2075 Woodside Road | Redwood City, CA 94061
(650) 260-0005 | peninsulacleanenergy.com

Regular Meeting of the Board of Directors of the Peninsula Clean Energy Authority (PCEA)
AGENDA

Thursday, June 27, 2024
6:30 pm

PLEASE NOTE: This meeting will be held in a hybrid format with both in-person and Zoom participation options for members of the public; Board members shall appear in person.

In-Person Meeting Locations:
PCEA Lobby, **2075 Woodside Road, Redwood City, CA 94061**
Los Banos City Hall, Conference Room B, **520 J Street, Los Banos, CA 93635**

Zoom, **Virtual Meeting Link:** https://pencleanenergy.zoom.us/j/87496649657
Meeting ID: 874-9664-9657 **Passcode:** 2075 **Phone:** +1 (669) 444-9171

This meeting of the Board of Directors will be held at the Peninsula Clean Energy Lobby: 2075 Woodside Road, Redwood City, CA 94061 and Los Banos City Hall, Conference Room B, 520 J Street, Los Banos, CA 93635 and by teleconference pursuant to California Assembly Bill 2449 and the Ralph M. Brown Act, CA Gov't Code. Section 54950, et seq. **Members of the Board are expected to attend the meeting in person** and should reach out to Assistant General Counsel for Peninsula Clean Energy, Jennifer Stalzer, with questions or accommodation information (jstalzer@smcgov.org). For information regarding how to participate in the meeting remotely, please refer to the instructions at the end of the agenda. In addition, a video broadcast of the meeting can be viewed at https://www.peninsulacleanenergy.com/board-of-directors following the meeting.

Public Participation

The PCEA Board meeting may be accessed through Zoom online at https://pencleanenergy.zoom.us/j/87496649657. The webinar ID is: 874-9664-9657 and the passcode is 2075. The meeting may also be accessed via telephone by dialing +1(669) 444-9171. Enter the webinar ID: 874-9664-9657, then press #. (Find your local number: https://pencleanenergy.zoom.us/u/kTlH1Ocod). Peninsula Clean Energy uses best efforts to ensure audio and visual clarity and connectivity. However, it cannot guarantee the connection quality.

Members of the public can also attend this meeting physically at the **Peninsula Clean Energy Lobby** at 2075 Woodside Road, Redwood City, CA 94061 or **Los Banos City Hall**, Conference Room B, 520 J Street, Los Banos, CA 93635.

Written public comments may be emailed to PCEA Board Clerk, Nelly Wogberg (nwogberg@peninsulacleanenergy.com) and such written comments should indicate the specific agenda item on which the member of the public is commenting.

Spoken public comments will be accepted during the meeting in the Board Room(s) or remotely through Zoom at the option of the speaker. Please use the "Raise Your Hand" function in the Zoom platform, or press *6 if you phoned into the meeting, to indicate that you would like to provide comment.

Please note that Peninsula Clean Energy Board of Directors meetings are a limited public forum, and all public comment must relate to something that is within the subject matter jurisdiction of the Board. If comments do not relate to the subject matter jurisdiction of the Board, we will stop the comment and move on to the next speaker. General Counsel will assist in identifying comments that are not related to the subject matter jurisdiction of the Board.

ADA Requests

Individuals who require 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, should contact Nelly Wogberg, Board Clerk, by 10:00 a.m. on the day before the meeting at (nwogberg@peninsulacleanenergy.com). Notification in advance of the meeting will enable PCEA to make reasonable arrangements to ensure accessibility to this meeting, the materials related to it, and your ability to comment.

Closed Captioning is available for all PCEA Board meetings. While watching the video broadcast in Zoom, please enable captioning.

CALL TO ORDER / ROLL CALL / APPROVE TELECONFERENCE PARTICIPATION UNDER AB 2449

This item is reserved to approve teleconference participation request for this meeting by Director pursuant to Brown Act revisions of AB 2449 due to an emergency circumstance to be briefly described.

PUBLIC COMMENT

This item is reserved for persons wishing to address the Board on any PCEA-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. Members of the public who wish to address the Committee are customarily limited to two minutes per speaker. The Board Chair may increase or decrease the time allotted to each speaker.

ACTION TO SET AGENDA AND TO APPROVE CONSENT AGENDA ITEMS

1. Approval of a Contract Amendment with ID Lab Global for Peninsula Clean Energy's Brand and Marketing Services in an Amount Not-to-Exceed $660,000

2. Approval of Amendments to Peninsula Clean Energy's Operating Rules and Regulations: Policy 14, "Delegation of Non-Energy Contracts Commitment and Financial Authority Policy", Policy 15, "Energy Supply Procurement Authority", and Policy 16, "Selection of the Chair and Vice Chair and Appointment to the Executive Committee and Other Standing Board Committees"

3. Approval of a Resolution Supporting Analysis of Greenhouse Gas Reductions from Local Building Electrification Options

4. Approval of Residential Low-Income Self-Generation Incentive Program (SGIP) Assistance Program

5. Approval of Minutes from the March 28, 2024 and May 23, 2024 Board of Directors Meetings

6. Appoint the Board Clerk as Secretary of the Board of Peninsula Clean Energy Authority (Action)

REGULAR AGENDA

7. Chair Report (Discussion)
8. CEO Report (Discussion)
9. CAC Report
10. Approval of Fiscal Year 2024-2025 Budget (Action)
11. Approval of Updates to Peninsula Clean Energy's Rate Tables and Rates to be Effective August 1, 2024 (Action)
12. Authorization to Adjust Pricing Premium for ECO100 Product Effective January 1, 2025 (Action)
13. Approval of a Resolution Delegating Authority to the Chief Executive Officer to Execute Two Energy Storage and Services Agreements (ESSA) with San Gabriel Project II, LLC for the Gabriel Storage I & II Projects, and Any Necessary Ancillary Documents, with a Delivery Term of 15 Years Starting at the Commercial Operation Date on or About June 1, 2027, in a Total Amount Not-to-Exceed $208 Million (Action)
14. Preliminary Approval of Proposed Administrative Updates to the Peninsula Clean Energy Authority Joint Powers Authority (JPA) Agreement (Action)
15. Board Members' Reports

CLOSED SESSION

The Board will adjourn to closed session to consider the following items at the end of the agenda, or at any time during the meeting as time permits. At the conclusion of closed session, the Board will reconvene in open session to report on any actions taken for which a report is required by law.

16. PUBLIC EMPLOYEE PERFORMANCE EVALUATION Title: Chief Executive Officer
17. CONFERENCE WITH LABOR NEGOTIATORS Agency Designated Representatives: Chair Donna Colson and General Counsel/Assistant General Counsel; Unrepresented Employee: Chief Executive Officer
18. Reconvene Open Session (If Necessary) To Report Any Action(s) Taken During Closed Session

INFORMATIONAL REPORTS

19. Data and Technology Department Quarterly Report
20. Update on Legislative Activities
21. Account Services Quarterly Update
22. Report on California Community Power (CCP) Joint Powers Authority
23. Acronym List

ADJOURNMENT

Public records that relate to any item on the open session agenda are available for public inspection. The

records are available at the Peninsula Clean Energy offices or on PCEA Website at: https://www.peninsulacleanenergy.com.

Instructions for Joining a Zoom Meeting via Computer or Phone

Best Practices:

- Please mute your microphone when you are not speaking to minimize audio feedback
- If possible, utilize headphones or ear buds to minimize audio feedback
- If participating via videoconference, audio quality is often better if you use the dial-in option (option 2 below) rather than your computer audio

Options for Joining

- Videoconference with Computer Audio - see Option 1 below
- Videoconference with Phone Call Audio - see Option 2 below
- Calling in via Telephone/Landline - see Option 3 below

Videoconference Options:

Prior to the meeting, we recommend that you install the Zoom Meetings application on your computer by clicking here https://zoom.us/download.

If you want full capabilities for videoconferencing (audio, video, screensharing) you must download the Zoom application.

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- From your computer, click on the following link that is also included in the meeting calendar invitation: https://pencleanenergy.zoom.us/j/87496649657
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- After the application opens, the pop-up screen below will appear asking you to choose ONE of the audio conference options. Click on the Computer Audio option at the top of the pop-up screen.

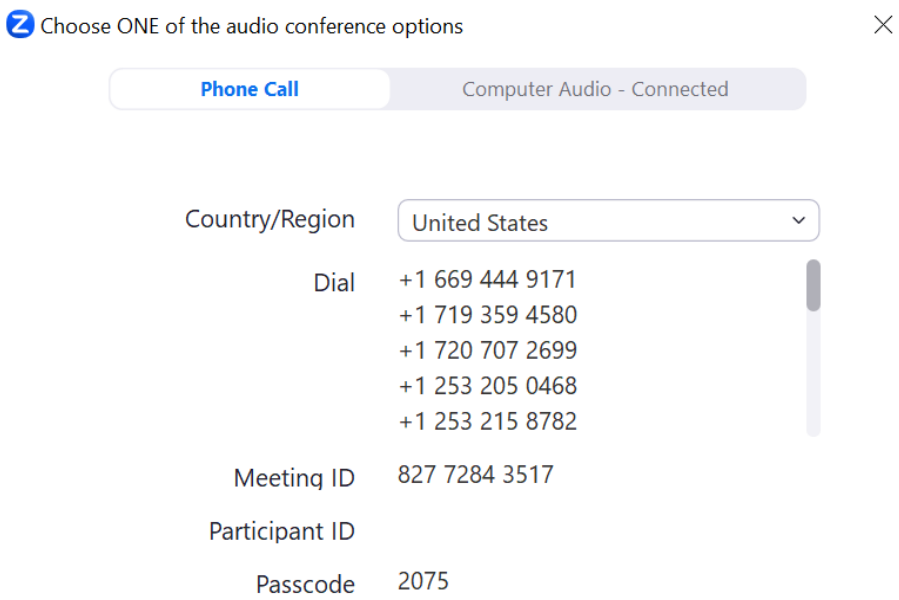


- Click the blue, "Join with Computer Audio" button.
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- From your computer, click on the following link that is also included in the meeting calendar invitation: https://pencleanenergy.zoom.us/j/87496649657
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- After the application opens, the pop-up screen below will appear asking you to choose ONE of the audio conference options. Click on the Phone Call option at the top of the pop-up screen.



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Please note that if you call in/use the audio only option, you will not be able to see the speakers or any presentation materials in real time.

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- Please dial +1 (669) 444-9171.
- You will be instructed to enter the meeting ID: **874-9664-9657 followed by #**.
- You will be instructed to enter your **Participant ID** followed by #. If you do not have a participant ID or do not know it, you can press # to stay on the line.
- You will be instructed to enter the meeting passcode **2075 followed by #.**

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 14, 2024
MEETING DATE: June 27, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Gwen Rose, Director of Marketing and Community Relations

SUBJECT: Approval of a Contract Amendment with ID Lab Global for Peninsula Clean Energy's Brand and Marketing Services in an Amount Not-to-Exceed $660,000

RECOMMENDATION

Delegate authority to the CEO to sign amendment for PCE Brand and Marketing services with ID Lab Global in an Amount Not-to-Exceed $660,000.

BACKGROUND

Peninsula Clean Energy has the need for brand and marketing strategy services to support Marketing objectives in the Board-approved Strategic Plan 2020-2025: “Elevate Peninsula Clean Energy’s brand reputation as a trusted leader in the community and the industry” and “Educate and engage stakeholders in order to gather input, inspire action, and drive program participation.”

In December 2023, PCE selected ID Lab Global as our marketing agency partner and executed a contract for their services. Over the first half of 2024, staff has worked with ID Lab Global on developing a new brand strategy for PCE that will enable a more customer-centric approach to marketing. In the next phase of engagement, while ID Lab continues to do foundational work on the brand strategy, they are transitioning to implementation of key elements of the brand strategy with a fully redesigned website, new content, an updated social media strategy, and a marketing technology audit and roadmap. ID Lab Global will also support the Marketing and Programs teams on the launch of the single family home electrification program.

DISCUSSION

Marketing objectives in the Board-approved Strategic Plan 2020-2025 include elevating the organization’s brand reputation as well as educating and engaging stakeholders in order to gather input, inspire action, and drive program participation. A strong brand and positive brand experience is central to enable our ability to deliver messages about electrification and decarbonization. Furthermore, we want to communicate and build PCE's brand with a much larger percentage of customers in our service territory in order to maximize our effectiveness.

Customer research conducted in Q2 2023 indicates that there are opportunities to strengthen the connection between the benefits and services we offer to customers in ways that will improve awareness, familiarity, and favorability metrics. Our updated brand strategy focuses on bridging the gap between current customer perception and future aspirations for the brand experience in order to drive towards a more customer-centered approach.

In September, an RFP for marketing services was posted to support PCE's brand update and to help launch campaigns with the following goals:

1. Increase awareness from 40% to more than 60%
2. Build a brand that our customers can relate to and trust
3. Generate leads and help customers take advantage of our programs
4. Retain customers

PCE selected ID Lab Global due to their unique set of capabilities that combines years of energy marketing, energy efficiency, and behavioral program leadership with global private-sector marketing and branding expertise. Their team brings deep expertise in brand strategy and identity, design and content creation; social media, performance marketing, and paid media.

To achieve these objectives, ID Lab Global has worked collaboratively with PCE's team through a strategic process to deliver an updated brand strategy. In the next phase of this engagement, they will begin to implement elements of the brand strategy with a fully redesigned website, and social media strategy. They will also assist with the marketing technology roadmap to enable personalized engagement, and support the marketing launch of the new single family home upgrade program. The projects under the new scope are discussed in more detail below.

Website Redesign

As PCE drives to improve customer experience and evolve the brand toward PCE 2.0, the website must quickly evolve to actualize these two overarching objectives. To do this, ID Lab will completely redesign and rebuild the site from top to bottom. From a visual perspective (UX), the new design of the site will take cues from the current brand design but significantly accelerate it to bring it inline with the new brand vision.

Core objectives of the web redesign include: expressing the brand with a new and reinvigorated design system that supports the updated brand strategy, building user experiences that deliver on the promise of being customer centric, simplifying the experience to enable customers to find and participate in more programs, and positioning the agency in a way that aligns with updated brand messaging.

Social Media

In the short term, PCE's social media goal is to drive awareness of the brand and generate interest. This equates to follows and engagement on our social channels and clicks to site. In the long term, we are looking to create a relationship with our customers that ends with loyalty, positive sentiment, and helping them take advantage of programs that could help them save money and energy. Through social media, we aim to meet our customers where they are, demonstrate our commitment to customers and the community, and communicate about our programs and services.

ID Lab is working with the Marketing team to update the social media strategy and develop the

overarching approach to channel mix, content strategy and content pillars, paid social, and a social calendar to support 3 months of content.

Marketing technology
As PCE strives to have deeper and broader positive impacts on the lives of its customers, the internal marketing team has asked ID Lab to review its processes, applications and technology (Martech) and recommend ways to improve effectiveness, productivity, cost-effectiveness and efficiency in order to:

- Scale marketing activities (frequency, duration, and depth)
- Increase marketing efficiency and overall impact
- Enable the internal go-to-market teams to increase productivity relative to effort
- Inform process of continuous improvement through monitoring and reporting

To achieve these objectives, ID Lab will gather PCE's needs, identify any limitations, and assemble a recommended marketing technology (Martech) stack – a collection of advanced marketing technologies that seamlessly interplay to achieve marketing goals and provide required market insights.

Marketing Campaigns
ID Lab will support PCE on the marketing campaign for launching the single family home electrification program. In addition to positioning the new program, determining brand fit, architecture, and messaging, ID Lab will drive the development and execution of the Go-To-Market plan, with creative, production, project management, and campaign optimization.

Promotional & Support Channels: The following provides a list of the forecasted channels the Contractor and PCE will use to promote this program.

- Acquisition Display
- Retargeting
- Paid Search
- Social: Instagram, Facebook, X, LinkedIn, explore others include Reddit and Nextdoor
- Email
- Content
- Copromotions/Co-Brand
- Landing Page(s)

ID Lab Global has been a valuable partner, driving high quality outcomes in the brand strategy and we look forward to working with them on this next phase of brand strategy implementation.

FISCAL IMPACT

Of the original $300,000 contract, a balance of $50,000 remains and will be redirected to the new scope. Therefore, the amended contract with ID Lab has a new not-to-exceed contract amount of $660,000 through December 31, 2024. This is included in the FYE 2025 marketing budget.

STRATEGIC PLAN

STRATEGIC PLAN GOAL
Develop a strong brand reputation that drives participation in Peninsula Clean Energy's

programs and ensures customer satisfaction and retention.

OBJECTIVES
1. Brand Reputation: Elevate Peninsula Clean Energy's brand reputation as a trusted leader in the community and the industry.
2. Engagement: Educate and engage stakeholders in order to gather input, inspire action, and drive program participation

ATTACHMENTS:
CONTRACT Amendment PCE Template -ID Lab June 2024-clean.docx

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

APPROVAL OF A CONTRACT AMENDMENT WITH ID LAB GLOBAL FOR PENINSULA CLEAN ENERGY'S BRAND AND MARKETING SERVICES IN AN AMOUNT NOT-TO-EXCEED $660,000

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

WHEREAS, the Peninsula Clean Energy Authority (“Peninsula Clean Energy" or the "Authority") was formed on February 29, 2016; and

WHEREAS, ID Lab Global was selected to provide brand and marketing services to PCEA, including brand strategy, brand identity, messaging platform, brand rollout, and a comprehensive marketing and communications plan; and

WHEREAS, ID Lab Global was selected based on their experience and unique set of capabilities that combines years of energy marketing, energy efficiency, and behavioral program leadership with global private-sector marketing and branding expertise; and

WHEREAS, the parties wish to amend the Agreement to expand the scope of marketing services to include website redesign, social media strategy development and training, marketing technology support, website content strategy and development, campaign development and creative/production support; and

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the CEO is authorized to execute with ID Lab Global an agreement for brand and marketing services in an amount not to exceed $660,000 through December 31, 2024.

AMENDMENT NO. 1 TO AGREEMENT BETWEEN PENINSULA CLEAN ENERGY AUTHORITY AND ID Lab Global LLC

THIS AMENDMENT TO THE AGREEMENT, entered into this 27th day of June, 2024 by and between PENINSULA CLEAN ENERGY AUTHORITY, a California joint powers authority, hereinafter called "PCEA," and ID Lab Global LLC, hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, the parties entered into an Agreement on January 2, 2024, for the purpose of marketing services for brand development, which could include brand strategy, messaging, logo, graphic identity; written and graphic standards and guidelines; development and production of tag lines and/or templates for various communications; and

WHEREAS, the parties wish to amend the Agreement to expand the scope of marketing services to include website redesign, social media strategy development and training, marketing technology support, website content strategy and development, campaign development and creative/production support; and

WHEREAS, the parties wish to amend the Agreement to increase the maximum amount by $360,000 to an amount not to exceed $660,000; and

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. **The text of Section 3 Payment shall be amended such to replace: "In no event shall PCEA's total fiscal obligation under this Agreement exceed three hundred thousand dollars ($300,000) which shall be paid by PCEA." with: "In no event shall PCEA's total fiscal obligation under this Agreement exceed six hundred and sixty thousand dollars ($660,000) which shall be paid by PCEA."**
2. **The text of Exhibit A shall be replaced in its entirety with "Exhibit A – Amended June 27, 2024" as attached.**
3. **The text of Exhibit B shall be replaced in its entirety with "Exhibit B – Amended June 27, 2024" as attached.**
4. **Except as expressly amended herein, all other provisions of the Agreement shall remain in full force and effect.**
5. **This Amendment No. 1 shall take effect upon the date of execution by both parties.**

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as set forth below.

