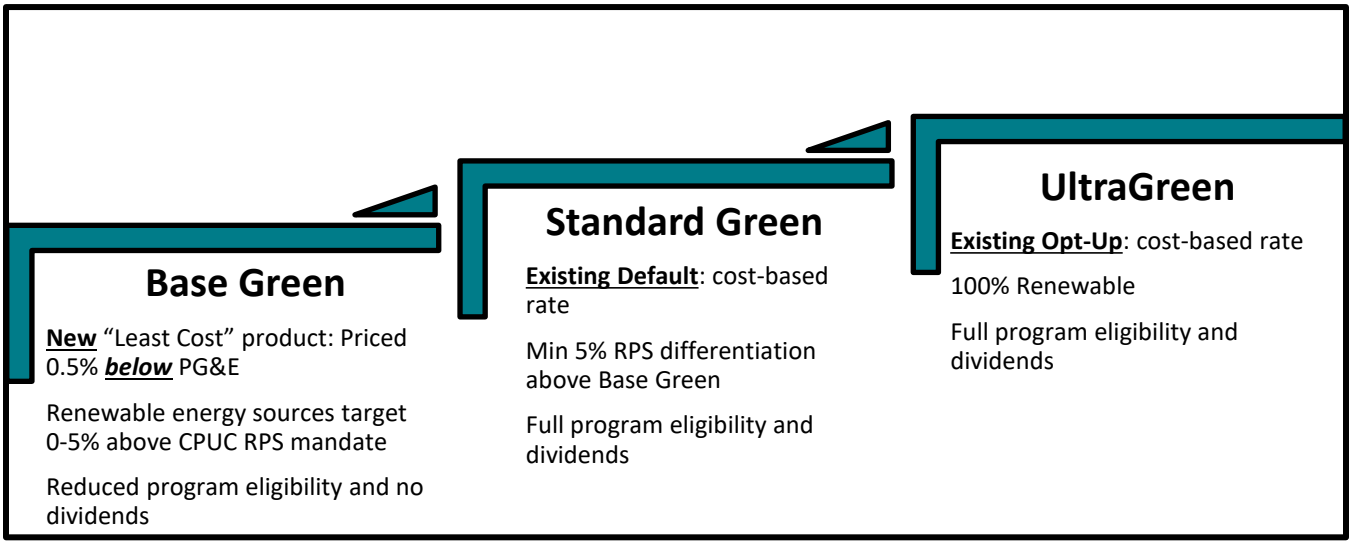

Table 1 below provides additional detail on the three-tiered customer product proposal.

Table 1 – VCE Draft Customer Products (Content and Pricing Strategy)

Customer Rate Option	Rate	Portfolio	Notes
Base Green **(new)**	Less than PG&E (-0.5%) total bill comparison	Target 0-5% above RPS requirements	• Ineligible to participate in customer dividend program; reduced access to customer program benefits • CARE/FERA customers maintain the existing VCE Standard Green RPS and Customer Programs for 2023
Standard Green - Default **(existing)**	Cost-based	Maintain existing VCE multi-year portfolio mix	• To establish product differentiation, the 2023 standard green portfolio target will be a minimum of 5% above the Base Green renewable content. The product differentiation percentage target will be revisited as part of the 2024 rate adoption process. • Eligible for customer dividend program and full customer program benefits
UltraGreen – Opt-up **(existing)**	Cost-based	Maintain existing 100% renewable portfolio	• Eligible for customer dividend program and full customer program benefits

Note: VCE's existing customer dividend program would continue to provide VCE with a mechanism to credit eligible customers when VCE reaches its financial/reserve objectives.

Table 2 below shows current and projected customer product RPS levels associated with the three customer rate options.

Table 2 – VCE Projected* (RPS)

Customer Rate Option	2023	2024	2025
CPUC RPS Mandate	41%	45%	47
Base Green (new)	42%	48%	52%
Standard Green - Default **(existing)**	47%	85%	83%
UltraGreen – Opt-up **(existing)**	100%	100%	100%

* The table above is based on current VCE renewable contracts.