Peninsula Clean Energy Authority

By: _____
Shawn E. Marshall, CEO

Dated: _____

By: _____

Name: _____

Title:_____

Dated: _____

Exhibit A - Amended June 27, 2024

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

Marketing Services Summary

Contractor is being engaged as the prime contractor, with assistance from their subcontractor, Villain, to perform the following services:

- PCEA website redesign (including new CMS and content)
- Social media strategy development and training
- Marketing technology audit and recommendations
- Home Electrification GTM plan and creative/production support

To achieve these objectives, Contractor will guide PCEA's marketing leadership and team through a strategic process to deliver the following:

1. Website requirements documentation
2. Sitemap, wireframes and content inventory for the new website
3. SEO strategy documentation
4. Website copy
5. Moodboard design to establish visual direction of the new website
6. Newly designed and built WordPress website
7. CMS instruction guide and 2 training sessions
8. Social media strategy
9. Social media content calendar template and completed calendars for July, August, and September 2024 content
10. Playbook for community management best practices
11. Social media reporting templates
12. Social media strategy training documentation and 2 training sessions
13. Martech audit and recommendations document
14. Home Electrification GTM plan documentation
15. Home Electrification creative services (e.g. design, video editing, social posts, ads, etc.)

Scope

The tasks and deliverables outlined in this Exhibit define the scope between Contractor and PCEA. A project kick-off meeting will be held to discuss each project, project specific goals and objectives, desired outcomes for each project, and a clear definition of the roles and responsibilities of all parties involved. The following table lists key tasks, deliverables, and responsibilities.

Project/Service	Description	IDLab	PCEA
Website Requirements	Gather, document, and	Contractor will:	PCEA will:

	prioritize website requirements. Deliverable: Website requirements document includes 3 rounds of review–an initial review with 2 rounds of revisions.	● Prepare for interviews (and align with PCE marketing) ● Interview PCE employees to extract requirements ● Document requirements and lead discussions to iterate, prioritize, and finalize requirements	● Identify PCE employees to interview ● Coordinate interviews ● Review requirements documentation and provide feedback
Hosting Environment	Set up new staging and production environments.	Contractor will: ● Communicate requirements and plugins ● Access staging environment to build website	PCEA will: ● Set up staging environment ● Set up new production environment ● Install WordPress theme and the first few plugins: Elementor and Rank Math ● Provide ID with credentials to WordPress and plugins ● Provide troubleshooting assistance if there are any issues with the staging environment
SEO Strategy	Document the new website SEO strategy. Deliverable: SEO strategy document includes 3 rounds, an initial with 2 rounds of revisions.	Contractor will: ● Perform research and determine SEO strategy and best practices to generate improved visibility and authority for new website ● Document SEO instructions for each page	PCEA will: ● Review SEO strategy document and provide feedback and/or approval
Information Architecture & UX Design	Inventory existing website pages to determine what	Contractor will: ● Create content inventory template and populate it with	PCEA will: ● Review content inventory, sitemap, and wireframes and

	to add/edit/delete, design sitemap and wireframes. Deliverables: Content inventory, sitemap, and wireframes. The sitemap and wireframes include 3 rounds, an initial with 2 rounds of revisions.	all existing website pages ● Design new sitemap to reorganize content and information ● Design wireframes to determine content structure, hierarchy and user experience for each core template or page	provide feedback and/or approval
Visual Exploration	Through an iterative approach design the homepage to explore what the next evolution of the PCEA visual brand identity should look like. Deliverable: Homepage design includes 3 rounds, an initial with 2 rounds of revisions.	Contractor will: ● Design the homepage based on the approved homepage wireframe	PCEA will: ● Provide any source assets required to use for homepage design ● Provide feedback and/or approval on homepage design
Content Migration & Creation	Develop site's content strategy, identify all content to migrate from current to new website, plan and create new content and visual assets. Deliverable: Website copy document includes 3 rounds, an initial	Contractor may: ● Develop website content strategy via the content inventory document ● Identify all existing content that should be migrated to new site ● Migrate content to new site ● Write new website copy ● Find, present and acquire all stock assets required	PCEA will: ● Collaborate with IDLab to determine content to migrate ● Provide technical support to migrate content ● Provide feedback and/or approval of website copy, assets designed, and stock assets recommended

	with 2 rounds of revisions.	● Design new website graphics	
UI Design & Build	Design, build, and integrate the website over the course of several sprints, each sprint lasting a minimum of 5 business days. Builds will be responsively designed for desktop and mobile users and will adhere to all ADA/accessibility requirements provided by PCEA. Deliverable: New Website and CMS	Contractor will: ● Each sprint will include a subset of sections and/or pages ● Simultaneously design and build all pages and graphics, including selecting imagery and/or videos ● Build the CMS to support each page's design, functionality and desired workflow to updating page content ● Add all SEO related metadata and information to each page	PCEA will: ● Review sections and pages completed in each sprint and provide feedback and/or approvals ● Review CMS design, features, and workflows to provide feedback
Quality Assurance Testing	Perform a comprehensive quality assurance testing pass on the entire site to identify and fix any issues.	Contractor will: ● QA site as we build it ● Identify issues and add them to issue tracking sheet ● Fix all issues	PCEA will: ● After Contractor's QA pass, PCEA marketing team to perform user acceptance testing (UAT) which means QA the site, identify issues, add issues to issue tracking sheet ● During UAT, PCEA marketing to share the website with executives, other departments and stakeholders and extract their feedback and add to issue tracking sheet
User Testing	Determine a cost effective way to perform and execute user	Contractor will: ● Identity a few different options for user testing	PCEA will: ● Participate in recommendations for user testing

	testing of the new website.	● Coordinate and oversee execution of user testing ● Collect and analyze results ● Provide recommendations based on results	● Pay for user testing ● Provide feedback on results and recommendations
Deployment	Migrate the website to the production environment and launch the new website.	Contractor will: ● Provide support to PCEA as the website is migrated to production and pushed live	PCEA will: ● Migrate the website files from its staging environment to the production environment
CMS Guide & Training	Create instructional documentation to enable PCEA to learn how to use the new CMS to update and maintain the website. Deliverable: CMS instructional guide document includes 3 rounds, an initial with 2 rounds of revisions.	Contractor will: ● Create CMS instructional guide ● Deliver two 2-hour training sessions to PCEA CMS managers	PCEA will: ● Provide review and/or approval of CMS guide/ documentation ● Identity CMS managers and their permissions in CMS ● CMS managers to participate in training sessions
Social Media Strategy	With an objective to increase the value of social media to the business and PCEA's audiences, develop social media strategy. Deliverable: Social media strategy document and reporting	Contractor will: ● Interview key PCEA marketing leadership and social media managers to align on related business and brand objectives for social media ● Develop a social media strategy that includes goals/objectives, content pillars, direction on what social media platforms to use and	PCEA will: ● Marketing leadership and social media managers to participate in interviews ● Provide reviews and feedback on social media strategy document iterations ● Participate in discussions to enable PCEA social team to support the strategy

	template includes 3 rounds, an initial with 2 rounds of revisions.	why, use of tools and platforms, brand tone and messaging, social care and escalation (community mgmt), paid social, metrics to use to measure performance, reporting best practices, and days of week and times of day to publish ● Create a reporting template to use when reporting on social media performance ● Provide consultation on PCEA social team structure, roles and responsibilities	
Social Media Playbooks & Guides	Create two documents, one to act as a playbook on community management best practices and the other regarding reporting best practices. Deliverable: One community management best practices document and a reporting best practices document — each includes 3 rounds, an initial with 2 rounds of revisions.	Contractor will: ● Create community management best practices document and review with PCEA ● Create reporting best practices document and review with PCEA ● Update both documents based on feedback ● Provide training sessions to train PCEA social media managers (see training section below)	PCEA will: ● Review each document and provide feedback and/or approvals
Social Media Content Calendaring	Create social media content calendar template use it to create calendars	Contractor will: ● Create content calendar template	PCEA will: ● Collaborate in creating calendars for July, August and September

	for July, August, and September 2024 social media content.	● Create calendar for July and update based on PCEA feedback ● Create calendar for August and update based on PCEA feedback ● Create calendar for September and update based on PCEA feedback ● Provide consultation and support to PCEA as the social media managers create and update calendars	● Own creating and updating calendars from October 2024 onward
Social Media Strategy Training	Create documentation to enable the PCEA social media team members to use the new social media strategy. Deliverable: Social media training guide document includes 3 rounds, an initial with 2 rounds of revisions.	Contractor will: ● Create social media training guide ● Deliver two 2-hour training sessions to PCEA social team members	PCEA will: ● Provide review and/or approval of social media training guide ● Identity social media platform managers and their permissions in each platform ● Social media managers to participate in training sessions
Martech Audit & Recommendations	Audit all technologies used for marketing and/or advertising purposes and provide recommendations for what to keep, change, and/or acquire. Deliverable: Audit and recommendations document	Contractor will: ● Use initial technology audit from insights brief as a source ● Identity all tech used for marketing and advertising and analyze its use and value for future marketing and advertising use ● Provide a final recommendation of what the marketing and advertising tech	PCEA will: ● Provide a list of all tech used for marketing and advertising ● List related marketing, engagement and tech requirements to the best of the PCEA team's ability ● Provide access and/or screen shares of all tech used ● Provide feedback and/or approval of recommendations

	includes 3 rounds, an initial with 2 rounds of revisions.	stack should be comprised of	
Home Electrification	Develop the Home Electrification GTM (go-to market) plan and provide creative/production support.	Contractor may: ● Provide consultation and/or create GTM plan ● Provide consultation and/or create paid media plans ● Provide consultation and/or Set up/configure campaigns on all required platforms ● Provide consultation and/or create campaign reports ● Write copy for campaign creative assets ● Design and produce campaign creative assets and deliverables ● Write scripts for campaign videos ● Edit campaign videos	PCEA to: ● Brief Contractor on campaign goals/objectives and/or creative needs ● Review all campaign assets and deliverables and provide feedback and/or approvals
Project & Account Management	Contractor will assign an account lead and project manager who will be the points of contact between PCEA and Contractor and be responsible for managing the relationship, communications, tasks, and deliverables.	Contractor's account and project managers will: ● Serve as main points of contact for PCEA ● Manage scope, budget, and timelines ● Maintain monthly deliverable tracker(s) ● Communicate task or deliverable status ● Manage creative development from concept, planning, execution, quality assurance, and publishing	PCEA to provide a primary point of contact for Contractor and project managers for business needs, priorities, assignments, direction, and feedback on all deliverables.

		• Create agendas & recaps, lead status meetings	

3. Assumptions

Villain will perform the above services of the project based on the following assumptions. Any deviation from the stated assumptions may result in a change to the level of effort, cost and timeline associated with this Project.

- The first phase of the website design includes requirements definition, UX (wireframes) and visual design (of homepage), SEO and content strategy — all of which will be core activities and deliverables aimed at defining how many sections and the content of the website. This means that before that is all completed we can only make assumptions to estimate the effort and cost for the build of the website. At the completion of those activities and deliverables Contractor will estimate the design and build of the website and communicate estimates to PCEA to review and approve prior to designing and building the website.
- Any deliverable created by Contractor that PCEA uses for commercial purposes, shall be deemed accepted and approved.
- PCEA to provide Contractor with requested information, documentation or access to people and systems/technology related to this Exhibit according to the agreed upon schedule.
- PCEA to provide clear and consolidated feedback during review of any planning or deliverables within the required timeframe per the project schedule.
- Contractor will create, deliver, manage and update detailed project plans for each project. Project plans will first be approved by PCEA before Contractor will commence services. Contractor to use these plans to manage projects on time and on budget, and PCEA for internal management and project tracking.
- If Client should require more time to deliver on a dependency or to provide direction and/or feedback, then that project-specific schedule will be adjusted to provide Contractor or PCEA with sufficient time to deliver on all tasks and deliverables.
- PCEA shall notify Contractor in writing if they wish to make changes to the scope of work. Contractor will provide a revised estimate and receive written authorization prior to proceeding.
- The cost of any stock assets (e.g. images and videos) are not included in the budget for this project. If/when required, Villain will inform Client and invoice Client for reimbursement of pre-approved stock content expenses, at cost.
- User Testing has not been scoped or priced yet. This will happen during the project and will require additional investment by PCEA.
- PCEA to provide clear expectations regarding ADA/accessibility and Brown Act compliance requirements by the end of the requirements phase of the website redesign.

Exhibit B - Amended June 27, 2024

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, PCEA shall pay Contractor based on the following rate card and terms:

Estimates

Cost estimates and estimated completion times are below. Contractor will submit detailed cost estimate with milestones for each project for approval by PCE prior to beginning work. Invoices will be time and materials and will specify the project and project phase or milestone being charged against.

PROJECT	ESTIMATED COST	COMPLETION
Website redesign	$200,000	Mid-September 2024
Social Strategy	$40,000	August 30, 2024
Marketing Technology Audit and Roadmap	$20,000	August 30, 2024
Home electrification marketing plan and creative development	$150,000	December 31, 2024
Amount of new scope	$410,000	
Balance from original contract	-$50,000	
Total contract NTE amount	$660,000	

Rates

The following rate card provides a description by role and hourly rate. The billing rate(s) of the team members assigned to the project may be increased from time to time upon thirty days prior written notice. Unless Client notifies Villain that it objects to such increases, work performed after the expiration of the notice period will be invoiced at the new rate(s). If Client objects to such increases, Villain may terminate this SOW by providing Client with thirty (30) days prior written notice.

Role	Rate
Lead Strategist	$300
Strategist	$250
Social Media Strategist	$250
Paid Media Specialist	$250
Account Lead	$250
Project Manager	$175
Creative Director	$200

Information Architect	$250
User Experience Designer	$200
Graphic Designer	$150
Copywriter	$200
SEO Specialist	$150
Marketing Manager	$150
Web Developer	$200
QA Specialist	$150
Video Editor	$200
Data Analyst	$175

Actual Hours Worked

Estimates of fees or time required to complete projects are approximations of the anticipated amount of time needed to complete the project. Client will be invoiced based on the amount of time actually required to complete the project. Billable hours are applicable only to actual hours expended. Billing is not applicable for absence due to holidays, illness, emergency leave, or vacation time. Villain will use its commercially practical efforts to minimize absences over which it may have control.

Invoicing

All work will be invoiced on a time and materials, hourly basis. Villain will submit an invoice monthly to Client for fees and direct expenses incurred hereunder. Invoices shall be generated from Villain's standard time record, identifying the charges with the project milestone they are being charged against. Time records for each Villain team member performing work hereunder shall be available to Client upon request. Standard time records shall be the basis for determining fees to be billed to Client under this Agreement.

Client shall pay all properly invoiced amounts within thirty (30) days from the date of the invoice. All out-of-pocket expenses (e.g. travel, mileage, transportation) incurred by Villain in connection with these services shall be approved by PCE in advance in writing, be billed at cost and included on the monthly invoice. All such expenses will be itemized when billed. Villain will use its commercially practical efforts to minimize those expenses over which it has control.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 4, 2024
MEETING DATE: June 27, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Shawn Marshall, Chief Executive Officer
Nelly Wogberg, Board Clerk

SUBJECT: Approval of Amendments to Peninsula Clean Energy's Operating Rules and Regulations: Policy 14, "Delegation of Non-Energy Contracts Commitment and Financial Authority Policy", Policy 15, "Energy Supply Procurement Authority", and Policy 16, "Selection of the Chair and Vice Chair and Appointment to the Executive Committee and Other Standing Board Committees"

RECOMMENDATION

Approval of Amended Peninsula Clean Energy Operating Rules and Regulations: Policy 14, "Delegation of Non-Energy Contracts Commitment and Financial Authority Policy", Policy 15, "Energy Supply Procurement Authority", and Policy 16, "Selection of the Chair and Vice Chair and Appointment to the Executive Committee and Other Standing Board Committees."

BACKGROUND

Peninsula Clean Energy's Operating Rules and Regulations are comprised of Board policies that govern the operations of the Agency. These policies are updated regularly based on changing needs of the organization and require Board approval. Staff has identified inconsistencies between these policies and the Joint Powers Authority (JPA) Agreement, which has resulted in proposed administrative updates as well as functional updates as appropriate.

Policy 14 - Delegation of Non-Energy Contracts Commitment and Financial Authority Policy

Policy 14 was first adopted by Peninsula Clean Energy's Board of Directors on November 16, 2017, when Peninsula Clean Energy had very few employees and limited operations.

It was amended on January 24, 2019, following the appointment of Peninsula Clean Energy's first Chief Financial Officer (CFO) to authorize the CFO to approve some limited transactions and to diversify some approval authority beyond a select few financial operations personnel.

On January 26, 2023, following the appointment of Peninsula Clean Energy's first Chief

Operating Officer (COO), the policy was amended to authorize the COO to approve some limited transactions and to further diversify the approval authority.

On August 24, 2023, the policy was further amended to streamline operations and place some limited responsibility for the approval of lower value contracts with several senior-level staff who are closer to the specific subject matter of a particular scope and agreement.

Policy 15 - Energy Supply Procurement Authority

In December 2017, the PCE Board adopted Policy 15 related to Energy Supply Procurement Authority. This policy authorizes the Chief Executive Officer (CEO) to approve agreements with terms of twelve months or less. The CEO is also authorized to approve agreements up to five years in consultation with the General Counsel and Board Chair.

On January 23, 2020, the PCE Board amended Policy 15 to: a) extend the CEO's authority to approve energy procurement contracts specific to local resource adequacy (RA) with terms up to thirty-six (36) months and b) allow the CFO authority to approve energy procurement contracts up to twelve (12) months, when CEO is unavailable and with prior written approval from CEO, and c) allow CEO authority, in consultation with the General Counsel, the Board Chair, and other members of the Board as CEO deems necessary to execute amendments to energy procurement contracts that had previously been approved by the Board.

Policy 16 - Selection of the Chair and Vice Chair and Appointment to the Executive Committee and Other Standing Board Committees

In January 2018, the PCE Board adopted Policy 16 to govern the selection of the Chair and Vice Chair and appointment to the Executive Committee and other standing Board Committees.

The PCE Board has established three Standing committees:
1) In April 2016 it established an Executive Committee currently made up of nine Board members.
2) In April 2017 it established the Audit and Finance Committee made up of five Board members.
3) In May 2017 it established the Community Advisory Committee currently made up of 13 community members who do not serve on the Board.

On January 24, 2019, in order to ease the Executive Committee and Audit and Finance Committee's ability to reach a quorum, Policy 16 was revised to allow "up to nine members" on the Executive Committee, and "up to five members" on the Audit and Finance Committee.

On March 25, 2021, Policy 16 was revised to enable the newly elected Chair and Vice Chair to make appointments to the Executive Committee and other standing Board Committees on an interim basis if there are vacancies, until the new slates for these committees are approved by the Board of Directors.

Policy 16 currently provides a process for selecting the Board Chair and Vice Chair, and appointments to the Executive Committee and Audit and Finance Committee but does not include any Board or committee operating procedures beyond that. This has been identified as an area of operational deficiency, which is discussed along with other administrative policy

amendments below.

DISCUSSION

Staff has identified discrepancies between the Joint Powers Authority (JPA) Agreement and certain PCE policies, and has proposed edits to ensure consistency and to streamline the documents governing PCE and the Board of Directors.

Policy 14 - Proposed name change to, "Non-Energy Agreement Signatory and Delegation Policy"

Staff identified that the approval authority for the Chief Executive Officer (CEO) was housed both in the JPA Agreement and in Policy 14. Staff recommends retaining this authority solely in Policy 14 to allow Staff and Board to respond quickly to any necessary future updates. A survey of other Community Choice Aggregators (CCAs) identified that the CEO signing authority can live in either the JPA or the PCE Operating Rules and Regulations, such as is the case in Policy 14.

Upon review of the JPA Agreement and policy 14, Staff recommends some additional functional updates detailed below:

In Section 4.1, Staff recommends an increase in the CEO contract signing authority from $100,000 to $250,000. Staff evaluated the $100,000 signing authority threshold originally adopted in 2015 as a percentage of non-energy costs in the table below.

	2018	2019	2020	2021	2022	2023	2024	2025
Non-Energy Costs	10,835,518	12,877,163	15,271,586	22,477,651	19,861,267	25,946,496	39,395,928	57,145,616
$100k	0.92%	0.78%	0.65%	0.44%	0.50%	0.39%	0.25%	0.17%
$150k								0.26%
$200k								0.35%
$250k								0.44%

As you can see, in 2018, $100,000 represented 0.92% of costs, which ranged between 0.40% - 0.80% over the next five years. Using a similar approach, staff suggests increasing the signing authority threshold to $250,000, which is 0.44% of the 2025 non-energy budgeted costs. It is worth noting that while Staff is recommending this increase to streamline operations and reduce the number of lower value contracts the Board must approve, it is also fine with whatever threshold increase the Board deems appropriate.

Finally, Staff also recommends the addition of Section 4.2 to delegate contracting authority to the Chief Financial Officer and/or the Chief Operating Officer in the event that the Chief Executive Officer is unavailable and there is written approval by the CEO or Board Chair.

Policy 15 - "Energy Supply Procurement Authority"
In addition to minor administrative edits, Staff recognized a need for delegation of authority in the event that the Chief Executive Officer is unavailable. Proposed edits to newly created Section 5 allow for the Chief Financial Officer to have the same energy contract authorities provided to the CEO in Policy 15, with written consent by the CEO or Board Chair, in the CEO's absence.

Policy 16 - Proposed name change to, "Policies and Procedures for Board of Directors,

Committees, and Advisory Groups"

Policy 16 has the most extensive set of proposed updates to better reflect and institutionalize current practices. Staff recommends updating this policy to detail the operating processes that the Board already follows and to create greater transparency for the public regarding how to engage with our public hybrid meetings. Earlier this year, the Board Chair requested language to guide decorum at PCE's public meetings. Other notable edits include:

- Removing officer term limits since they are already included in the JPA Agreement. Policy 16 will continue to guide the process and timeline for selecting a new Board Chair and Vice Chair;
- The inclusion of the Community Advisory Committee as a Standing Committee, and noting the difference between a Standing Committee and a Board Standing Committee, which is comprised of members of the Board;
- The definition of Ad Hoc Committees and Staff-Led Committees and how they differ from Brown Act meeting bodies;
- The inclusion of the Emeritus Advisory Group, designated by the Board and maintained by staff, and used as a resource for subject matter and institutional knowledge;
- An in depth guide to remote meeting attendance for both Board members and members of the public; and,
- Clear guidelines around public participation decorum in Board and Committee meetings.

Staff expects that adopting these proposed updates to Policy 16 will create more clarity and transparency for members of the Board, members of Committees, Advisory Group members, and members of the public.

The Executive Committee reviewed and discussed these updates at their June 10, 2024 meeting and voted unanimously to recommend these updates to the Board of Directors.

FISCAL IMPACT

None.

ATTACHMENTS:
Policy 14 - Revised Delegation of Authority Policy - Proposed Edits June 2024 - Clean.pdf
Policy 14 - Revised Delegation of Authority Policy - Proposed Edits June 2024 - Redline.pdf
Policy 15 - Procurement Authority - Proposed Edits June 2024 - Clean.pdf
Policy 15 - Procurement Authority - Proposed Edits June 2024 - Redline.pdf
Policy 16 - Board and Committee Appointments - Proposed Edits June 2024 - Clean.pdf
Policy 16 - Board and Committee Appointments - Proposed Edits June 2024 - Redline.pdf

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

APPROVAL OF AMENDMENTS TO PENINSULA CLEAN ENERGY'S OPERATING RULES AND REGULATIONS: POLICY 14, "DELEGATION OF NON-ENERGY CONTRACTS COMMITMENT AND FINANCIAL AUTHORITY POLICY", POLICY 15, "ENERGY SUPPLY PROCUREMENT AUTHORITY", AND POLICY 16, "SELECTION OF THE CHAIR AND VICE CHAIR AND APPOINTMENT TO THE EXECUTIVE COMMITTEE AND OTHER STANDING BOARD COMMITTEES"

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

WHEREAS, the Board of the Peninsula Clean Energy Authority approved the latest edits to Policy 14, "Delegation of Non-Energy Contracts Commitment and Financial Authority Policy" on August 24, 2023; and

WHEREAS, the Board of the Peninsula Clean Energy Authority approved the latest edits to Policy 15, "Energy Supply Procurement Authority" on January 23, 2020; and

WHEREAS, the Board of the Peninsula Clean Energy Authority approved the latest edits to Policy 16, "Selection of the Chair and Vice Chair and Appointment to the Executive Committee and Other Standing Board Committees" on March 25, 2021; and

WHEREAS, Peninsula Clean Energy Authority staff identified discrepancies between the above Policies and the Joint Powers Authority Agreement and has proposed edits to ensure consistency and streamline the documents governing the Peninsula Clean Energy Authority; and

WHEREAS, the Peninsula Clean Energy Authority has grown in size and maturity with multiple levels of management including a built out C-Suite, necessitating Board direction for delegation; and

WHEREAS, the Peninsula Clean Energy Authority recognizes the importance of clarity and transparent practices; and

WHEREAS, the Peninsula Clean Energy Authority Executive Committee reviewed and discussed the proposed changes to Policies 14, 15, and 16 at their meeting on June 10, 2024 and unanimously approved to recommend these administrative updates.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board approves the following revised policies:

- Policy 14, to be renamed the, "Non-Energy Agreement Signatory and Delegation Policy"
- Policy 15, "Energy Supply Procurement Authority"
- Policy 16, to be renamed the, "Policies and Procedures for Board of Directors, Committees, and Advisory Groups"

to be dated June 27, 2024.

PENINSULA CLEAN ENERGY

Policy Number: 14
Board Adoption: November 16, 2017
Revised: January 24, 2019
Revised: January 26, 2023
Revised: August 24, 2023
Revised: xx xx, 2024

Non-Energy Agreement Signatory and Delegation Policy

Overview and Purpose

Peninsula Clean Energy (PCE) is committed to effective and efficient management of its operations and finances. The purpose of this policy is to:

- Establish the principles that govern the delegation of non-energy contracting and financial commitment authority.
- Support accountability and efficiency in non-energy contracting
- Approval of expenses and disbursement authority is outlined in PCE Operating Rules and Regulations Policy 17, "Disbursement and Invoice Approval Authority"

1. Responsible Parties

The Chief Executive Officer, Chief Operating Officer and Chief Financial Officer are responsible for ensuring that uniform policies and procedures are followed for delegating and implementing approval authorities.

2. General Policy Guidelines

The cumulative amount of contracts and financial authority is limited by approved budgets. Approval from the Board of Directors for all financial commitments is required in order to exceed a budgeted amount as directed by PCE's Joint Powers Agreement, Section 5.2.3.

3. Scope

3.1 This policy applies to all the employees of Peninsula Clean Energy.

3.2 This policy is for staff only and does not cover the Board of Directors' powers and responsibilities, which are detailed in PCE's Joint Powers Agreement.

4. Policy Details

4.1 The Chief Executive Officer, the Chief Operating Officer, or the Chief Financial officer may approve and enter into any contract agreement if the total amount payable under the agreement is less than $250,000 in any fiscal year, as stated in the PCE Joint Powers Agreement, section 3.4, except for the specific approval authority granted in PCE Operating Rules and Regulations Policy 15 "Energy Supply Procurement Authority",, and the approval amount is included in the Board-approved budget for the current fiscal year.

4.2 In the absence of the Chief Executive Officer, with written approval delegating their authority by the CEO or the Board Chair, the Chief Financial Officer (CFO) and/or the

Chief Operating Officer (COO), may execute the delegated non-energy agreement as approved by the Board of Directors.

4.3 Upon request by the Board of Directors, The Chief Financial Officer will prepare a written monthly report for the Chief Executive Officer and Chief Operating Officer that lists all contract agreements approved that month.

Policy Number: 14
Board Adoption: November 16, 2017
Revised: January 24, 2019
Revised: January 26, 2023
Revised: August 24, 2023
Revised: xx xx, 2024

~~Delegation of Non-Energy Contracts Commitment and Financial Authority Policy~~Non-Energy Agreement Signatory and Delegation Policy

Overview and Purpose

Peninsula Clean Energy (PCE) is committed to effective and efficient management of its operations and finances. The purpose of this policy is to:

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- Support accountability and efficiency in non-energy contracting
- Approval of expenses and disbursement authority is outlined in PCE Operating Rules and Regulations Policy 17, "~~(~~Disbursement and Invoice Approval Authority"~~)~~

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amount is included in the Board-approved budget for the current fiscal year. ~~the then-current fiscal year's Board-approved budget.~~

4.2 In the absence of the Chief Executive Officer, with written approval delegating their authority to the Chief Financial Officer (CFO) and/or the Chief Operating Officer (COO), either the CFO and/or the COO may execute the delegated non-energy agreement as approved by the Board of Directors.

4.3 Upon request by the Board of Directors, The Chief Financial Officer will prepare a written monthly report for the Chief Executive Officer and Chief Operating Officer that lists all contract agreements approved that month.

PENINSULA CLEAN ENERGY

Policy Number: 15
Board Adoption: December 14, 2017
Revised: January 23, 2020
Revised: xx xx, 2024

Energy Supply Procurement Authority

Overview and Purpose

"Energy Procurement" shall mean all contracting for energy and energy-related products for PCE, including but not limited to products related to electricity, capacity, energy efficiency, distributed energy resources, demand response, and storage. In Energy Procurement, Peninsula Clean Energy Authority will procure according to the following guidelines:

1. **Short-Term Agreements**:
   a. The Chief Executive Officer (CEO) has the authority to approve Energy Procurement contracts with terms of less than twelve (12) months ~~or less~~, and; ~~in addition to contracts for Resource Adequacy that meet the specifications in section (b) and in Table 1 below.~~
   b. The Chief Executive Officer has authority to approve Energy Procurement contracts for Resource Adequacy that meet PCE's three (3) year forward capacity obligations measured in megawatts (MW) and that meet the specifications in Table 1 below, which are set annually by the California Public Utilities Commission and the California Independent System Operator for compliance requirements.

Table 1:

Product	Year-Ahead Compliance Obligation	Term Limit
Local Resource Adequacy	In years 1 & 2, must demonstrate capacity to meet 100% of monthly local obligation for years 1 and 2 and 50% of monthly local obligation for year 3 by October 31st of the prior year	Up to 36 months
System Resource Adequacy	In year 1, must demonstrate capacity to meet 90% of systems obligation for summer months (May – September) by October 31st of the prior year	Up to 12 months
Flexible Resource Adequacy	In year 1, must demonstrate capacity to meet 90% of monthly flexible obligation by October 31st of the prior year	Up to 12 months

~~c. Chief Financial Officer has authority to approve any contract for Resource Adequacy with a term of twelve (12) months or less if the CEO is unavailable and with prior written approval from the CEO.~~

~~d.~~c. The CEO shall report all such agreements to the Peninsula Clean Energy Board ~~monthly~~ through the quarterly procurement report.

2. **Medium-Term Agreements:**

   The Chief Executive Officer, in consultation with the General Counsel, the Board Chair, and other members of the Board as the Chief Executive Officer deems necessary, has the authority to approve Energy Procurement contracts with terms greater than twelve (12) months but not more than five (5) years, in addition to Resource Adequacy contracts as specified in Table 1 above. The Chief Executive Officer shall report all such agreements to the Peninsula Clean Energy Board through the quarterly procurement report. ~~The CEO shall report all such agreements to the PCE board monthly.~~

3. **Intermediate and Long-Term Agreements:**

   Approval by the Peninsula Clean Energy Board is required before the CEO enters into Energy Procurement contracts with terms greater than five (5) years.

4. **Amendments to Agreements**

   The Chief Executive Officer, in consultation with the General Counsel and the Board Chair, or Board Vice Chair in the event that the Board Chair is unavailable, has authority to execute amendments to Energy Procurement contracts that were previously approved by the Board.

5. **Delegation of Authority in the Absence of the Chief Executive Officer**
   a. In the absence of the CEO, with written consent by the CEO or the Board Chair, the Chief Financial Officer shall have all energy contract authorities of the CEO as described above.
   b. The CEO shall report all such agreements to the Peninsula Clean Energy Board through the quarterly procurement report.

PENINSULA CLEAN ENERGY

Policy Number: 15
Board Adoption: December 14, 2017
Revised: January 23, 2020
Revised: xx xx, 2024

Energy Supply Procurement Authority

Overview and Purpose

"Energy Procurement" shall mean all contracting for energy and energy-related products for PCE, including but not limited to products related to electricity, capacity, energy efficiency, distributed energy resources, demand response, and storage. In Energy Procurement, Peninsula Clean Energy Authority will procure according to the following guidelines:

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   The Chief Executive Officer, in consultation with the General Counsel, the Board Chair, and other members of the Board as the Chief Executive Officer deems necessary, has the authority to approve Energy Procurement contracts with terms greater than twelve (12) months but not more than five (5) years, in addition to Resource Adequacy contracts as specified in Table 1 above. The Chief Executive Officer shall report all such agreements to the Peninsula Clean Energy Board through the quarterly procurement report. ~~The CEO shall report all such agreements to the PCE board monthly.~~

3. **Intermediate and Long-Term Agreements:**

   Approval by the Peninsula Clean Energy Board is required before the CEO enters into Energy Procurement contracts with terms greater than five (5) years.

4. **Amendments to Agreements**

   The Chief Executive Officer, in consultation with the General Counsel and the Board Chair, or Board Vice Chair in the event that the Board Chair is unavailable, has authority to execute amendments to Energy Procurement contracts that were previously approved by the Board.

5. **Delegation of Authority in the Absence of the Chief Executive Officer**
   a. In the absence of the CEO, with written consent by the CEO or the Board Chair, the Chief Financial Officer shall have all energy contract authorities of the CEO as described above.
   b. The CEO shall report all such agreements to the Peninsula Clean Energy Board through the quarterly procurement report.

Policy Number: 16
Board Adoption: January 25, 2018
Revised: January 24, 2019
Revised: March 25, 2021
Revised: xx xx, 2024

Policies and Procedures for Board of Directors, Committees, and Advisory Groups

Overview and Purpose

The purpose of these policies and procedures is to provide a set of guidelines through which Peninsula Clean Energy (PCE) Board and Committees conducts their business in a fair, equitable and effective manner. If a provision of these policies or procedures conflicts or is inconsistent with State or Federal law, the State or Federal law shall govern. These rules are intended to enhance public participation and ensure effective committee meetings so that the best possible decisions can be made for Peninsula Clean Energy.

This policy governs the function of various boards and committees of Peninsula Clean Energy including the Board of Directors, the Executive Committee, Audit and Finance Committee, Staff Committees, Ad Hoc Committees, and the Emeritus Advisory Group.

1. Standing Committees

It is the policy of the Board to use standing committees in open and public meetings to conduct PCE business in greater depth than what is possible in the time allotted for Board meetings. The standing committees of PCE are: 1) Executive Committee, 2) Audit and Finance Committee, and 3) Community Advisory Committee. All standing committees are subject to the Brown Act and are conducted in publicly noticed in-person meetings. PCE standing committees are described below and shall be subject to the following procedural rules:

Executive Committee:

As a Standing Board Committee, the role of the PCE Executive Committee is to consider and make recommendations on matters relating to non-routine PCE operational procedures, significant policy matters that may require additional study or feedback before moving to the full Board, and/or matters referred to it by the Board.

The Executive Committee will consist of up to nine members, two of whom will be the Chair and Vice-Chair and up to seven of whom will be separately elected by the Board to serve one-year terms. The Chair of the Board shall also serve as the Chair of the Executive Committee. The Vice-Chair of the Board shall also serve as the Vice-Chair of the Executive Committee. Members of the Executive Committee will not be subject to term limits.

With respect to the process and timing for nomination and election of the Executive Committee, the Chair elected in February will, in consultation with the Vice-Chair, recommend to the Board at its March meeting a slate of up to seven Executive Committee members. The Board will be asked to cast a vote either for or against the entire slate at the March Board meeting. In the event the Board does not approve the slate, any Board members may nominate individual members to the Executive Committee or the Board may direct the Chair to return at the April Board meeting with a new slate. If there is an interim vacancy on the Executive Committee, the Board Chair and Vice Chair are authorized to fill that vacancy until the new slate is approved by the Board.

Audit and Finance Committee:

As a Standing Board Committee, the role of the Board Audit and Finance Committee is to consider and make recommendations on matters referred to it by the Board relating to PCE finance, budget, financial audits, and debt.

The Audit and Finance Committee will consist of up to five members elected by the Board to serve one-year terms. Members of the Audit and Finance Committee will not be subject to term limits.

With respect to the process and timing for nomination and election of the Audit and Finance Committee, the Chair elected in February will, in consultation with the Vice-Chair, recommend to the Board at its March meeting a slate of up to five Audit and Finance Committee members. The Board will be asked to cast a vote either for or against the entire slate at the March Board meeting. In the event the Board does not approve the slate, any Board members may nominate individual members to the Audit and Finance Committee, or the Board may direct the Chair to return at the April Board meeting with a new slate. Annually, the Audit and Finance Committee will elect a Chair and Vice Chair of the Audit and Finance Committee at their first meeting following the election of the slate. If there is an interim vacancy on the Audit and Finance Committee, the Board Chair and Vice Chair are authorized to fill that vacancy until the new slate is approved by the Board.

Community Advisory Committee:

The role of the Community Advisory Committee (CAC) is to advise on substantial public-facing program initiatives before they are presented to the Board of Directors for approval, as practical given timeliness, staff, and CAC capacity. CAC members also engage in outreach to the community and advocate for Peninsula Clean Energy's mission, goals, and programs; advise on high-level legislative and regulatory direction of the organization; provide a forum for community discussions on a wide variety of strategies in conjunction with staff and the Board; and form working groups, as recommended by the CAC membership, to assist Peninsula Clean Energy's staff and Board with projects of importance to the organization.

The Community Advisory Committee will consist of between 11 to 15 members drawn from the community and appointed by the PCE Board. Members might be affiliated with a community group but will not formally represent any particular group on the CAC. CAC members will serve three-year terms. Committee members may serve a total of three terms and serve at the pleasure of the Board.

Please see additional information regarding the Community Advisory Committee on PCE's website at: https://www.peninsulacleanenergy.com/community-advisory-committee.

General Standing Committee Requirements:

a. General purpose and function of Committees

The purpose and intent of standing committee meetings is to expedite Board action by providing more thorough and detailed discussion and study of prospective or current Board agenda items with a full and complete airing of all sentiments and expressions of opinion by both the committee and the public. Actions of the standing committee shall be advisory recommendations only, except as to matters expressly delegated to a committee by the Board. If a matter is taken forward to the full Board for approval after receiving a unanimous vote of approval at the committee level, the item may be placed on the Board's Consent Calendar, unless otherwise recommended by the Committee, Chair, General Counsel or Chief Executive Officer.

b. Quorum

A majority of the committee membership shall constitute a meeting quorum.

c. Attendance by Nonmembers

As required by the Brown Act, Board members who are not on a committee may attend the committee meeting but only as an observer; they may not speak in an official capacity or otherwise participate in the committee meeting. If the Board wishes to allow Board members who are not serving on the committee to speak, the meeting should be noticed as a meeting of the full Board, and all Board meeting procedural requirements will apply.

d. Minutes and Report of Committees

PCE staff, generally the Board Clerk, shall be responsible for the preparation and distribution to the Board of the minutes of the Executive and Audit and Finance committee meetings. In addition, a video recording of each meeting shall be posted on the PCE website in case a member of the public would like to watch the full meeting. The minutes of each committee meeting serve as the report to the Board and should be included, as appropriate, in subsequent Board meeting packets.

The CAC Committee Chair, in consultation with PCE staff, shall provide a written or verbal report of CAC meeting content and any action items during the CAC Report segment at the next publicly noticed Board meeting.

e. Committee Agendas

The Chair of each standing committee shall work with staff to prepare the agenda for committee meetings. Items should be scheduled as they are ready, taking into account the time required for staff research and analysis to support committee discussions, the time-sensitivity of particular items, and other factors as determined by staff and the committee chair.

f. Public Participation at Committees

Please see Section 4 for complete details on public participation at Board and Committee meetings.

Please note that Peninsula Clean Energy meetings are a limited public forum, and all public comment must relate to something that is on the agenda or within the subject matter jurisdiction of the Board and Agency. If comments do not relate to the agenda or subject matter jurisdiction of the Board and Agency, we will stop the comment and move on to the next speaker. General Counsel will assist in identifying comments that are not related to the meeting agenda or subject matter jurisdiction of the Board and Agency.

g. New Standing Committees

The Board may establish new standing committees as needed.