Based on staff research, sister CCA programs with additional customer product options and cost-recovery rates have not experienced significant "opt-out" or "opt down" activity. The research supports these general findings in both the residential and commercial/industrial sectors regardless of the CCA's age, geography, or size. Moreover, VCE would continue as planned to grow its overall environmentally beneficial portfolio content over the next five years regardless of the customer rate structure (i.e., 2 or 3 customer rate options).

Fiscal Impact

Staff analyzed the potential fiscal impact on customer bills and VCE. The analysis is summarized below.

- Sample monthly average bill comparison. Staff recognizes the importance of evaluating the sensitivity of various levels of "opt-out"/" opt-down" scenarios and the relative impacts on the average customer bill. Based on the above-proposed rate/product structure and 2022 VCE rates, a sample monthly average bill comparison resulted in the Base Green product option being approximately $1.25 less per bill with current favorable PG&E generation and PCIA rates. Although this is a relatively small individual impact, it does demonstrate that VCE would have competitive rates with PG&E. It is important to note that the rates paid by Base Green customers, under current conditions, would still cover the basic cost of service to serve them but would not contribute fully to reserve or program funds. This analysis is the basis for limiting Base Green customers participation in VCE dividend payments and programs.

- Fiscal Impact Scenarios – Sensitivity Analysis. Staff prepared three scenarios associated with potential participation levels in the Base Green rate option to test possible impacts on VCE. Using information presented with VCE's adopted budget and forecast for 2022, the scenarios evaluated multiple participation levels with the same total cost basis for allocation purposes.

  Under the most likely scenario based on current budget, power costs, and opt-down rates from other CCA's, the new customer rate/product option generates slight increases of approximately 1% in the average costs of VCE's default Standard Green and UltraGreen rates. Based on staff research of other CCA rates, VCE's adjusted rates under a three-tiered customer rate option structure remain competitive with PG&E and within the ranges of rates offered by other CCAs. It is also important to note that between 2023-25, VCE will be offering a superior default rate renewable content product (i.e. more than 80% renewable by 2024).

  Staff believes that the small increases to existing Standard Green and UltraGreen rates should be weighed against VCE's added ability to retain and regain cost-sensitive customers

by offering customers the lowest-cost product available. Without the additional rate/product option, VCE customers' current choice is to opt out, which has a greater potential impact on VCE's remaining customers. Although customer loss is unlikely with current customer rates, it is also important to note the potential rate impact that existing VCE customers may experience absent an option to retain cost-sensitive customers in a situation where regulatory and/or power market costs require VCE to set rates above PG&E to cover costs and build/maintain reserves.

Since launch, VCE has taken a pragmatic approach to balancing business objectives (e.g. offering cleaner electricity at competitive rates). Staff believes that adding an additional customer rate option continues that approach by reducing opt-out risk while setting rates that allow VCE to build/maintain healthy reserves and continue to build toward a portfolio that significantly out paces even the State's ambitious clean energy goals.

Proposed Implemenation Timeline

Consistent with prior Board direction, Staff recommends implementation of the three-tiered rate structure in 2023 to coincide with VCE's annual rate setting process. The annual rate-setting process also provides a forum to review and propose any customer rate/option adjustments in future years.

Schedule for Customer Rate/Product Option:

- May 2022: CAC Introduction/feedback on updated draft rate options. - **Completed**
- June 2022: Board Introduction/feedback action on updated draft rate options. - **Completed**
- June 2022: CAC consideration/recommendation on updated draft rate options. - **Completed**
- July 2022: Board consideration of final updated draft rate options. - **Current**

If adopted, an additional rate option would be implemented with the VCE 2023 Rates.

For reference, this is the proposed schedule for implementation of 2023 rates:

- May - August 2022: Begin 2023 Rate study/preliminary revenue needs
- September 2022: Mid-year rate review of 2022 actuals
- October to December 2022: Review 2023 customer rate study review and rate adoption.
- December 2022: Board adoption of 2023 rates
- Q1 2023: Rates update report to Board/CAC.