2. **Board Ad Hoc Committees and Staff-Led Committees**

The Board of Directors may create Ad Hoc Committees on a limited basis and subject matter when necessary to study PCE business in greater depth than what is possible in the time allotted for Board and Standing Committee meetings. The following rules are intended to clarify the distinction between Standing Committees, Ad Hoc Board Committees, and Staff-Led Subcommittees to establish operating guidelines for such committees:

a. Definition of Ad Hoc Committee

An Ad Hoc Committee of the Board is a temporary advisory committee composed of less than a quorum of Board members or any Standing Committee. The work of an Ad Hoc Committee has a limited or single purpose. An Ad Hoc committee is not intended to be perpetual but rather dissolved once its specific task is completed. By contrast, a Standing Committee has ongoing subject matter jurisdiction over a variety of related topics.

b. Definition of a Staff-Led Committee

A PCE staff-led committee is an informal group focused on a particular PCE topic or function that includes less than a quorum of Board or other standing committee members.

It is a non-Brown Act committee staffed by a member of PCE's executive team or PCE department head that meets periodically and at staff's direction. Staff shall utilize group feedback and/or vet a particular department specific topic. A staff-led subcommittee does not set Agency or Board policy or direction.

c. Brown Act

The procedural requirements of the Brown Act apply to all committees that have either: (a) continuing subject matter jurisdiction over a matter or group of related matters; or (b) a regular meeting schedule set by Board action. All Standing Committees are Brown Act bodies. Ad hoc committees are generally not Brown Act bodies, provided that: 1) they are temporary bodies, formed for the purpose of addressing a limited or single purpose, 2) include only members of Board, and 3) do not have a regular meeting schedule set by Board action. When the Board creates an Ad Hoc committee that is not a Brown Act body, the Board may, at its discretion, direct that the committee follow Brown Act procedures.

d. Creation and Appointment

The Board Chair or the full Board may create an Ad Hoc Committee and appoint less than a quorum of the Board or any Standing Committee to serve. The Chair will publicly announce any Ad Hoc Committee created, its membership, and stated purpose. In contrast, only the Board and not the Chair alone can create an ongoing Standing Committee. Staff-led subcommittees are organized and led by PCE executive and/or director-level staff.

e. Members

Ad Hoc Committees shall consist of less than a quorum of the Board, and shall not include any other persons, including members of other legislative bodies. Staff-led subcommittees shall consist of less than a quorum of the Board and may include others from the CAC or outside the Board as may be warranted.

f. Reporting

Ad Hoc Committees shall report their recommendations to the Board in the timeframe directed by the Board.

g. Termination of Ad Hoc Committee by Majority of the Board

A majority of the Board may vote to terminate any Ad Hoc Committee following placement of the issue on an agenda.

h. Conclusion

A public announcement shall be made any time the Ad Hoc Committee has concluded its work and/or upon dissolution.

3. **Emeritus Advisory Group**

Staff will maintain a list of interested former Directors or alternates of the PCEA Board of Directors, who have retired from public office, as the Emeritus Advisory Group. These group members will remain connected and engaged to PCEA business through their review of publicly posted Agenda Packets and newsletters. These group members could be called upon by Staff to provide expertise on particular issues/initiatives and to participate in subcommittee meetings on topics such as: outreach, legislative advocacy, technical assistance, teaching, review of staff work product, or any other means by which the Staff or the Community Advisory Committee can reasonably deploy their knowledge, enthusiasm and passion around clean energy advocacy and advancement of the mission of Peninsula Clean Energy Authority.

4. **General Procedures for Board of Directors Meetings**

The purpose of these guidelines is to facilitate the orderly and efficient conduct of PCE business. This purpose recognizes the value of establishing a community understanding of meeting procedures so that broad public participation is encouraged. This purpose also recognizes that Board members must have a common approach to the discussion and debate of PCE business so that meetings are both streamlined and thorough.

These are guidelines rather than rules. The Board intends that PCE staff and Board members will follow these guidelines; however, these guidelines should not be used in a way that leads to inefficiency, unfairness, or the promotion of form over substance.

In addition to Board-adopted guidelines, State law establishes a variety of mandatory meeting rules that the Board must follow in order to ensure open government and fair process, regardless of unusual situations and consequences. (See Cal. Govt Code section 54950.)

a. <u>Chair and Vice-Chair</u>

The Chair and Vice-Chair will be elected by the Board to serve one-year terms and be subject to term limits as defined by the Peninsula Clean Energy Join Powers Authority Section 3.8, “Selection of Board Officer”. A member may serve as Chair for one-year terms, however, after a break in service of at least one-year, a member may again serve as Chair. The same rules apply to the position of Vice-Chair. A member may serve consecutive terms as Vice-Chair and then subsequently serve as Chair. There is a general expectation that Vice-Chairs will serve as Chair following their term as Vice-Chair. However, ultimately, the decision of whom to elect is at the discretion of the Board.

With respect to the process and timing for nomination and election of the Chair and Vice-Chair, every January the Chair will appoint an ad hoc nominating committee made up of between three and five Board members, each of whom has indicated to the Chair an intention not to seek the positions of Chair or Vice-Chair. At the January meeting of the Board, the Chair will inform the Board of the composition of the nominating committee and invite interested members to notify the nominating committee of their desire to serve as either Chair or Vice-Chair. Prior to the February meeting of the Board, the nominating committee shall confer and prepare a recommendation regarding who should serve as Chair and Vice- Chair for that year. At the February Board meeting, that recommendation shall be submitted to the Board and the Board shall take action thereon.

b. Meeting Schedules, Agendas and Supporting Materials

The Board of Directors generally conducts two different kinds of meetings: regular meetings and special meetings. The PCE Joint Exercise of Powers Authority (the JPA Agreement) provides that the PCE Board of Directors holds at least six regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution or ordinance of the Board.

The Board also schedules periodic special meetings, which are meetings on any day or time other than the regular meeting time. The Board may call a special meeting on a minimum of 24 hours' notice. The Board makes every effort to provide notice well in advance of 24 hours.

c. Posting of Agendas

Under the Brown Act, meeting agendas must be posted no later than 72 hours prior to regular meetings and 24 hours prior to special meetings. Agendas are posted at meeting locations and on the PCE Board web page.

d. Supporting Reports and Materials

It is Board policy to make every effort to provide supporting reports and materials at the time the agenda is posted. Materials that are not available at the time of agenda posting will be distributed as soon as feasible before the meeting. Materials that are distributed to a majority of the Board will be made available to the public at the same time, as required by law. Some materials, such as presentation materials or "supplemental memoranda" may be distributed to Board members and the public at the meeting.

e. Attendance Procedures

The PCE Board expects its members to attend Board meetings regularly and consistently. Board members should notify their Alternates and the Board Clerk of any planned

absences. If a Member Jurisdiction has more than three (3) absences at Board meetings or three (3) absences at Standing Committee meetings, the Board Chair will direct staff to notify the subject Board member with the intention of resolving the participation issue, and with further absence will direct staff to send a letter to the city manager, mayor and city council with a request to designate a replacement.

f. Remote Attendance of Board Members at Board and Standing Committee Meetings

Board members are strongly encouraged to attend meetings in person. State law allows Board members to attend meetings remotely by following the procedures outlined in Government Code Section 54953(b) ("Standard Remote Attendance") or the procedures outlined in Assembly Bill 2449 (2022) ("AB 2449 Remote Attendance"). For convenience, these procedures are summarized below and are current as of the date of this Policy revision. If state law is subsequently amended, the amended terms of State law will apply.

Board members are encouraged to consult in advance with the Board Clerk and, if needed, PCE's General Counsel to ensure compliance with all required procedures.

i. Number of Remote Appearances

Standard remote attendance shall be permitted not more than five (5) times a year per legislative body (for example, five times a year for full Board meetings and five additional times a year for each Board committee).

AB 2449 Remote Attendance rules state that no more than two (2) meetings may be attended remotely during a calendar year under AB 2449 for "just cause," as described below.

ii. General Procedures for Appearing Remotely

Board members must follow mandatory procedures set forth in State law. At any meeting where a Board member is attending remotely, the following requirements must be met:

1. At least a quorum of the Board must participate from a singular physical location within the jurisdiction.
2. The agenda must identify and include an opportunity for the public to attend and directly address the Board member through a call-in option, an internet-based service option, and in-person at the location of the meeting.
3. The Board may not take action if there is an unresolved disruption to the meeting broadcast or to the ability to take call-in or internet-based public comment.

If the above threshold requirements are met, the Board member attending remotely must ensure they follow the procedures associated with either Standard Remote Attendance or AB 2449 Remote Attendance.

iii. Standard Remote Attendance Procedures

A Board member attending remotely using these procedures must ensure that:

1. The meeting agenda identifies the remote attendance location and is posted at that location in an area that is accessible and visible 24 hours a day for at least 72 hours prior to a regular meeting and 24 hours prior to a special meeting.
2. The remote attendance location is open and fully accessible to the public, and fully accessible under the Americans with Disabilities Act, throughout the entire meeting. These requirements apply to private residences, hotel rooms, and similar facilities, all of which must remain fully open and accessible throughout the meeting, without requiring identification or registration.
3. The remote attendance technology used is open and fully accessible to all members of the public, including those with disabilities.
4. Members of the public who attend the meeting at the remote attendance location have the same opportunity to address the Board from the remote location that they would if they were present at the quorum location.
5. The remote attendance location must not require an admission fee or any payment for attendance.
6. If the meeting includes a closed session, the Board Member must ensure that there is a private location available for that portion of the meeting. A private location means a closed room such that no other person can hear any portion of the closed session.
7. A Board member attending remotely must participate through audio and visual technology.

If the Board Member intends to follow the procedures of Standard Remote Attendance but determines that any or all of these requirements cannot be met, he or she shall not participate in the meeting remotely using Standard Remote Attendance procedures.

iv. Standard Remote Attendance Guidelines

1. Five (5) days written notice in advance of the publication of the agenda must be given by the Board member to the Board Clerk about their intent to participate remotely; the notice must include the address at which the remote attendance will occur, and the address the Board packet should be mailed to, if a hard copy is requested.

2. The Board member is responsible for posting the Board agenda in the remote location, or having the agenda posted by somebody at the location and confirming that posting has occurred. The Board Clerk will assist, if necessary, by emailing, faxing or mailing the agenda to whatever address or fax number the Board member requests; however, it is the Board member's responsibility to ensure that the agenda arrives and is posted. If the Board Member needs the assistance of the Board Clerk in delivery of the agenda, the fax number or address must be included in the five-day advance written notice above.
3. The Board Member must ensure that the location will be publicly accessible while the meeting is in progress.
4. The Board Member must state at the beginning of the Board meeting that the posting requirement was met at the location and that the location is publicly accessible and must describe the location.

v. <u>AB 2449 Remote Attendance Procedures</u>

1. In 2022 the Legislature adopted AB 2449, which amended the Brown Act to allow remote participation in certain narrow circumstances (listed below) without publishing the remote location on the meeting agenda and without providing public access from the remote location. AB 2449 will remain in effect until January 1, 2026.
2. Where the requirements of AB 2449 are met, a Board member is not required to follow the standard remote guidelines described above.
3. A Board member may use AB 2449 if the Board member has either "just cause" or "emergency circumstances" that require remote participation, as defined by AB 2449.

    A. **"Just cause"** is defined as:

    - a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires remote attendance,
    - a contagious illness that prevents in-person attendance,
    - a need related to a physical or mental disability which cannot be resolved by a request for reasonable accommodation, or
    - travel while on the business of a state or local agency.

    A Board member with "just cause" to attend remotely must notify the Board or Board committee and the Board Clerk at the earliest possible opportunity, including at the start of the meeting, of their need to participate remotely and provide a general description of the circumstances.

B. **"Emergency circumstances"** is defined as a physical or family medical emergency that prevents a Board member from attending the Board meeting in person.

A Board member attending remotely due to "emergency circumstances" must notify the Board or Board committee and the Board Clerk at the earliest possible opportunity.

The Board or Board committee must request a general description of the circumstances relating to the Board member's need to appear remotely. The description does not need to have more than 20 words, and the Board member does not have to disclose any personal medical information.

At the earliest opportunity available to it, the Board or Board committee must, by a majority vote of its members, take action on the request to approve or disapprove it. If the request does not allow sufficient time to place it on the agenda for the meeting for which the request is made, the legislative body must take action on the request at the beginning of the meeting by majority vote.

C. **Disclosures**. Board members attending remotely must publicly disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member and the general nature of the member's relationship with the individual.

D. **Technology**. Board members attending remotely shall participate using both audio and visual technology.

If the Board member intending to follow the procedures of AB 2449 Remote Attendance determines that any or all of these requirements cannot be met, he or she shall not participate in the meeting remotely using AB 2449 Remote Attendance procedures.

E. **AB 2449 Remote Attendance Sample Scripts**

At the start of the meeting, the Board member attending remotely may use the following language to identify under which provision they are attending remotely:

Just Cause:

"I have just cause to attend this meeting remotely under AB 2449. I have not attended a meeting remotely due to just cause more than once this calendar year. I have attended [NUMBER] meetings remotely this calendar year. I must attend this meeting remotely because…

1. "… I must provide caregiving to [RELATION]."
2. "… a contagious illness prevents me from attending in person."
3. "… I have a need related to a disability which could not be accommodated at this meeting."
4. "… I am travelling while on official business of [STATE OR LOCAL AGENCY]."

"In this room, I am accompanied by…

1. "…no one over the age of 18."
2. "…one or more individuals over the age of 18. They are [RELATION (e.g., my spouse, coworker, medical provider)]."

Emergency Circumstances:

"Due to emergency circumstances, I request to attend this meeting remotely under AB 2449. I have attended [NUMBER] meetings remotely this calendar year. The [PHYSICAL OR FAMILY] medical emergency I am facing requires my remote attendance because [BRIEF DESCRIPTION]."

"In this room, I am accompanied by…

1. "…no one over the age of 18."
2. "…one or more individuals over the age of 18. They are [RELATION (e.g., my spouse, coworker, medical provider)]."

5. **How the Public Engages with the Board and Committees**

Public Participation During Peninsula Clean Energy meetings

The Board and its Committees welcomes members of the public to participate in meetings through public comment opportunities. It is the policy of the Board to assure that members of the public have the opportunity to speak on any regular or special meeting agenda item before final action. These rules are intended to enhance public participation and Board and Committee debate so that the best possible decisions can be made for PCE and its member agencies. Open government meetings must allow everyone to be heard without fear of cheers or jeers. For these reasons, the Board and Committees take these rules seriously. Disruptive or unruly behavior in violation of the law can result in removal from the Peninsula Clean Energy meeting and/or arrest and prosecution.

a. Access to Meetings

In-Person and Remote Participation - Peninsula Clean Energy meetings are available in person in the locations provided on the agenda and through an online meeting platform. Members of the public are welcome to attend the meeting in person or to join the online meeting platform.

Translators - Speakers may bring a translator as needed and will be allotted additional time, as appropriate.

ADA Access - PCEA makes every reasonable effort to accommodate the needs of the disabled consistent with law. Any provision of these rules may be modified if needed to provide reasonable accommodation. Persons needing assistance should contact: the Board Clerk, at 650-414-1533 (voice) or nelly.wogberg@peninsulacleanenergy.com (email).

If found feasible by staff, members of the public may be given the opportunity to activate their personal video during their public comments.

b. Summary of Rules for Public Participation

Every regular agenda has two different kinds of opportunities for the public to speak. The first is during General Public Comment. The second is during the public comment or public hearing portion of each agenda item.

Please note that Peninsula Clean Energy meetings are a limited public forum, and all public comment must relate to something that is within the subject matter jurisdiction of the Board. If comments do not relate to the subject matter jurisdiction of the Board, we will stop the comment and move on to the next speaker. General Counsel will assist in identifying comments that are not related to the subject matter jurisdiction of the Board.

General Public Comment

This part of the meeting is provided so that the public can speak to any subject that is in the PCE jurisdiction, when there is no item listed on the agenda for that topic. State law does not permit the meeting body to act on or discuss an item raised at that meeting during General Public Comment. Board members shall not enter into debate with speakers but may ask brief clarifying questions and may ask PCE staff to follow up on any concerns raised.

Public comment or public hearing portion of each agenda Item

The Brown Act requires the opportunity for public comment on all listed agenda items, except ceremonial items, procedural items (Agenda Changes and Deletions) and brief announcements (Chair Report, CAC Report, CEO Report and Board Member Reports). Public comments or testimony must be related to the matter under consideration.

c. Time Limits

The presiding officer (usually the Chair or Vice Chair) may announce the time that each speaker may use. PCE generally allows 2 minutes per speaker, but a shorter time may be designated when there are many speakers, numerous items on the agenda, or items anticipated to be lengthy.

d. Gaining Permission to Speak

Any person who wants to make a spoken public comment on an item on the agenda can do so if they are attending either in person or virtually. Members of the public participating virtually should use the “raise hand” function in the online meeting platform, or if participating via phone, hit *9 to notify the Clerk that they wish to speak. The Clerk will provide the names of the speakers to the Chair or Vice Chair so that the speakers can be identified and organized in an orderly way when the Chair calls for public comment.

e. Public Decorum During Meetings

The presiding officer at PCE meetings (usually the Chair or Vice Chair) is authorized and required to “preserve strict order and decorum.” This is important in order to ensure a fair opportunity for everyone to participate in an open and civil setting.

i. No person, other than a Board or Committee member and the person having the floor, shall be permitted to speak without the permission of the presiding officer.

ii. All remarks should be addressed to the Board or Committee as a body and not to any individual member or staff person.

iii. It is unlawful for any person to: (1) Disrupt the conduct of a meeting; (2) Make threats against any person or against public order and security while in the Board Room.

Any Board or Committee Member may appeal the presiding officer’s decision on a decorum violation to the full Board or Committee. A meeting disruption may lead to a person being removed from the meeting and/or misdemeanor charges pursuant to the California Pe. *See* Cal. Penal Code Sections 403 and 422.

f. Record of Speakers

i. Persons wishing to address the Board or Committee within the meeting room, shall use the microphone provided for the public. All public speakers, whether in person or virtual participants shall speak in a recordable tone, either personally or with assistance, if necessary.

ii. Speakers are requested to state their name but cannot be compelled to do so as a condition of addressing the Board or Committee.

Policy Number: 16
Board Adoption: January 25, 2018
Revised: January 24, 2019
Revised: March 25, 2021

~~Selection of the Chair and Vice Chair and appointment to the Executive Committee and other standing Board Committees~~Policies and Procedures for Board of Directors, Committees, and Advisory Groups

Overview and Purpose

The purpose of these policies and procedures is to provide a set of guidelines through which Peninsula Clean Energy (PCE) Board and Committees conducts their business in a fair, equitable and effective manner. If a provision of these policies or procedures conflicts or is inconsistent with State or Federal law, the State or Federal law shall govern. These rules are intended to enhance public participation and ensure effective committee meetings so that the best possible decisions can be made for Peninsula Clean Energy.

~~1.~~ This policy governs the function of various boards and committees of Peninsula Clean Energy including the Board of Directors, the Executive Committee, Audit and Finance Committee, Staff Committees, Ad Hoc Committees, and the Emeritus Advisory Group. ~~Policy governing: (i) the appointment of the Chair and Vice-Chair; (ii) the make up of, and appointment process for, the Executive Committee, the Audit Committee, and the Finance Committee; and (iii) the maximum term length, if any, of the Chair, Vice-Chair, and members the Executive Committee, and the Audit and Finance Committee.~~

1. Standing Committees

It is the policy of the Board to use standing committees in open and public meetings to conduct PCE business in greater depth than what is possible in the time allotted for Board meetings. The standing committees of PCE are: 1) Executive Committee, 2) Audit and Finance Committee, and 3) Community Advisory Committee. All standing committees are subject to the Brown Act and are conducted in publicly noticed in-person meetings. PCE standing committees are described below and shall be subject to the following procedural rules:

Executive Committee:

As a Standing Board Committee, the role of the PCE Executive Committee is to consider and make recommendations on matters relating to non-routine PCE operational procedures, significant policy matters that may require additional study or feedback before moving to the full Board, and/or matters referred to it by the Board.

The Executive Committee will consist of up to nine members, two of whom will be the Chair and Vice-Chair and up to seven of whom will be separately elected by the Board to serve one-year terms. The Chair of the Board shall also serve as the Chair of the Executive Committee. The Vice-Chair of the Board shall also serve as the Vice-Chair of the Executive Committee. Members of the Executive Committee will not be subject to term limits.

With respect to the process and timing for nomination and election of the Executive Committee, the Chair elected in February will, in consultation with the Vice-Chair, recommend to the Board at its March meeting a slate of up to seven Executive Committee members. The Board will be asked to cast a vote either for or against the entire slate at the March Board meeting. In the event the Board does not approve the slate, any Board members may nominate individual members to the Executive Committee or the Board may direct the Chair to return at the April Board meeting with a new slate. If there is an interim vacancy on the Executive Committee, the Board Chair and Vice Chair are authorized to fill that vacancy until the new slate is approved by the Board.

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As a Standing Board Committee, the role of the Board Audit and Finance Committee is to consider and make recommendations on matters referred to it by the Board relating to PCE finance, budget, financial audits, and debt.

The Audit and Finance Committee will consist of up to five members elected by the Board to serve one-year terms. Members of the Audit and Finance Committee will not be subject to term limits.

With respect to the process and timing for nomination and election of the Audit and Finance Committee, the Chair elected in February will, in consultation with the Vice-Chair, recommend to the Board at its March meeting a slate of up to five Audit and Finance Committee members. The Board will be asked to cast a vote either for or against the entire slate at the March Board meeting. In the event the Board does not approve the slate, any Board members may nominate individual members to the Audit and Finance Committee, or the Board may direct the Chair to return at the April Board meeting with a new slate. Annually, the Audit and Finance Committee will elect a Chair and Vice Chair of the Audit and Finance Committee at their first meeting following the election of the slate. If there is an interim vacancy on the Audit and Finance Committee, the Board Chair and Vice Chair are authorized to fill that vacancy until the new slate is approved by the Board.

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Please see additional information regarding the Community Advisory Committee on PCE's website at: https://www.peninsulacleanenergy.com/community-advisory-committee.

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b. Quorum

A majority of the committee membership shall constitute a meeting quorum.

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As required by the Brown Act, Board members who are not on a committee may attend the committee meeting but only as an observer; they may not speak in an official capacity or otherwise participate in the committee meeting. If the Board wishes to allow Board members who are not serving on the committee to speak, the meeting should be noticed as a meeting of the full Board, and all Board meeting procedural requirements will apply.

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PCE staff, generally the Board Clerk, shall be responsible for the preparation and distribution to the Board of the minutes of the Executive and Audit and Finance committee

meetings.~~.~~ In addition, a video recording of each meeting shall be posted on the PCE website in case a member of the public would like to watch the full meeting. The minutes of each committee meeting serve as the report to the Board and should be included, as appropriate, in subsequent Board meeting packets.

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The Chair of each standing committee shall work with staff to prepare the agenda for committee meetings. Items should be scheduled as they are ready, taking into account the time required for staff research and analysis to support committee discussions, the time-sensitivity of particular items, and other factors as determined by staff and the committee chair.

f. Public Participation at Committees

Please see Section 4 for complete details on public participation at Board and Committee meetings.

Please note that Peninsula Clean Energy meetings are a limited public forum, and all public comment must relate to something that is on the agenda or within the subject matter jurisdiction of the Board and Agency. If comments do not relate to the agenda or subject matter jurisdiction of the Board and Agency, we will stop the comment and move on to the next speaker. General Counsel will assist in identifying comments that are not related to the meeting agenda or subject matter jurisdiction of the Board and Agency.

g. New Standing Committees

The Board may establish new standing committees as needed.

2. Board Ad Hoc Committees and Staff-Led Committees

The Board of Directors may create Ad Hoc Committees on a limited basis and subject matter when necessary to study PCE business in greater depth than what is possible in the time allotted for Board and Standing Committee meetings. The following rules are intended to clarify the distinction between Standing Committees, Ad Hoc Board Committees, and Staff-Led Subcommittees to establish operating guidelines for such committees:

a. Definition of Ad Hoc Committee

An Ad Hoc Committee of the Board is a temporary advisory committee composed of less than a quorum of Board members or any Standing Committee. The work of an Ad Hoc Committee has a limited or single purpose. An Ad Hoc committee is not intended to be

perpetual but rather dissolved once its specific task is completed. By contrast, a Standing Committee has ongoing subject matter jurisdiction over a variety of related topics.

b. Definition of a Staff-Led Committee

A PCE staff-led committee is an informal group focused on a particular PCE topic or function that includes less than a quorum of Board or other standing committee members. It is a non-Brown Act committee staffed by a member of PCE's executive team or PCE department head that meets periodically and at staff's direction. Staff shall utilize group feedback and/or vet a particular department specific topic. A staff-led subcommittee does not set Agency or Board policy or direction.

c. Brown Act

The procedural requirements of the Brown Act apply to all committees that have either: (a) continuing subject matter jurisdiction over a matter or group of related matters; or (b) a regular meeting schedule set by Board action. All Standing Committees are Brown Act bodies. Ad hoc committees are generally not Brown Act bodies, provided that: 1) they are temporary bodies, formed for the purpose of addressing a limited or single purpose, 2) include only members of Board, and 3) do not have a regular meeting schedule set by Board action. When the Board creates an Ad Hoc committee that is not a Brown Act body, the Board may, at its discretion, direct that the committee follow Brown Act procedures.

d. Creation and Appointment

The Board Chair or the full Board may create an Ad Hoc Committee and appoint less than a quorum of the Board or any Standing Committee to serve. The Chair will publicly announce any Ad Hoc Committee created, its membership, and stated purpose. In contrast, only the Board and not the Chair alone can create an ongoing Standing Committee. Staff-led subcommittees are organized and led by PCE executive and/or director-level staff.

e. Members

Ad Hoc Committees shall consist of less than a quorum of the Board, and shall not include any other persons, including members of other legislative bodies. Staff-led subcommittees shall consist of less than a quorum of the Board and may include others from the CAC or outside the Board as may be warranted.

f. Reporting

Ad Hoc Committees shall report their recommendations to the Board in the timeframe directed by the Board.

g. Termination of Ad Hoc Committee by Majority of the Board

A majority of the Board may vote to terminate any Ad Hoc Committee following placement of the issue on an agenda.

h. Conclusion

A public announcement shall be made any time the Ad Hoc Committee has concluded its work and/or upon dissolution.

3. **Emeritus Advisory Group**

Staff will maintain a list of interested former Directors or alternates of the PCEA Board of Directors, who have retired from public office, as the Emeritus Advisory Group. These group members will remain connected and engaged to PCEA business through their review of publicly posted Agenda Packets and newsletters. These group members could be called upon by Staff to provide expertise on particular issues/initiatives and to participate in subcommittee meetings on topics such as: outreach, legislative advocacy, technical assistance, teaching, review of staff work product, or any other means by which the Staff or the Community Advisory Committee can reasonably deploy their knowledge, enthusiasm and passion around clean energy advocacy and advancement of the mission of Peninsula Clean Energy Authority.

~~2.~~4. General Procedures for Board of Directors Meetings

The purpose of these guidelines is to facilitate the orderly and efficient conduct of PCE business. This purpose recognizes the value of establishing a community understanding of meeting procedures so that broad public participation is encouraged. This purpose also recognizes that Board members must have a common approach to the discussion and debate of PCE business so that meetings are both streamlined and thorough.

These are guidelines rather than rules. The Board intends that PCE staff and Board members will follow these guidelines; however, these guidelines should not be used in a way that leads to inefficiency, unfairness, or the promotion of form over substance.

In addition to Board-adopted guidelines, State law establishes a variety of mandatory meeting rules that the Board must follow in order to ensure open government and fair process, regardless of unusual situations and consequences. (See Cal. Govt Code section 54950.)

a. Chair and Vice-Chair

The Chair and Vice-Chair will be elected by the Board to serve one-year terms and be subject to term limits as defined by the Peninsula Clean Energy Join Powers Authority Section 3.8, "Selection of Board Officer". ~~The Chair and Vice-Chair will each be subject to a consecutive term limit of three years. That means that a~~ A member may serve as Chair for ~~up to three consecutive~~ one-year terms~~.~~, ~~H~~however, after a break in service of at least one-year, a member may again serve as Chair. The same rules apply to the position of Vice-Chair. A member may serve consecutive terms ~~ly serve three years~~ as Vice-Chair and then ~~three years~~subsequently serve as Chair. There is a general expectation that Vice-Chairs will serve as Chair following their term as Vice-Chair. However, ultimately, the decision of whom to elect is at the discretion of the Board.

With respect to the process and timing for nomination and election of the Chair and Vice-Chair, every January the Chair will appoint an ad hoc nominating committee made up of between three and five Board members, each of whom has indicated to the Chair an intention not to seek the positions of Chair or Vice-Chair. At the January meeting of the Board, the Chair will inform the Board of the composition of the nominating committee and invite interested members to notify the nominating committee of their desire to serve as either Chair or Vice-Chair. Prior to the February meeting of the Board, the nominating committee shall confer and prepare a recommendation regarding who should serve as Chair and Vice- Chair for that year. At the February Board meeting, that recommendation shall be submitted to the Board and the Board shall take action thereon.

b. Meeting Schedules, Agendas and Supporting Materials

The Board of Directors generally conducts two different kinds of meetings: regular meetings and special meetings. The PCE Joint Exercise of Powers Authority (the JPA Agreement) provides that the PCE Board of Directors holds at least six regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution or ordinance of the Board.

The Board also schedules periodic special meetings, which are meetings on any day or time other than the regular meeting time. The Board may call a special meeting on a minimum of 24 hours' notice. The Board makes every effort to provide notice well in advance of 24 hours.

c. Posting of Agendas

Under the Brown Act, meeting agendas must be posted no later than 72 hours prior to regular meetings and 24 hours prior to special meetings. Agendas are posted at meeting locations and on the PCE Board web page.

d. Supporting Reports and Materials

It is Board policy to make every effort to provide supporting reports and materials at the time the agenda is posted. Materials that are not available at the time of agenda posting will be distributed as soon as feasible before the meeting. Materials that are distributed to a majority of the Board will be made available to the public at the same time, as required by law. Some materials, such as presentation materials or "supplemental memoranda" may be distributed to Board members and the public at the meeting.

e. Attendance Procedures

The PCE Board expects its members to attend Board meetings regularly and consistently. Board members should notify their Alternates and the Board Clerk of any planned absences. If a Member Jurisdiction has more than three (3) absences at Board meetings or three (3) absences at Standing Committee meetings, the Board Chair will direct staff to notify the subject Board member with the intention of resolving the participation issue, and with further absence will direct staff to send a letter to the city manager, mayor and city council with a request to designate a replacement.

f. Remote Attendance of Board Members at Board and Standing Committee Meetings

Board members are strongly encouraged to attend meetings in person. State law allows Board members to attend meetings remotely by following the procedures outlined in Government Code Section 54953(b) ("Standard Remote Attendance") or the procedures outlined in Assembly Bill 2449 (2022) ("AB 2449 Remote Attendance"). For convenience, these procedures are summarized below and are current as of the date of this Policy revision. If state law is subsequently amended, the amended terms of State law will apply.

Board members are encouraged to consult in advance with the Board Clerk and, if needed, PCE's General Counsel to ensure compliance with all required procedures.

i. Number of Remote Appearances

Standard remote attendance shall be permitted not more than five (5) times a year per legislative body (for example, five times a year for full Board meetings and five additional times a year for each Board committee).

AB 2449 Remote Attendance rules state that no more than two (2) meetings may be attended remotely during a calendar year under AB 2449 for "just cause," as described below.

ii. General Procedures for Appearing Remotely

Board members must follow mandatory procedures set forth in State law. At any meeting where a Board member is attending remotely, the following requirements must be met:

1. At least a quorum of the Board must participate from a singular physical location within the jurisdiction.
2. The agenda must identify and include an opportunity for the public to attend and directly address the Board member through a call-in option, an internet-based service option, and in-person at the location of the meeting.
3. The Board may not take action if there is an unresolved disruption to the meeting broadcast or to the ability to take call-in or internet-based public comment.

If the above threshold requirements are met, the Board member attending remotely must ensure they follow the procedures associated with either Standard Remote Attendance or AB 2449 Remote Attendance.

iii. Standard Remote Attendance Procedures

A Board member attending remotely using these procedures must ensure that:

1. The meeting agenda identifies the remote attendance location and is posted at that location in an area that is accessible and visible 24 hours a day for at least 72 hours prior to a regular meeting and 24 hours prior to a special meeting.
2. The remote attendance location is open and fully accessible to the public, and fully accessible under the Americans with Disabilities Act, throughout the entire meeting. These requirements apply to private residences, hotel rooms, and similar facilities, all of which must remain fully open and accessible throughout the meeting, without requiring identification or registration.
3. The remote attendance technology used is open and fully accessible to all members of the public, including those with disabilities.
4. Members of the public who attend the meeting at the remote attendance location have the same opportunity to address the Board from the remote location that they would if they were present at the quorum location.
5. The remote attendance location must not require an admission fee or any payment for attendance.
6. If the meeting includes a closed session, the Board Member must ensure that there is a private location available for that portion of the meeting. A private location means a closed room such that no other person can hear any portion of the closed session.
7. A Board member attending remotely must participate through audio and visual technology.

If the Board Member intends to follow the procedures of Standard Remote Attendance but determines that any or all of these requirements cannot be met, he or she shall not participate in the meeting remotely using Standard Remote Attendance procedures.

iv. Standard Remote Attendance Guidelines

1. Five (5) days written notice in advance of the publication of the agenda must be given by the Board member to the Board Clerk about their intent to participate remotely; the notice must include the address at which the remote attendance will occur, and the address the Board packet should be mailed to, if a hard copy is requested.
2. The Board member is responsible for posting the Board agenda in the remote location, or having the agenda posted by somebody at the location and confirming that posting has occurred. The Board Clerk will assist, if necessary, by emailing, faxing or mailing the agenda to whatever address or fax number the Board member requests; however, it is the Board member's responsibility to ensure that the agenda arrives and is posted. If the Board Member needs the assistance of the Board Clerk in delivery of the agenda, the fax number or address must be included in the five-day advance written notice above.
3. The Board Member must ensure that the location will be publicly accessible while the meeting is in progress.
4. The Board Member must state at the beginning of the Board meeting that the posting requirement was met at the location and that the location is publicly accessible and must describe the location.

v. AB 2449 Remote Attendance Procedures

1. In 2022 the Legislature adopted AB 2449, which amended the Brown Act to allow remote participation in certain narrow circumstances (listed below) without publishing the remote location on the meeting agenda and without providing public access from the remote location. AB 2449 will remain in effect until January 1, 2026.
2. Where the requirements of AB 2449 are met, a Board member is not required to follow the standard remote guidelines described above.
3. A Board member may use AB 2449 if the Board member has either "just cause" or "emergency circumstances" that require remote participation, as defined by AB 2449.

A. **"Just cause"** is defined as:

- a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires remote attendance,
- a contagious illness that prevents in-person attendance,
- a need related to a physical or mental disability which cannot be resolved by a request for reasonable accommodation, or
- travel while on the business of a state or local agency.

A Board member with "just cause" to attend remotely must notify the Board or Board committee and the Board Clerk at the earliest possible opportunity, including at the start of the meeting, of their need to participate remotely and provide a general description of the circumstances.

B. **"Emergency circumstances"** is defined as a physical or family medical emergency that prevents a Board member from attending the Board meeting in person.

A Board member attending remotely due to "emergency circumstances" must notify the Board or Board committee and the Board Clerk at the earliest possible opportunity.

The Board or Board committee must request a general description of the circumstances relating to the Board member's need to appear remotely. The description does not need to have more than 20 words, and the Board member does not have to disclose any personal medical information.

At the earliest opportunity available to it, the Board or Board committee must, by a majority vote of its members, take action on the request to approve or disapprove it. If the request does not allow sufficient time to place it on the agenda for the meeting for which the request is made, the legislative body must take action on the request at the beginning of the meeting by majority vote.

C. **Disclosures**. Board members attending remotely must publicly disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member and the general nature of the member's relationship with the individual.

D. **Technology**. Board members attending remotely shall participate using both audio and visual technology.

If the Board member intending to follow the procedures of AB 2449 Remote Attendance determines that any or all of these requirements cannot be met, he or she shall not participate in the meeting remotely using AB 2449 Remote Attendance procedures.

E. **AB 2449 Remote Attendance Sample Scripts**

At the start of the meeting, the Board member attending remotely may use the following language to identify under which provision they are attending remotely:

Just Cause:

"I have just cause to attend this meeting remotely under AB 2449. I have not attended a meeting remotely due to just cause more than once this calendar year. I have attended [NUMBER] meetings remotely this calendar year. I must attend this meeting remotely because…

1. "… I must provide caregiving to [RELATION]."
2. "… a contagious illness prevents me from attending in person."
3. "… I have a need related to a disability which could not be accommodated at this meeting."
4. "… I am travelling while on official business of [STATE OR LOCAL AGENCY]."

"In this room, I am accompanied by…

1. "…no one over the age of 18."
2. "…one or more individuals over the age of 18. They are [RELATION (e.g., my spouse, coworker, medical provider)]."

Emergency Circumstances:

"Due to emergency circumstances, I request to attend this meeting remotely under AB 2449. I have attended [NUMBER] meetings remotely this calendar year. The [PHYSICAL OR FAMILY] medical emergency I am facing requires my remote attendance because [BRIEF DESCRIPTION]."

"In this room, I am accompanied by…

1. "…no one over the age of 18."
2. "…one or more individuals over the age of 18. They are [RELATION (e.g., my spouse, coworker, medical provider)]."

5. **How the Public Engages with the Board and Committees**

Public Participation During Peninsula Clean Energy meetings

The Board and its Committees welcomes members of the public to participate in meetings through public comment opportunities. It is the policy of the Board to assure that members of the public have the opportunity to speak on any regular or special meeting agenda item before final action. These rules are intended to enhance public participation and Board and Committee debate so that the best possible decisions can be made for PCE and its member agencies. Open government meetings must allow everyone to be heard without fear of cheers or jeers. For these reasons, the Board and Committees take these rules seriously. Disruptive or unruly behavior in violation of the law can result in removal from the Peninsula Clean Energy meeting and/or arrest and prosecution.

a. Access to Meetings

In-Person and Remote Participation - Peninsula Clean Energy meetings are available in person in the locations provided on the agenda and through an online meeting platform. Members of the public are welcome to attend the meeting in person or to join the online meeting platform.

Translators - Speakers may bring a translator as needed and will be allotted additional time, as appropriate.

ADA Access - PCEA makes every reasonable effort to accommodate the needs of the disabled consistent with law. Any provision of these rules may be modified if needed to provide reasonable accommodation. Persons needing assistance should contact: the Board Clerk, at 650-414-1533 (voice) or nelly.wogberg@peninsulacleanenergy.com (email).

If found feasible by staff, members of the public may be given the opportunity to activate their personal video during their public comments.

b. Summary of Rules for Public Participation

Every regular agenda has two different kinds of opportunities for the public to speak. The first is during General Public Comment. The second is during the public comment or public hearing portion of each agenda item.

Please note that Peninsula Clean Energy meetings are a limited public forum, and all public comment must relate to something that is within the subject matter jurisdiction of the Board. If comments do not relate to the subject matter jurisdiction of the Board, we will stop the comment and move on to the next speaker. General Counsel will assist in identifying comments that are not related to the subject matter jurisdiction of the Board.

General Public Comment

This part of the meeting is provided so that the public can speak to any subject that is in the PCE jurisdiction, when there is no item listed on the agenda for that topic. State law does not permit the meeting body to act on or discuss an item raised at that meeting during General Public Comment. Board members shall not enter into debate with

speakers but may ask brief clarifying questions and may ask PCE staff to follow up on any concerns raised.