CONCLUSION

Staff is recommending adoption of an expanded customer rate/option structure similar to those implemented by other CCA's. Staff recognizes that the recommended action is a shift from VCE's current rate structure but also that it is driven by forces outside of VCE's direct control. Adding a new least-cost Base Green customer rate/product option gives customers an additional choice but does not alter VCE's overall portfolio or progress toward 2030 renewable goals. Staff is making the recommendation because a three-tiered rate structure supports local control, customer choice, cost competitiveness and the ability to execute local programs.

If the expanded customer rate/option structure is approved, staff will bring recommended VCE 2023 customer rates to the Board for consideration as outlined in the schedule.

ATTACHMENT: Resolution adopting Cost-Based Rate Policy and Revised Customer Rate Structure

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2022- ___

A RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE APPROVING A NEW CUSTOMER RATE OPTION TO CREATE A THREE-TIER CUSTOMER RATE STRUCTURE

WHEREAS, the Valley Clean Energy Alliance ("VCE") was formed as a community choice aggregation agency ("CCA") on November 16, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions. The City of Winters, located in Yolo County, was added as a member of VCE and a party to the JPA in December of 2019; and,

WHEREAS, VCE desires to offer rate options to its customers; and,

WHEREAS, the new three-tiered rate structure is designed to offer more customer rate options and increase VCE's ability to set rates calibrated to actual cost and reserve requirements while providing a competitive price option to PG&E; and,

WHEREAS, VCE has been considering an additional customer rate option since mid-2020 to expand customer choice.

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

1. The Board of Directors hereby approves and authorizes the Executive Officer to implement a three-tiered customer rate structure beginning in 2023, establishing a new least cost option to join VCE's existing Standard Green default and UltraGreen opt-up rates.

PASSED, APPROVED AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____, 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Jesse Loren, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 23

TO: Board of Directors

FROM: Mitch Sears, Executive Officer

SUBJECT: Approve Amendment 2 to the Joint Powers Agreement

DATE: July 14, 2022

RECOMMENDATION

Adopt resolution approving Second Amendment to Valley Clean Energy Alliance Joint Exercise of Powers Agreement (JPA Agreement) and authorizing the Executive Officer, in consultation with legal counsel, to take necessary implementing actions.

BACKGROUND & DISCUSSION

On December 12, 2019 the City of Winters became a signatory and party to VCE's JPA Agreement. Pursuant to the JPA Agreement, each party has a voting share which is determined by dividing the party's annual energy use by all of the parties' total annual energy. February 2022 marked the completion of enrolling City of Winters customers and their annual energy use has been calculated, triggering the need to update Exhibits C (Annual Energy) and D (Voting Shares) to the JPA Agreement. In addition, the City of Winters will be added to the list of parties provided in Exhibit B (List of Parties) to the JPA Agreement.

The Joint Powers Agency Agreement provides that the annual energy use and voting shares exhibits (Exhibits C – Annual Energy and D – Voting Shares) be updated to reflect annual changes in energy usage. The current Joint Powers Agreement requires that revisions to Exhibits C or D be made through an amendment to the JPA Agreement. Amendments require at least 30 days notification to all member prior to the Board taking action on the amendment (per Section 7.4 Amendment of the JPA), and each amendment to the Agreement must be filed with the Secretary of State and other local agencies.

Given the factual and technical nature of the Annual Energy and Voting Shares exhibits and the need to update them annually, staff and General Counsel believe that going through the amendment process to update these exhibits each year is unnecessarily time-consuming and cumbersome. Therefore, in addition to updating Exhibits B, C, and D, the proposed Second Amendment also creates a more streamlined process for updating them in the future. If the Board approves the Second Amendment, future updates to these Exhibits may be approved by the Board without going through the amendment process.

On June 9, 2022, VCE provided written notice to each jurisdiction of the proposed Second Amendment.

CONCLUSION

Section 3.7.5 Special Voting Requirements for Certain Matters of the JPA requires an affirmative vote of two-thirds of Directors to approve an amendment to the JPA Agreement. Staff is recommending that the VCE Board approve the Second Amendment, streamlining the process for updating Exhibits C and D, as well as adopting updated Exhibits B, C, and D. Staff is also asking that the Board authorize the Executive Officer, in consultation with legal counsel, to take necessary steps to implement this action.