Public comment or public hearing portion of each agenda Item

The Brown Act requires the opportunity for public comment on all listed agenda items, except ceremonial items, procedural items (Agenda Changes and Deletions) and brief announcements (Chair Report, CAC Report, CEO Report and Board Member Reports). Public comments or testimony must be related to the matter under consideration.

c. Time Limits

The presiding officer (usually the Chair or Vice Chair) may announce the time that each speaker may use. PCE generally allows 2 minutes per speaker, but a shorter time may be designated when there are many speakers, numerous items on the agenda, or items anticipated to be lengthy.

d. Gaining Permission to Speak

Any person who wants to make a spoken public comment on an item on the agenda can do so if they are attending either in person or virtually. Members of the public participating virtually should use the "raise hand" function in the online meeting platform, or if participating via phone, hit *9 to notify the Clerk that they wish to speak. The Clerk will provide the names of the speakers to the Chair or Vice Chair so that the speakers can be identified and organized in an orderly way when the Chair calls for public comment.

e. Public Decorum During Meetings

The presiding officer at PCE meetings (usually the Chair or Vice Chair) is authorized and required to "preserve strict order and decorum." This is important in order to ensure a fair opportunity for everyone to participate in an open and civil setting.

i. No person, other than a Board or Committee member and the person having the floor, shall be permitted to speak without the permission of the presiding officer.

ii. All remarks should be addressed to the Board or Committee as a body and not to any individual member or staff person.

iii. It is unlawful for any person to: (1) Disrupt the conduct of a meeting; (2) Make threats against any person or against public order and security while in the Board Room.

Any Board or Committee Member may appeal the presiding officer's decision on a decorum violation to the full Board or Committee. A meeting disruption may lead to a person being removed from the meeting and/or misdemeanor charges pursuant to the California Pe. *See* Cal. Penal Code Sections 403 and 422.

f. Record of Speakers

i. Persons wishing to address the Board or Committee within the meeting room, shall use the microphone provided for the public. All public speakers, whether in person or virtual participants shall speak in a recordable tone, either personally or with assistance, if necessary.

~~i.~~ii. Speakers are requested to state their name but cannot be compelled to do so as a condition of addressing the Board or Committee.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 14, 2024
MEETING DATE: June 27, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Kirsten Andrews-Schwind, Associate Director of Community Relations and Climate Equity

SUBJECT: Approval of a Resolution Supporting Analysis of Greenhouse Gas Reductions from Local Building Electrification Options

RECOMMENDATION

Adopt a resolution directing that PCE staff, or its consultants, estimate and report to member jurisdictions and the public, for each existing and planned building electrification policy, model ordinance, and regulation, promoted or offered by Peninsula Clean Energy, the amount of greenhouse gas emissions reduction and co-benefits that could realistically be achieved by adopting such policy, ordinance, or regulation.

BACKGROUND

Peninsula Clean Energy's mission is to reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions. By creating a 100% clean electricity product, Peninsula Clean Energy is significantly reducing emissions for our member agencies and helping them meet their climate goals. PCE supports customers and member agencies' efforts to decarbonize the community by electrifying buildings and vehicles and powering them with clean electricity.

In September 2018, the Board approved the PCE Program Roadmap, which identifies programs for 2019 and beyond including initiatives in building and transportation electrification as well as distributed energy resources. As part of the decarbonization objectives, PCE has also developed analytics and ongoing reporting to monitor progress. In 2022, Peninsula Clean Energy prepared a 2035 Decarbonization Feasibility Analysis & Plan and found that 30% of remaining Countywide emissions are from methane gas combustion in buildings, while 50% of remaining emissions are from vehicles.

To monitor progress, PCE maintains a Strategic Plan Dashboard that summarizes Key Performance Indicators (KPIs) for the organization, including the relative impact of our programs in terms of metric tons of emissions saved. This dashboard is presented to the Executive Committee twice per year, and the Board of Directors once per year.

The 2018 Program Roadmap identified building codes as a major priority to provide effective support for building decarbonization and EV readiness. In January 2019 the Board approved a contract with TRC Engineers to provide technical assistance to local governments for the development of enhancements to local building codes, known as “reach codes”, to deliver increased EV readiness and all-electric buildings. This program is in partnership with Silicon Valley Clean Energy (SVCE) which is sharing the costs.

The program has been highly successful and is unique nationally. To date, 19 local governments in San Mateo County have adopted some form of new construction reach code covering over 90% of the County population. In SVCE territory, 12 agencies adopted reach codes and 15 local governments overall in Santa Clara County. The adoption of reach codes has had statewide and national impact, inspiring many other jurisdictions to follow suit. According to the Building Decarbonization Coalition1, 56 cities in California, 8 California Counties, and 130 jurisdictions nationwide have adopted a form of electrification ordinance to-date, most following PCE’s model codes. Reach codes have been instrumental in assisting the state in moving forward on all-electric and increased EV readiness for new construction by demonstrating in numerous jurisdictions the effective adoption of advanced codes, including with builder acceptance and successful implementation. Prior to the success of the local reach codes, the direction of the state code was substantially less advanced. The statewide code changes now include the following elements, most of which were already standard in PCE’s reach code since 2019:

- Building electrification requirements:
  - Heat pump space heating baseline for most new commercial buildings
  - Heat pump space or water heating baseline for new residential buildings
  - Proposed 2025 requirement for electrification upon replacement for specific types of existing commercial building heating systems
  - Proposed 2025 CalGreen voluntary requirement for electrification upon replacement for existing residential air conditioning systems.
- EV charging requirements:
  - Move towards EV-ready installations instead of only conduit and panel capacity
  - Introduction of low-power outlets
  - Introduction of automated load management systems
  - Proposed 2026 requirement requiring charging access for all new multi-unit dwellings, with a port available to each dwelling unit.

The Reach Codes Program has been found to be one of PCE’s most effective programs for reducing building and vehicle emissions. Policies adopted for new construction in PCE territory are expected to save over 60,000 tons of CO2-equivalent (CO2e) from 2020-2030.

DISCUSSION

Due to recent developments, some agencies are actively considering updates to their 2022 reach code policy. Policies under consideration include: updates to new construction all-electric building requirements, updates to EV readiness requirements, and existing building decarbonization requirements of differing levels of impact.

On May 9, 2024, the Community Advisory Committee (CAC) adopted the following resolution:

WHEREAS, it is an Institutional Priority of Peninsula Clean Energy to contribute to member jurisdictions reaching the State’s 2045 goal to be 100% greenhouse gas free for transportation

and building electrification by 2035; and

WHEREAS, the Board of Directors issued a directive in September 2021 on reaching 100% greenhouse gas free by 2035; and

WHEREAS, member jurisdictions have limited resources and time within which to dramatically reduce greenhouse gas emissions to meet the above goals; and

WHEREAS, the Peninsula Clean Energy Community. Advisory Committee believes both the mission of Peninsula Clean Energy and the best interests of member jurisdictions would be served by ensuring member jurisdictions are well informed of the likely relative effectiveness of existing and planned building electrification policies, model ordinances, and regulations offered by PCE, in making progress toward these goals.

NOW, THEREFORE, BE IT RESOLVED that the Peninsula Clean Energy Community Advisory Committee respectfully requests that the PCE Board of Directors direct staff to disclose to all its member jurisdictions and the public, for each existing and planned building electrification policy, model ordinance, and regulation, promoted or offered by Peninsula Clean Energy: the amount of greenhouse gas emissions reduction and co-benefits that could realistically be achieved by adopting such policy, ordinance, or regulation.

While the CAC resolution does not include the EV readiness provisions of building codes, it is worth noting that the EV component of our reach code project has had major influence across the state. By 2026, local reach codes for EV-reading in new multi-family buildings may no longer be necessary as the state code has essentially now caught up to the EV readiness required by cities that pioneered local reach codes.

Following the CAC meeting last month, staff has discussed potential collaboration with the County of San Mateo Regionally Integrated Climate Action Planning Services (RICAPS) program, and its climate action planning consultant, Rincon. The RICAPS Program appears to have budget and staff to assist with determining the GHG emissions reduction potential related to electrification and EV readiness policies which may be under consideration. PCE staff also discussed the CAC request with TRC.

PCE staff can work with Rincon and TRC to:

- Develop a list of potential strategies member agencies are actively considering or may consider.
- Calculate the rough order of magnitude GHG reduction potential of various strategies, specifically as a way for member agencies to compare relative impact of different policies, ordinances or regulation.
- Calculate the magnitude of impact in terms of projected EV-ready spaces due to different policy options.
- Provide summary slides to help member agency elected officials understand relative impact of policy options.

PCE staff will provide these summaries in terms of GHG savings per year, or GHG over multiple years of different strategies, specifically listed in metric tons CO2-equivalent. PCE and its consultants can also list potential co-benefits associated with each policy option.

Cities are actively adopting reach codes this summer, with East Palo Alto approving its new

reach code on first reading on June 4th. PCE can work with Rincon and TRC to have updated methodologies and emissions reduction potential information ready through the summer and will expect to include that information on a local policy discussion at which PCE or its consultants are presenting, as soon as the information is ready. This will be ready for inclusion in our discussions sometime Q3 2024.

FISCAL IMPACT

No new fiscal impact. The work will be performed under existing TRC and Rincon contracts, and with PCE staff time.

STRATEGIC PLAN

The proposed program supports the following elements of the strategic plan:

Goal 3: Community Energy Programs, Objective A:

- Key Tactic 3: Ensure nearly all new construction is all-electric and EV ready
- Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

APPROVAL OF A RESOLUTION SUPPORTING ANALYSIS OF GREENHOUSE GAS REDUCTIONS FROM LOCAL BUILDING ELECTRIFICATION OPTIONS

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California ("Peninsula Clean Energy" or "PCE"), that

WHEREAS, it is an Institutional Priority of Peninsula Clean Energy to contribute to member jurisdictions reaching the State's 2045 goal to be 100% greenhouse gas free for transportation and building electrification by 2035; and

WHEREAS, the Board of Directors issued a directive in September 2021 on reaching 100% greenhouse gas free by 2035; and

WHEREAS, member jurisdictions have limited resources and time within which to dramatically reduce greenhouse gas emissions to meet the above goals; and

WHEREAS, the Peninsula Clean Energy Community Advisory Committee believes both the mission of Peninsula Clean Energy and the best interests of member jurisdictions would be served by ensuring member jurisdictions are well informed of the likely relative effectiveness of existing and planned building electrification policies, model ordinances, and regulations offered by PCE, in making progress toward those goals.

NOW, THEREFORE, BE IT RESOLVED that Peninsula Clean Energy adopt a resolution directing that PCE staff, or its consultants, estimate and report to member jurisdictions and the public, for each existing and planned building electrification policy, model ordinance, and regulation, promoted or offered by PCE, the amount of greenhouse gas emissions reduction and co-benefits that could realistically be achieved by adopting such policy, ordinance, or regulation.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 13, 2024
MEETING DATE: June 27, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jana Kopyciok-Lande, Associate Director of Innovation Strategy

SUBJECT: Approval of Residential Low-Income Self-Generation Incentive Program (SGIP) Assistance Program

RECOMMENDATION

Approval of a program to support low-income residential customers to access incentives under the statewide Self-Generation Incentive Program (SGIP).

BACKGROUND

Peninsula Clean Energy's mission is to reduce greenhouse gas (GHG) emissions and reinvest in the San Mateo County and Los Banos community. Outages and high utility costs, especially for low-income customers, are a material concern in PCE's service territory.

The Self-Generation Incentive Program (SGIP) is California's statewide program to incentivize behind-the-meter (BTM) energy storage systems (ESS). AB 209 (2022) and AB 102 (2023) allocated $280 million of new funding to SGIP for income-qualified residential customers and expanded incentives to also include behind-the-meter solar+storage projects (instead of only standalone storage system like previous years). SGIP provides significant incentives which can fully cover solar and battery systems for eligible low-income customers.

Accessing these incentives is challenging, especially for underserved communities. One primary barrier is the complexity in navigating the SGIP application process. This has led many customers and installers not to apply for SGIP funding for their residential battery energy storage projects. The result is higher costs for customers and inaccessibility for income-qualified customers.

DISCUSSION

PCE is undertaking a broad effort to diversify revenue sources for its programs to increase its impact. This includes pursuing select, high-impact state and federal funding opportunities where PCE is well positioned for success.

The SGIP program provides an opportunity to help low-income customers install residential

storage or solar with storage systems, including customers that have received electrification support from PCE via the Home Upgrade program. PCE is developing a program to facilitate access to SGIP incentives for eligible customers to help simplify the SGIP application process on behalf of PCE's customers and installers and to support more installations of solar and battery energy storage systems in PCE's service area. Under the program, an individual customer installing a standalone storage system would receive a system valued up to $13,200, and one installing a solar + storage system would receive a system valued up to $25,600. In either case, PCE would cover the cost then receive the equivalent funds from SGIP. This program would be a one-time program for 2024-25 while SGIP funding is available and is recommended for approval by the PCE Executive Committee. The PCE Community Advisory Board (CAC) also endorses the development of the SGIP Assistance Program, encouraging staff to explore strategies for multifamily buildings and other rental property participation.

The new funding for SGIP is expected to become available in Q4 2024. Applications for the rebates must be immediately submitted at the time applications open because available funds are typically quickly exhausted. As a result, eligible customers must be identified in advance and an experienced rebate administrator must be selected to file the applications and manage associated activity.

To that end, PCE would issue a competitive solicitation for a rebate administrator to facilitate the SGIP applications. PCE would also potentially select one or more installers to participate, with prevailing wage compensation. PCE would identify and recruit customers eligible for the SGIP program, verify their eligibility for incentives in advance of new funding becoming available, secure the SGIP rebates for the eligible customers by working with the selected rebate administrator, and support the installations of solar+storage or standalone storage systems in 2025 for customers with reserved SGIP funds.

It is anticipated that some income-qualified homes may also need roofing work. This is a common major barrier for solar installations. While the SGIP program provides up to $3,500 in additional incentives for remediation work, the program will likely not be able to cover major roofing work. Hence, the prospective PCE SGIP Assistance Program could include additional support for roof repairs. Costs for roof repair vary significantly depending on need, ranging from under $1,000 to over $10,000. Because customers will see substantial on-bill savings from solar and storage systems it may be possible to finance roof repairs when needed.

It is envisioned that PCE would offer its Zero Percent Loan on-bill finance to address roof repair costs, but with the intention that customers would still see savings even with the finance payments during the loan term. Details of this element remain to be developed but assuming 200 homes participate, possibly half might have solar (100) and half of those (50) might need roof work. Assuming an average of $10,000 per home would result in $500,000. This budget is within the planned budget for residential solar and storage financing for FY25.

Finally, it is also envisioned that the battery storage dispatch of the systems installed under the SGIP Assistance Program would be optimized under a future PCE Virtual Power Plant (VPP) to also provide grid value. This would mean maximizing the dispatch in the evening net peak. In the long- run, PCE plans to put in place a distributed energy resource management system (DERMS) under which these resources would be integrated. However, the PCE DERMS is unlikely to be in place in time for these deployments. The specific near-term method of ensuring grid value is under development and may be contractual with the battery provider.

The Executive Committee considered this item on June 10, 2024 and voted unanimously to recommend approval by the full Board of Directors.

FISCAL IMPACT

Estimated direct costs of under $100,000 for the SGIP rebate administrator. Program would include some financing which would be repaid by customers, which could be in approximately $500,000. This is within the planned residential solar and storage financing of up to $3 million for FY25. Other program incentive funds would be entirely from SGIP. If PCE enables 200 customers access to SGIP incentives (100 of them for standalone storage systems and 100 for solar+storage systems), PCE would bring more than $4.5 million in SGIP incentives to our low-income residential customers.

STRATEGIC PLAN

The proposed program supports the following elements of the strategic plan:

Goal 3 – Community Energy Programs, Objective B: Support strategic decarbonization and local power

Key Tactic 1: Create minimum of 20 MW of new local renewable power sources in PCE service territory by 2025

Reduce barriers to residential solar including methods to drive down installation costs

Key Tactic 2: Support distributed energy resources to lower costs, support reliability, and advance distributed and grid decarbonization

Develop and implement programs to lower customer energy costs through distributed generation and load shaping

Key Tactic 3: Foster resilience

Support residential storage

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

APPROVAL OF RESIDENTIAL LOW-INCOME SELF-GENERATION INCENTIVE PROGRAM (SGIP) ASSISTANCE PROGRAM

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

WHEREAS, PCE was formed on February 29, 2016; and

WHEREAS, solar and storage systems provide numerous benefits including reducing energy costs and supporting decarbonization; and

WHEREAS, support for residential solar and storage systems is on the PCE program roadmap; and

WHEREAS, support for low-income communities is an identified priority for PCE; and

WHEREAS, the Self-Generation Incentive Program is a high-value opportunity not easily accessed by low-income community members.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board approves the creation of the Residential Low-Income Self-Generation Incentive Program (SGIP) Assistance Program.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 21, 2024
MEETING DATE: June 27, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Nelly Wogberg, Board Clerk

SUBJECT: Approval of Minutes from the March 28, 2024 and May 23, 2024 Board of Directors Meetings

RECOMMENDATION

Approve Minutes from the March 28, 2024 and May 23, 2024 Board of Directors Meetings.

ATTACHMENTS:
03-28-2024_Draft_Minutes.pdf
05-23-24_BOD_Draft_Minutes.pdf

Regular Meeting of the Board of Directors of the Peninsula Clean Energy Authority (PCEA) Minutes

Thursday, March 28, 2024
6:30 p.m.
Zoom Video Conference and Teleconference

CALL TO ORDER

Meeting was called to order at 6:34 p.m. in virtual teleconference, in the Peninsula Clean Energy Authority lobby, in the Los Banos City Hall conference room A, and at the Hotel at Oberlin Lobby.

ROLL CALL

Participating:

Rick DeGolia, Atherton, *Chair*
Tom McCune, Belmont
Coleen Mackin, Brisbane
Donna Colson, Burlingame, *Vice Chair*
Ken Gonzalez, Colma
Carlos Romero, East Palo Alto, arrived 6:36 p.m.
Harvey Rarback, Half Moon Bay
Leslie Ragsdale, Hillsborough, participating from the Oberlin Hotel
Paul Llanez, Los Banos
Anders Fung, Millbrae
Tygarjas Bigstyck, Pacifica
Jeff Aalfs, Portola Valley
Marty Medina, San Bruno
John Dugan, San Carlos
Amourence Lee, San Mateo

Absent:

Dave Pine, San Mateo County
Ray Mueller, San Mateo County
Roderick Daus-Magbual, Daly City
Sam Hindi, Foster City
Betsy Nash, Menlo Park
Elmer Martinez Saballos, Redwood City
James Coleman, South San Francisco
Ned Fluet, Woodside

A quorum was established.

PUBLIC COMMENT

None

ACTION TO SET THE AGENDA AND APPROVE REMAINING CONSENT AGENDA ITEMS

MOTION: Director Fung moved, seconded by Director Romero to set the Agenda, and approve Agenda Item Numbers 1-5.

1. Authorization of Peninsula Clean Energy's General Counsel to Execute with the Law Firm of Clean Energy Counsel, an Engagement Agreement Allowing for a Term from March 1, 2024 Through February 28, 2026 in an Amount Not-to-Exceed $500,000.
2. Authorization of Peninsula Clean Energy's General Counsel to Execute with the Law Firm of Sheppard, Mullin, Richter & Hampton LLP, an Engagement Agreement Allowing for a Term from January 1, 2024 Through December 31, 2025 in an Amount Not-to-Exceed $1,700,000.
3. Approval of One EV Ready Program Fund Reservation Agreement, Providing Approximately $100,000 in Customer Incentives to San Mateo Union High School District.
4. Approval of Contract Amendment with Optony for the GovEV Program for an increase of $410,000 to a total of $800,000 and 16-Month Extension to a Total Contract Term of Approximately 4-years.
5. Approval of Minutes from the July 27, August 24, and September 28, 2023 Board Meetings.

MOTION PASSED: 15-0 (Absent: San Mateo County, San Mateo County, Daly City, Foster City, Menlo Park, Redwood City, South San Francisco, Woodside)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine				X
San Mateo County	Director Mueller				X
Atherton	Director DeGolia	X			
Belmont	Director McCune	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			
Daly City	Director Daus-Magbual				X
East Palo Alto	Director Romero	X			
Foster City	Director Hindi				X
Half Moon Bay	Director Rarback	X			
Hillsborough	Director Ragsdale	X			
Los Banos	Director Llanez	X			
Menlo Park	Director Nash				X
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck	X			
Portola Valley	Director Aalfs	X			
Redwood City	Director Martinez Saballos				X
San Bruno	Director Medina	X			
San Carlos	Director Venkatesh	X			
San Mateo	Director Loraine	X			

South San Francisco	Director Coleman				X
Woodside	Director Fluet				X
	Total	15			8

REGULAR AGENDA

6. Chair Report

None

7. CEO Report

Shawn Marshall, Chief Executive Officer, gave a presentation including a regulatory update and a programs update.

8. Community Advisory Committee Report

Cheryl Schaff, Community Advisory Committee (CAC) Chair, gave a report on the March 14, 2024 CAC meeting.

9. Selection of Board of Directors Chair and Vice Chair (Action)

Director Fung shared that the Board Chair and Vice Chair Ad Hoc Nominating Committee nominates Donna Colson from Burlingame to serve as the Board Chair and Marty Medina from San Bruno to serve as the Vice Chair.

Director Medina expressed gratitude for the opportunity and expressed appreciation to Chair DeGolia.

MOTION: Director Fung moved, seconded by Director Mackin to nominate Donna Colson from Burlingame to serve as the Board Chair and Marty Medina from San Bruno to serve as the Vice Chair of the Peninsula Clean Energy Board of Directors.

Chair DeGolia called for any nominations from the floor.

MOTION PASSED: 15-0 (Absent: San Mateo County, San Mateo County, Daly City, Foster City, Menlo Park, Redwood City, South San Francisco, Woodside)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine				X
San Mateo County	Director Mueller				X
Atherton	Director DeGolia	X			
Belmont	Director McCune	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			
Daly City	Director Daus-Magbual				X
East Palo Alto	Director Romero	X			
Foster City	Director Hindi				X

Half Moon Bay	Director Rarback	X			
Hillsborough	Director Ragsdale	X			
Los Banos	Director Llanez	X			
Menlo Park	Director Nash				X
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck	X			
Portola Valley	Director Taylor	X			
Redwood City	Director Martinez Saballos				X
San Bruno	Director Medina	X			
San Carlos	Director Venkatesh	X			
San Mateo	Director Loraine	X			
South San Francisco	Director Coleman				X
Woodside	Director Fluet				X
	Total	15			8

Director Mackin, Director Rarback, Director Bigstyck, Director Loraine, Director Fung expressed their gratitude to Director DeGolia.

Shawn Marshall, Chief Executive Officer, expressed her appreciation to Director DeGolia.

Chair Colson expressed her appreciation to and presented Director DeGolia with a token of the Board's appreciation.

10. Approval of Revisions to the Net Energy Metering (NEM) Annual Cash Out Policy (Action)

Leslie Brown, Director of Account Services, gave a presentation on the Net Energy Metering (NEM) annual cash out policy including fiscal history, considerations and challenges, proposed revisions, alternatives to the $100 check threshold, and customer notification.

Director Bigstyck asked if accounts would be affected by lowering the cap and if our relationships would be affected. Leslie explained that she is not worried as the compensation with Peninsula Clean Energy is better than would be with PG&E.

Director DeGolia asked for the maximum cap at other Community Choice Aggregators. Leslie explained that some do not have a cap, but they the regeneration is being calculated at a much smaller rate. Connor Prince, Senior Analyst, Account Services, confirmed that the highest cap is $10,000 though their compensation model is net surplus compensation making their total compensation much lower despite the higher cap.

Director Loraine asked for clarification on how the credits can be applied to PG&E charges. Leslie explained that excess generators would likely have gas be the largest cost on their PG&E bill in addition to their interconnection fee.

MOTION: Director Rarback moved, seconded by Vice Chair Medina to approve the proposed updates to the Net Energy Metering Annual Cash Out policy including raising the annual cash out check threshold to $500 beginning in April 2024 and lowering the annual cash out cap from $20,000 to $10,000 beginning in April 2025.

MOTION PASSED: 15-0 (Absent: San Mateo County, San Mateo County, Daly City, Foster City, Menlo Park, Redwood City, South San Francisco, Woodside)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine				X
San Mateo County	Director Mueller				X
Atherton	Director DeGolia	X			
Belmont	Director McCune	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			
Daly City	Director Daus-Magbual				X
East Palo Alto	Director Romero	X			
Foster City	Director Hindi				X
Half Moon Bay	Director Rarback	X			
Hillsborough	Director Ragsdale	X			
Los Banos	Director Llanez	X			
Menlo Park	Director Nash				X
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck	X			
Portola Valley	Director Taylor	X			
Redwood City	Director Martinez Saballos				X
San Bruno	Director Medina	X			
San Carlos	Director Venkatesh	X			
San Mateo	Director Loraine	X			
South San Francisco	Director Coleman				X
Woodside	Director Fluet				X
	Total	15			8

11. Approval of Hybrid Approach Rate Setting Methodology (Action)

Nick Bijur, Chief Financial Officer, gave a presentation on the hybrid approach to the rate setting methodology including background, NewGen analysis, rate setting options, current methodology, cost of service include Peninsula Clean Energy (Peninsula Clean Energy) cost allocation, a hybrid approach, and Community Choice Aggregator (CCA) benchmarking.

Shawn Marshall, Chief Executive Officer, added that there is no stated policy that requires Peninsula Clean Energy to be 5% below PG&E rates, though the Board has always followed that.

Director McCune asked if anyone has complained about the current system, and if this were implemented, which class of customer would see the greatest change. Shawn shared that a general complaint is that PCE sits on a lot of cash and is the biggest driver of the conversation. Nick added that everyone would be impacted equally in the hybrid approach.

Director Rarback asked if the existing cost allocation would give a clear idea of revenue and allow financing of programs. Shawn explained that it would be handled the same as now where the

Programs team looks at plans and elevates as part of the overall budget, adding that programs are not being affected, and rates would be set to cover those costs.

Rafael Reyes, Director of Energy Programs, explained that projections are made based on estimated uptick of program size, adding that PCE is anticipating that programs will have to level off with PCE funds and as a consequence is looking to other sources of income including federal earmarks.

Director DeGolia asked what the estimated average rate discount currently is. Leslie Brown, Director of Account Services, explained that the discount is generally around 13%.

Director Taylor asked how likely it would be PCE's energy costs would exceed PG&E's costs. if PCE Energy costs. Nick estimated that this would be a low likelihood.

Director Taylor asked how much of an issue the excess revenues are, noting the importance of the 5% discount and marketing power. Shawn explained that the Board could choose every year to be below PG&E, if we choose to fall below the minimum threshold as was done in 2020 and 2021. As part of the surplus fund effort, a recommendation was established to maintain the cash on hand of a minimum of 180 days and set an upper target over 250 days, where the Board will reduce rates for customers.

Chair Colson added that rating agencies have made it clear that running negative deficit years, if PCE was not willing to increase rates to be profitable, then the rating would be downgraded.

Director Llanez expressed support for the hybrid approach as it helps explain why rates are what they are.

Director Romero asked if other CCAs have been using the hybrid approach since inception. Nick confirmed that Marin Clean Energy has. Director Romero asked about changing the rates structure and the marketing that will be involved with that since PCE customers have been accustomed to the 5% discount. Shawn explained that other agencies have dealt with this as Silicon Valley rates have changed every year, between 1-4%.

Director Romero asked how costs vary between customer class, and what does it mean to have costs vary by class. Nick explained it is based on demand charges, time of day, and how customers use energy. Director Romero noted that this is a calculatable figure. Nick confirmed.

Director Romero asked for an example of when Peninsula Clean Energy rates might be higher than PG&E.

Roy Xu, Director of Power Resources, explained that the Power Charge Indifference Adjustment (PCIA) and an aggressive renewable goal, that can increase our costs higher than PG&E. Jeremy Waen, Director of Regulatory Policy, added that years when rates would need to be higher than PG&E would be when market conditions are at very low levels affiliated to the PCIA.

Director Bigstyck asked if PCE rates were higher than PG&E, if PCE would be eliminating the buffer from 180 days cash on hand. Nick explained that PCE would be collecting enough revenue to cover costs and say above 180 days cash on hand, leading to a rare situation where we would fall below 180 days cash on hand. In that situation rates would be adjusted mid-cycle.

Director Mackin shared that the 5% messaging hasn't been as effective, but the integrity of having the best deal consistently is important.

Chair Colson noted that if we move to this model, this is not permanent and can be adjusted in upcoming years if necessary.

Director Taylor asked if public messaging has been factored in as part of the finances. Nick explained that going through the budget process and see where PG&E rates will land and work out where the rates will land.

MOTION: Director Loraine moved, seconded by Director Bigstyck to adopt a "hybrid" approach that includes elements of current "PG&E minus" and cost of service ratemaking methodologies, and better ensures financial stability, while maximizing the discount provided to customers; also avoids subjectivity and possible contention of allocating costs among customers.

MOTION PASSED: 15-0 (Absent: San Mateo County, San Mateo County, Daly City, Foster City, Menlo Park, Redwood City, South San Francisco, Woodside)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine				X
San Mateo County	Director Mueller				X
Atherton	Director DeGolia	X			
Belmont	Director McCune	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			
Daly City	Director Daus-Magbual				X
East Palo Alto	Director Romero	X			
Foster City	Director Hindi				X
Half Moon Bay	Director Rarback	X			
Hillsborough	Director Ragsdale	X			
Los Banos	Director Llanez	X			
Menlo Park	Director Nash				X
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck	X			
Portola Valley	Director Taylor	X			
Redwood City	Director Martinez Saballos				X
San Bruno	Director Medina	X			
San Carlos	Director Venkatesh	X			
San Mateo	Director Loraine	X			
South San Francisco	Director Coleman				X
Woodside	Director Fluet				X
	Total	15			8

Chair Colson announced that Item Number 13 would be heard ahead of Agenda Item Number 12.

13. Approval of Revisions to Peninsula Clean Energy's Organizational Priority Number 1 of the Strategic Plan from "Delivering 100% Renewable Energy Annually by 2025" to "Delivering 100% Renewable Energy Annually by 2030 Through Strategic Procurement of Resources to Maximize Peninsula Clean Energy's 24/7 Hourly Renewable Matching Goal" (Action)

Shawn Marshall, Chief Executive Officer, noted 2 corrections to the staff report: removing the word hourly from the second page of the staff report in the last paragraph to read, "Due to the reduced availability of new long-term resources, Peninsula Clean Energy would need to rely more on short-term PCC1 RECs to meet its stated ~~hourly~~ renewable target…" and on the fourth page of the staff report under Mid Cost Option changing the percentage from 62% to 60% to read, "Annual renewable percentage between 2025 and 2029 will continue on an upward trajectory with a minimum of 60 ~~62~~% but will remain flexible based on available renewable resources…".

Roy Xu, Director of Power Resources, gave a presentation including current priorities and goals, a timeline, renewable percent with the current resource portfolio, challenges with the 2025 target year, important terminology, and product content.

Director Romero asked for clarification on Portfolio Content Categories (PCC)-2. Roy explained that PCC-2 can be gas, and it is unclear if it could be coal.

Leslie Brown, Director of Account Services, elaborated on greenhouse gas (GHG) free and clean, noting that geothermal energy has had some emissions assigned to it in the recent past, which is why Peninsula Clean Energy's product is clean, but not completely GHG free.

Director Loraine asked for clarification on PCC-1 renewable energy credits (RECs). Roy confirmed that the RECs are being purchased for Eco100 and EcoPlus customers.

Roy continued the presentation including the update of 100% annual renewable energy goal.

Mehdi Shahriari, Planning and Analytics Manager, continued the presentation with the calendar year 2025-2026 cost of energy analysis.

Director Taylor asked what is driving the higher prices. Mehdi explained that there are many factors including a project contract that was terminated, and projects with delays in 2025 and 2026, as well as other changes in the market such as Resource Adequacy (RA) changes. Roy added that in general, a shortage in supply and high demand for the products.

Director Taylor asked if changes in California law and the difficulty in out of state imported power would increase the available market. Roy explained that transmission lines into California are an obstacle and a large undertaking.

Chair Colson clarified that Eco100 customers do not get the 5% discount as it is a premium product.

Director Romero asked how the 2030 goal is achieved. Roy explained that the expectation is that projects will start to come online in 2029/2030 and that contracts can be signed now with 2029/2030 operation dates. Roy noted that he believes there will be more opportunities to contract these resources to come online in later years. Shawn added that those resources would fill out the hourly matching goal.

Director Romero asked if in 2030, will Peninsula Clean Energy have enough agreements, or will we negotiate more? Roy confirmed that we will negotiate more and explained that we can only be as confident as the currently available data in reaching this goal.

Public Comment: None

Director Mackin shared that if these contracts are not pursued now, other people will, and if we don't push forward, we will lose ground. Roy confirmed, adding that we are in a high-cost environment for all products.

Director Loraine expressed interest in the mid-cost option and this decision is the core to the mission, "to reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions". Director Loraine added that to stay the course to our first goal is no longer affordable, but it needs to be sustainable, and to be clear eyed about the true cost of taking these steps forward, part of what we are talking about is the idea of investing in Power Purchase Agreements (PPAs) and longer term agreements for a more sustainable price that we can offer to customers.

Director Romero asked if the net asset position declines every year or are we passing these costs off to our residents. Nick Bijur, Chief Financial Officer, explained that under the old rate system, we wouldn't have changed rates, this would impact days cash on hand, under new rate making approach, this would directly impact customer rates.

Director Taylor asked if the mid-cost option will impact and if there are enough reserves to cover this. Nick explained there are not reserves to cover $216 million, so rates will need to go up, but suspects that PG&E rates will also likely go up in that time.

Chair Colson asked if we have set ourselves into a box with parameters that have changed- has the environment for electricity changed, political, and others where we have to make a readjustment.

Director DeGolia asked if the low-cost option includes selling REC's. Roy confirmed.

Director DeGolia expressed that the goal to be 100% renewable isn't particular important but to be 100% without fossil fuel generation and to spend our money in ways that creates additional emissions reductions. Director DeGolia believes that in the whole energy mix it is important to have the goals and advocate for goals that leave fossil fuel generated energy. Director DeGolia added that being customer centric means that cost is critical. We have to stay to the low-cost commitment that we made and is more important than being 100% renewable.

Director McCune supports the Staff recommendation as it is progress and achievable and doable.

MOTION: Director McCune moved, seconded by Director Medina to approve revisions to Peninsula Clean Energy's Organizational Priority Number 1 of the Strategic Plan from: "Delivering 100% Renewable Energy Annually by 2025" to, "Delivering 100% Renewable Energy Annually by 2030 Through Strategic Procurement of Resources to Maximize Peninsula Clean Energy's 24/7 Hourly Renewable Matching".

Director Taylor asked if we didn't sell RECs is that still the mid-cost option? Director DeGolia explained that contracts will be reviewed too see if it makes sense to get to 80% or 100%, as long as the contracts help us move to hourly matching that will be good for customers and good for Peninsula Clean Energy.

Director Taylor suggests softening the strategy for the next 3 years or so, and then ramping it back up when the costs come back down. Shawn Marshall, Chief Executive Officer, explained she doesn't want to kick the can down the road and make another huge jump in 5 years. This is why in the staff report talks about an upward trajectory, starting low and bumping up.

Chair Colson noted that $216 million is a lot of decarbonization programs and lower electricity that we could provide. A balance between cost and product. What is good about mid-range is the momentum is moving in the right direction without boxing us into a direction that in untenable.

MOTION PASSED: 14-1 (Absent: San Mateo County, San Mateo County, Daly City, Foster City, Menlo Park, Redwood City, South San Francisco, Woodside)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine				X
San Mateo County	Director Mueller				X
Atherton	Director DeGolia	X			
Belmont	Director McCune	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			
Daly City	Director Daus-Magbual				X
East Palo Alto	Director Romero		X		
Foster City	Director Hindi				X
Half Moon Bay	Director Rarback	X			
Hillsborough	Director Ragsdale	X			
Los Banos	Director Llanez	X			
Menlo Park	Director Nash				X
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck	X			
Portola Valley	Director Taylor	X			
Redwood City	Director Martinez Saballos				X
San Bruno	Director Medina	X			
San Carlos	Director Venkatesh	X			
San Mateo	Director Loraine	X			
South San Francisco	Director Coleman				X
Woodside	Director Fluet				X
	Total	14	1		8

Chair Colson asked for clarification on the no vote. Director Romero explained that the market is so unsettled that we may be back here again. Chair Colson clarified that the status quo is not what you are in favor of. Director Romero confirmed.

12. Discussion of Draft Load Management Standard (LMS) Plan for submission to California Energy Commission (CEC) (Discussion)

Jeremy Waen, Senior Director of Regulatory Policy, introduced the item and Doug Karpa, Managing Counsel for Regulatory Policy, gave a presentation that including goals of the load management standard, load management standard regulations and requirements, and options for marginal cost-based rates and cost-based programs.

Director Taylor asked about the magnitude of what to move off peak. Doug explained that, no, there isn't, because we don't know how responsive customers will be to price signals.

Director Loraine asked how good we feel about PG&E's pilots and if we would be able to continue with internal programs. Doug confirmed that we can opt out.

Leslie Brown, Director of Account Services, added that we have been engaged for a couple of years before the LMS requirement. PG&E needs some Community Choice Aggregator (CCA) partners to make them functional since so much of their load is being served by CCAs. PG&E doesn't have enough customers to run functional pilots without CCA participation.

14. Board Members' Reports

None

ADJOURNMENT

Meeting was adjourned at 9:41 p.m.

Regular Meeting of the Board of Directors of the Peninsula Clean Energy Authority (PCEA) Minutes

Thursday, May 23, 2024
6:30 p.m.
Zoom Video Conference and Teleconference

CALL TO ORDER YouTube

Meeting was called to order at 6:36 p.m. in virtual teleconference, in the Peninsula Clean Energy Authority lobby and in the Los Banos City Hall conference room B.

ROLL CALL

Participating:

Dave Pine, San Mateo County
Ray Mueller, San Mateo County
Rick DeGolia, Atherton
Tom McCune, Belmont
Coleen Mackin, Brisbane
Donna Colson, Burlingame, *Chair*
Roderick Daus-Magbual, Daly City
Carlos Romero, East Palo Alto
Harvey Rarback, Half Moon Bay
Leslie Ragsdale, Hillsborough
Paul Llanez, Los Banos
Betsy Nash, Menlo Park
Anders Fung, Millbrae
Craig Taylor, Portola Valley
Kaia Eakin, Redwood City
Marty Medina, San Bruno, *Vice Chair*
Pranita Venkatesh, San Carlos
Adam Loraine, San Mateo
James Coleman, South San Francisco

Absent:

Ken Gonzalez, Colma
Sam Hindi, Foster City
Paul Llanez, Los Banos
Tygarjas Bigstyck, Pacifica
Ned Fluet, Woodside

A quorum was established.

PUBLIC COMMENT YouTube

John McKenna

ACTION TO SET THE AGENDA AND APPROVE REMAINING CONSENT AGENDA ITEMS

YouTube

Public Comment: None

MOTION: Director Romero moved, seconded by Director Aalfs to set the Agenda, and approve Agenda Item Numbers 1-7.