Attachments

1. Resolution 2022-XXX
2. Second Amendment

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2022 - ___

RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE (VCE) APPROVING AMENDMENT TWO (2) TO VCE'S JOINT POWERS AGENCY (JPA) AND AUTHORIZING EXECUTIVE OFFICER IN CONSULTATION WITH LEGAL COUNSEL TO UPDATE EXHIBITS B – LIST OF PARTIES, C – ANNUAL ENERGY, AND D – VOTING SHARES

WHEREAS, the Valley Clean Energy Alliance ("VCE") was formed as a community choice aggregation agency ("CCA") on November 16, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions. The City of Winters, located in Yolo County, was added as a member of VCE and a party to the JPA in December of 2019; and,

WHEREAS, under Section 2.4.2 of the JPA Agreement creating Valley Clean Energy Alliance, the Board of Directors may allow other cities and counties to become members in the VCE JPA and thereby to participate in VCE's Community Choice Energy program (the "Program") provided certain conditions are met; and,

WHEREAS, in September 2019 the VCE Board, Cities of Davis and Woodland, and Yolo County approved the First Amendment to the JPA to create an Associate Member classification and on November 14, 2019 the City of Winters became an Associate Member; and,

WHEREAS, on November 5, 2019 the City of Winters completed the membership requirements with the passing of an ordinance authorizing its participation in the community choice program as required by Public Utilities Code Section 366.2(c)(12); and,

WHEREAS, the City of Winters membership in Valley Clean Energy JPA was approved via Resolution 2019-016 effective December 12, 2019; and,

WHEREAS, pursuant to the JPA each party has a voting share which is determined by dividing the party's annual energy use by all of the parties' total annual energy; and,

WHEREAS, February 2022 marked the completion of enrolling City of Winters customers and their annual energy use has been calculated; and,

WHEREAS, changes to Exhibits require an amendment of the Agreement, which requires that VCEA provide written notice to all Parties of amendments to the Agreement at least 30 days prior to Board action on the amendment; and,

WHEREAS, given the factual nature of the information included in Exhibits C and D, VCE desires to amend the Agreement to provide that these Exhibits may be modified with Board approval and without going through a full amendment process; and,

WHEREAS, in accordance with Section 7.4 of the JPA, on June 9, 2022, VCE provided written notice to each jurisdiction of Amendment 2, including updating Exhibits B – List of Parties, Exhibit C – Annual Energy, and D – Voting Shares.

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

1. Approve the Second Amendment to the VCE's Joint Exercise of Powers Agreement (JPA).
2. Authorize the Executive Officer in consultation with legal counsel to file the amended Second Amendment with the Secretary of State, Yolo County Local Agency Formation Commission, and take any other necessary steps to implement the Joint Powers Agreement.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the _____ day of _____ 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Jesse Loren, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

Attachments:

1. Second Amendment to JPA with updated Exhibits B, C and D

SECOND AMENDMENT TO THE JOINT EXERCISE OF POWERS AGREEMENT RELATING TO AND CREATING THE VALLEY CLEAN ENERGY ALLIANCE

This Second Amendment amends the Joint Exercise of Powers Agreement Relating To and Creating the Valley Clean Energy Alliance ("VCEA"), which was originally entered into as of October 25, 2016 (the "Original Agreement") as between the County of Yolo, the City of Davis, and the City of Woodland (the "Parties"). The Original Agreement was subsequently amended by that certain First Amendment to the Joint Exercise of Powers Agreement Relating To and Creating the Valley Clean Energy Alliance (the "First Amendment"), dated September 12, 2019 (collectively, the "JPA Agreement"). On December 12, 2019, the City of Winters became a signatory and Party to the Agreement pursuant to Section 2.4.2 of the Agreement.

This Second Amendment is effective upon approval by the Parties, who agree as follows:

RECITALS

A. The Parties share various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and customers within their jurisdictions.

B. Pursuant to the Agreement, each Party to the Agreement shall have a "voting share" which is determined by dividing the Party's annual energy use by all of the Parties' total annual energy. This information is provided in Exhibit C, "Total Annual Energy," and Exhibit D "Voting Shares" to the Agreement, and is necessary in order for the Parties to conduct weighted voting by voting shares pursuant to Section 3.7 of the Agreement.

C. Sections 3.7.1 and 3.7.2 of the Agreement provide that Exhibits C and D of the Agreement shall be revised no less than annually as necessary to account for changes in the number of Parties and changes to the Parties' Annual Energy Use.

D. Changes to Exhibits C and D require an amendment of the Agreement, which requires that VCEA provide written notice to all Parties of amendments to the Agreement at least 30 days prior to Board action on the amendment.

E. Given the factual nature of the information included in Exhibits C and D, VCEA desires to amend the Agreement to provide that these Exhibits may be modified with Board approval and without going through a full amendment process.

F. Furthermore, VCEA desires to update Exhibits C and D effective with the date of this Second Amendment.

AGREEMENT

NOW, THEREFORE, in Consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

1. Section 3.7.1 of the Agreement is hereby amended to read as follows:

3.7.1 Voting Shares.

Each member agency shall have a voting share as determined by the following formula: (Annual Energy Use/Total Annual Energy) multiplied by 100, where

(a) "Annual Energy Use" means, (i) with respect to the first two (2) years following the Amendment Date, the annual electricity usage, expressed in kilowatt hours ("kWh"), within the Party's respective jurisdiction and (ii) with respect to the period after the second anniversary of the Amendment Date, the annual electricity usage during the prior Fiscal Year, expressed in kWh, of accounts within a Party's respective jurisdiction that are served by VCEA; and

(b) "Total Annual Energy" means the sum of all Parties' Annual Energy Use. The initial values for Annual Energy Use will be designated in Exhibit C, and shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year. An adjustment to Exhibit C shall not constitute an amendment of this Agreement pursuant to Section 7.4, but may be approved by the Board and kept on file with the Secretary.

(c) The combined voting share of all Directors representing a member agency shall be based upon the annual electricity usage within the member agency's jurisdiction; the combined voting share of a county shall be based upon the annual electricity usage within the unincorporated area of the county.

For the purposes of Weighted Voting, if a member agency has more than one director present and voting, then the voting shares allocated to the entity shall be equally divided amongst its Directors that are present and voting.

2. Section 3.7.2 is hereby amended to read as follows:

3.7.2 Exhibit Showing Voting Shares. The initial voting shares will be set forth in Exhibit D. Exhibit D shall be revised no less than annually as necessary to account for changes in the number of Parties and changes in the Parties' Annual Energy Use. Revisions to Exhibit D shall not constitute an amendment of this Agreement pursuant to Section 7.4, but may be approved by the Board and kept on file with the Secretary.

3. Exhibit B of the JPA Agreement is hereby amended to include the City of Winters as a Party to the Agreement as shown in Attachment 1 to this Second Amendment.

4. Exhibit C of the JPA Agreement is hereby amended as shown in Attachment 2 to this Second Amendment.

5. Exhibit D of the JPA Agreement is hereby amended as shown in Attachment 3 to this Second Amendment.

6. All other provisions of the JPA Agreement not expressly modified by this Second Amendment shall remain in full force and effect.

EXHIBIT B

LIST OF PARTIES

Parties: County of Yolo

City of Davis

City of Woodland

City of Winters

EXHIBIT C

ANNUAL ENERGY USE / VOTING SHARES

Unincorporated Yolo County	283,073,212 kWh
Davis	205,538,829 kWh
Woodland	259,671,593 kWh
Winters	26,080,710 kWh

EXHIBIT D

VOTING SHARES

Unincorporated Yolo County	283,073,212 kWh	36.6 votes
Davis	205,538,829 kWh	26.5 votes
Woodland	259,671,593 kWh	33.5 votes
Winters	26,080,710 kWh	3.4 votes
Total	774,364,344 kWh	100