1. Approval of a Resolution Appointing Members to the Community Advisory Committee (Action)
2. Approval of a Two-Year Contract Extension with TRC Engineers, Inc. for Reach Code Technical Assistance, In An Amount Not To Exceed $750,000 (Action)
3. Approval of an Amendment to the Agreement with Darren Goode to Provide Professional Services Through May 31, 2025, Increasing the Amount by $102,000 for a Total Not-to-Exceed Amount of $656,000 (Action)
4. Approval of Amendment Number 3 to the Agreement with Ascend Analytics to Extend the Agreement by 1 Year Through May 28, 2025, and to Increase the Not-to-Exceed Contract Amount by $150,000 (Action)
5. Approval of a Contract with La Piana Consulting for Work on the Strategic Plan Update, In An Amount Not To Exceed $150,000 (Action)
6. Approval of RidePanda Contract Amendment, E-Bikes Program, for an Increased Amount of $300,000, with an Updated Total Contract Value of $525,000 (Action)
7. Approval of Minutes from the November 16, 2023 and April 25, 2024 Board of Directors Meetings

MOTION PASSED: 18-0 (Absent: Director Gonzalez, Director Hindi, Director Llanez, Director Bigstyck, and Director Fluet)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Mueller	X			
Atherton	Director DeGolia	X			
Belmont	Director McCune	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson	X			
Colma	Director Gonzalez				X
Daly City	Director Daus-Magbual	X			
East Palo Alto	Director Romero	X			
Foster City	Director Hindi				X
Half Moon Bay	Director Rarback	X			
Hillsborough	Director Ragsdale	X			
Los Banos	Director Llanez				X
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			

Pacifica	Director Bigstyck				X
Portola Valley	Director Aalfs	X			
Redwood City	Director Eakin	X			
San Bruno	Director Medina	X			
San Carlos	Director Venkatesh	X			
San Mateo	Director Loraine	X			
South San Francisco	Director Coleman	X			
Woodside	Director Fluet				X
	Total	18			5

REGULAR AGENDA

8. Chair Report YouTube

Donna Colson provided a chair report to the Board of Directors.

9. CEO Report YouTube

Shawn Marshall, Chief Executive Officer, provided an update to the Board, and Marc Hershman, Director of Legislative Affairs, provided the Board with a legislative update.

10. Community Advisory Committee Report YouTube

Cheryl Schaff, Community Advisory Committee (CAC) Chair, provided a recap of the May 9, 2024 CAC meeting.

Public Comment: Jason Mendelson, Robert Whitehair

11. Approval of the Establishment of a Rate Stabilization Fund (Action) YouTube

Nick Bijur, Chief Financial Officer provided the Board a presentation on the proposed Establishment of a Rate Stabilization Fund.

Public Comment: None

MOTION: Director Romero moved, seconded by Director Loraine to Approve the establishment of a Rate Stabilization Fund under Government Accounting Standard Board (GASB) Standard 62 for the purpose of stabilizing customer electric generation charges.

MOTION PASSED: 18-0 (Absent: Director Gonzalez, Director Hindi, Director Llanez, Director Bigstyck, and Director Fluet)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Mueller	X			
Atherton	Director DeGolia	X			
Belmont	Director McCune	X			

Brisbane	Director Mackin	X			
Burlingame	Director Colson	X			
Colma	Director Gonzalez				X
Daly City	Director Daus-Magbual	X			
East Palo Alto	Director Romero	X			
Foster City	Director Hindi				X
Half Moon Bay	Director Rarback	X			
Hillsborough	Director Ragsdale	X			
Los Banos	Director Llanez				X
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck				X
Portola Valley	Director Aalfs	X			
Redwood City	Director Eakin	X			
San Bruno	Director Medina	X			
San Carlos	Director Venkatesh	X			
San Mateo	Director Loraine	X			
South San Francisco	Director Coleman	X			
Woodside	Director Fluet				X
	Total	18			5

12. Approval to Proceed with the Development of an In-House Customer Contact Center (Action)
YouTube

Leslie Brown, Director of Account Services, and Stephanie Elmore, Contact Center Manager, provided a presentation on an in-house customer contact center.

Public Comment: Jason Mendelson

MOTION: Director Mueller moved, seconded by Director Pine to Approve Peninsula Clean Energy's staff's proposal to move forward with the development of an in-house customer contact center.

MOTION PASSED: 18-0 (Absent: Director Gonzalez, Director Hindi, Director Llanez, Director Bigstyck, and Director Fluet)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Mueller	X			
Atherton	Director DeGolia	X			
Belmont	Director McCune	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson	X			
Colma	Director Gonzalez				X
Daly City	Director Daus-Magbual	X			
East Palo Alto	Director Romero	X			
Foster City	Director Hindi				X

Half Moon Bay	Director Rarback	X			
Hillsborough	Director Ragsdale	X			
Los Banos	Director Llanez				X
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck				X
Portola Valley	Director Aalfs	X			
Redwood City	Director Eakin	X			
San Bruno	Director Medina	X			
San Carlos	Director Venkatesh	X			
San Mateo	Director Loraine	X			
South San Francisco	Director Coleman	X			
Woodside	Director Fluet				X
	Total	18			5

13. Approval of Community Advisory Committee Deliverables and Community Advisory Committee Work Plan (Action) YouTube

Vanessa Shinn, Senior Community Specialist provided the Board with a presentation on the Community Advisory Committee deliverables and work plan.

Public Comment: None

MOTION: Director Loraine moved, seconded by Director Roderick to Approve the Community Advisory Committee Deliverables and Community Advisory Committee Work Plan.

MOTION PASSED: 18-0 (Absent: Director Gonzalez, Director Hindi, Director Llanez, Director Bigstyck, and Director Fluet)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Mueller	X			
Atherton	Director DeGolia	X			
Belmont	Director McCune	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson	X			
Colma	Director Gonzalez				X
Daly City	Director Daus-Magbual	X			
East Palo Alto	Director Romero	X			
Foster City	Director Hindi				X
Half Moon Bay	Director Rarback	X			
Hillsborough	Director Ragsdale	X			
Los Banos	Director Llanez				X
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck				X

Portola Valley	Director Aalfs	X			
Redwood City	Director Eakin	X			
San Bruno	Director Medina	X			
San Carlos	Director Venkatesh	X			
San Mateo	Director Loraine	X			
South San Francisco	Director Coleman	X			
Woodside	Director Fluet				X
	Total	18			5

14. Annual Update on Diversity, Equity, Accessibility, and Inclusion (DEAI) Action Plan Implementation (Discussion) YouTube

Kirsten Andrews-Schwind, Associate Director, Community Relations & Climate Equity, provided the Board with an update on the Diversity, Equity, Accessibility, and Inclusion (DEAI) Action Plan Implementation.

Public Comment: None

15. Discussion of Distributed Energy Resources (DER) Plan – Part 1 (Discussion) YouTube

Peter Levitt, Programs Manager, Distributed Energy Resources provided the Board with a presentation on Part 1 of the Distributed Energy Resources Plan.

Public Comment: Eduardo Pelegri-Llopart

16. Committee Members' Reports YouTube

Chair Colson announced the formation of the CEO Review Committee.

ADJOURNMENT

Meeting was adjourned at 8:56 p.m.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 17, 2024
MEETING DATE: June 27, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Shawn Marshall, Chief Executive Officer

SUBJECT: Appoint the Board Clerk as Secretary of the Board of Peninsula Clean Energy Authority (Action)

RECOMMENDATION

Appoint the Board Clerk, Nelly Wogberg, as Secretary of the Board of Peninsula Clean Energy Authority.

BACKGROUND

Paragraph 3.9.2 of the JPA Agreement forming Peninsula Clean Energy requires the Board to appoint a Secretary (who need not be a member of the Board) who shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority pursuant to Paragraph 3.9.2.

On March 24, 2016 the Board hired the County Counsel's Office to serve as General Counsel to Peninsula Clean Energy. The County Counsel's Office attends Board meetings and has served in the role of Secretary at the Board's pleasure since March 31, 2016.

DISCUSSION

A s Peninsula Clean Energy Authority has grown in size and maturity, County Counsel suggests appointing the Board Clerk, Nelly Wogberg, as Secretary of the Board.

FISCAL IMPACT

None.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

APPOINT THE BOARD CLERK AS SECRETARY OF THE BOARD OF PENINSULA CLEAN ENERGY AUTHORITY (ACTION)

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

WHEREAS, the Peninsula Clean Energy Authority ("Peninsula Clean Energy) was formed on February 29, 2016; and

WHEREAS, the JPA Agreement forming the Authority requires the Board to appoint a Secretary who shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority pursuant to Paragraph 3.9.2; and

WHEREAS, the San Mateo County Counsel's Office was appointed General Counsel by the Board and has served in the role of Secretary at the Board's pleasure since March 31, 2016; and

WHEREAS, Peninsula Clean Energy Authority has grown in size and maturity and Staff is able to manage the role of Secretary.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board Clerk, Nelly Wogberg, is appointed Secretary of the Board of Peninsula Clean Energy Authority.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 21, 2024
MEETING DATE: June 27, 2024
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Executive Committee

FROM: Shawn Marshall, Chief Executive Officer

SUBJECT: CEO Report (Discussion)

BACKGROUND

This report is provided monthly to the Board of Directors and is informational only.

DISCUSSION

During the Board meeting, Shawn Marshall, CEO will provide an update on a variety of PCE topics including a brief regulatory and legislative update, recent DEAI-related activities, and a GovPV/programs update.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 14, 2024
MEETING DATE: June 27, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Nicholas Bijur, Chief Financial Officer

SUBJECT: Approval of Fiscal Year 2024-2025 Budget (Action)

RECOMMENDATION

Approve proposed fiscal year 2024-2025 budget (July 1, 2024, through June 30, 2025).

BACKGROUND

On May 13, 2024, staff presented a draft fiscal year 2024-2025 budget to the Audit and Finance Committee to solicit comments and input. The Audit and Finance Committee was supportive of the draft budget and did not have any suggested changes. Staff presented a slightly revised budget updated with the most current assumptions to the Executive Committee on June 10, 2024, at which time the Executive Committee unanimously recommended approval of the FYE 2025 budget to the Board of Directors.

DISCUSSION

A fiscal year 2024-2025 (July 1, 2024, through June 30, 2025) budget presentation and details will be provided for Board of Directors review. The bottom-up budgeting approach included individual discussions with the department heads to develop their portions of the budget. For the first time, staff also conducted a cross-department half-day meeting to review priorities and cost reduction opportunities. Based on this meeting, significant changes were made to the budget in order to ensure greater accuracy and reduce costs where possible.

The budget being presented includes sufficient operating expenses to support Peninsula Clean Energy's (PCE or the Agency) mission to reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions. Given a significant increase in the forecasted cost of energy, driven largely by the cost of Renewable Energy Credits (RECs) and Resource Adequacy (RA), the proposed budget assumes the recognition of $15 million of revenues from the recently approved Rate Stabilization Fund, which will allow PCE to set rates in August at a 5% net discount to Pacific Gas and Electric Company (PG&E) (breakeven is ~3%), while reporting a positive change in net position.

FISCAL IMPACT

Approving the fiscal year 2024-2025 budget will provide sufficient resources to support the Agency's mission and operations, allows PCE to offer its customers a 5% net discount to PG&E as of August 2024, and supports PCE's long-term financial viability.

ATTACHMENTS:
06-27-2024 Board Budget Presentation.pdf

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

APPROVAL OF FISCAL YEAR 2024-2025 BUDGET (ACTION)

RESOLVED, by the Board of Directors of the Peninsula Clean Energy Authority (PCEA) of the County of San Mateo, State of California, that

WHEREAS, PCEA Staff reviewed a draft budget for Fiscal Year 2024-2025 and the underlying assumptions with the Audit and Finance Committee at its meeting on May 13, 2024, to solicit input and recommended changes, and;

WHEREAS, PCEA Staff reviewed an updated version of the budget, presented as the proposed and final version of the budget for the Fiscal Year 2024-2025 with the most updated and current information available with the Executive Committee at its meeting on June 10, 2024, and;

WHEREAS, the Executive Committee of the Peninsula Clean Energy Authority reviewed such final version of the budget for Fiscal Year 2024-2025 at its meeting on June 10, 2024, and recommended to the Board of Directors approval of the budget at the Board's meeting on June 27, 2024.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the PCEA Board of Directors approves the Fiscal Year 2024-2025 budget, which was presented to the Board of Directors at its meeting on June 27, 2024.

FY 2024-2025
Budget Review and Approval

(as of June 21, 2024)

Schedule – Budget Review and Approval

- ~~May 13, 2024 – Review Initial Draft Budget with Audit & Finance Committee~~
- ~~June 10, 2024 – Review Revised Draft Budget with Executive Committee~~
- June 27, 2024 – Approve Final Budget by Board of Directors

Key Assumptions

$423 million **Cost of Energy** budget

- Increase of $96 million (29%) over FY24
- Assumes significantly higher prices for RECs (+69%), GHG-Free (+452%) and RA (+46%)
- Higher load (+5%) and energy prices (+9%)
- Includes contingency of $29 million (~7% of energy costs)

Near doubling of **Programs** budget to $27 million

- Surplus Funds (grants and school building electrification), new programs (GovBE, TurnkeyBE, PV+storage), and ramp-up of existing programs
- Significantly expanded capital program, largely due to GovPV ($21 million)

Additional **Compensation** expense driven in part by 8 new headcount

- Includes 4 headcount for in-house customer contact center
- Salary increases (average of 5% merit/COLA plus selective, one-time market adjustments)

Key Assumptions (cont'd)

Increased **Operating Expense** needed to support core operations

- Marketing for branding, website support and partner/school grants
- Consultant spend largely for Power Resources
- Additional Legal support for Power Resources and Federal activities
- New software across multiple departments

2% increase in **Operating Revenues** to $462 million

- 5% increase in base load due to new commercial load (~3%) and organic growth/normalized weather (~2%)
- Increased ECO100 charge to 1.5 cents effective January 1, 2025
- Rates set based on "hybrid" Cost of Service
- Recognition of $15 million from the Rate Stabilization Fund provides opportunity to set rates at a 5% net discount to PG&E, resulting in a slightly lower system average rate (-4%)

Summary FY25 Budget

($ in '000)	2024			2025	
	Budget	Updated Fcst	Var - Fav/(Unfav)	Budget	Increase/(Decrease)
Operating Revenues	474,624	454,896	(19,728)	461,693	6,797
Rate Stabilization Fund	-	(68,000)	(68,000)	15,000	83,000
Total Revenues	**474,624**	**386,896**	**(87,728)**	**476,693**	**89,797**
Cost of Energy	311,261	326,969	(15,707)	423,404	96,435
Gross Profit	**163,363**	**59,927**	**(103,436)**	**53,289**	**(6,637)**
Operating Expenses	39,396	36,454	2,942	57,140	20,686
Operating Income (Loss)	**123,967**	**23,473**	**(106,378)**	**(3,851)**	**(27,324)**
Non-Operating Income	645	11,829	11,184	9,103	(2,726)
CHANGE IN NET POSITION	**124,612**	**35,302**	**(95,194)**	**5,252**	**(30,050)**

Detailed FY25 Budget

($ in '000)	2024			2025	
	Budget	Updated Fcst	Var - Fav/(Unfav)	Budget	Increase/(Decrease)
Electricity Sales	471,671	446,060	(25,611)	451,925	5,865
Green Electricity Premium	2,953	3,003	50	3,764	761
Non-Energy Revenues	-	5,832	5,832	6,004	172
Rate Stabilization Fund	-	(68,000)	(68,000)	15,000	83,000
Total Revenues	**474,624**	**386,896**	**(87,728)**	**476,693**	**89,797**
Cost of Energy	311,261	326,969	(15,707)	423,404	96,435
Gross Profit	**163,363**	**59,927**	**(103,436)**	**53,289**	**(6,637)**
Compensation	10,923	9,765	1,158	13,581	3,816
Data Manager	3,871	3,592	279	3,600	8
Service Fees (PG&E)	1,400	1,333	67	1,334	1
Consultants & Professional Services	1,788	1,334	454	2,145	810
Legal	1,575	987	587	1,394	407
Communications & Noticing	2,851	2,035	816	2,700	665
General & Administrative	4,027	3,051	976	4,677	1,626
Community Energy Programs	12,726	14,221	(1,495)	27,370	13,149
Depreciation	235	135	99	339	203
Operating Expenses	**39,396**	**36,454**	**2,942**	**57,140**	**20,686**
Operating Income (Loss)	**123,967**	**23,473**	**(100,494)**	**(3,851)**	**(27,324)**
Non-Operating Income	645	11,829	11,184	9,103	(2,726)
CHANGE IN NET POSITION	**124,612**	**35,302**	**(89,310)**	**5,252**	**(30,050)**

Cash Position

($ in '000)	2024			2025	
	Budget	Updated Fcst	Fav/(Unfav)	Budget	YoY
Beginning Cash	262,950	253,505	(9,445)	382,090	128,585
(+) Change in Net Position[(1)]	124,612	103,302	(21,310)	(9,860)	(113,162)
(-) Net Capital Programs	10,400	8,000	(2,400)	29,750	21,750
(+/-) Working Capital	-	33,283	33,283	-	(33,283)
(=) Ending Cash	**377,162**	**382,090**	**4,929**	**342,481**	**(39,610)**
Days Cash on Hand (DCOH)	**393**	**384**	**(9)**	**260**	**(124)**

(1) Excludes Rate Stabilization Fund

5-Year Forecast

Recognition of $68 million from the Rate Stabilization Fund

($ in '000)	2025	2026	2027	2028	2029
	Budget	Forecast	Forecast	Forecast	Forecast
Operating Revenues	461,693	465,087	485,877	468,199	507,085
Rate Stabilization Fund	15,000	53,000	-	-	-
Total Revenues	**476,693**	**518,087**	**485,877**	**468,199**	**507,085**
Cost of Energy	423,404	456,581	417,955	395,243	427,633
Gross Profit	**53,289**	**61,506**	**67,921**	**72,956**	**79,451**
Operating Expenses	57,140	67,817	72,631	69,720	82,566
Operating Income (Loss)	**(3,851)**	**(6,311)**	**(4,710)**	**3,236**	**(3,115)**
Non-Operating Income	9,103	7,820	7,011	7,061	7,110
CHANGE IN NET POSITION	**5,252**	**1,509**	**2,301**	**10,297**	**3,995**
Cash	**342,592**	**273,607**	**269,568**	**274,680**	**274,265**
DCOH	**260**	**191**	**202**	**217**	**197**

DCOH within target of 180-250 days

Recommendation/Resolution

RESOLUTION THAT THE BOARD OF DIRECTORS APPROVE THE FISCAL YEAR 2024-2025 BUDGET

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 17, 2024
MEETING DATE: June 27, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Executive Committee

FROM: Leslie Brown Director of Account Services

SUBJECT: Approval of Updates to Peninsula Clean Energy's Rate Tables and Rates to be Effective August 1, 2024 (Action)

RECOMMENDATION

Recommend Board of Directors approve staff proposal to recalculate Peninsula Clean Energy ECOplus rates to be set at a net 5% discount to July 1, 2024 PG&E rates based off of the 2016 PCIA and Franchise Fee Surcharges and apply this rate to all PCE customers effective August 1, 2024.

BACKGROUND

At the January 2024 Board meeting, PCE staff proposed, and the Board approved, holding PCE customer rates at 2023 levels through at least July 1, 2024 rather than to immediately follow PG&E's January 1 rate increase. PG&E's January 1 rate increase included an accelerated (6-month) recapture of under-collected energy costs from the previous year (2023), and a mid-year adjustment and generation rate decrease that will occur on July 1, 2024 as the cost recovery surcharge sunsets. Holding rates at 2023 levels has allowed PCE's customers to realize a higher discount relative to PG&E for the past several months (10%-15% for most customers).

With the upcoming budget cycle, PCE is transitioning to a hybrid Cost of Service (COS) rate setting process to more closely align our rate setting to our actual cost to serve instead of only following PG&E rates as a benchmark. Analyst models are projecting that PG&E's system average generation rate will decrease by approximately 11% in July. That decrease is expected to bring PG&E's generation rates back down closer to 2023 levels. As with every rate change, PG&E's individual tariff adjustments are not expected to be published until 1-2 days before they become effective, but for budgeting purposes our Finance team utilized the most recent modeling available from CalCCA's rate tools and reports.

An estimated 'break even' cost recovery would likely be achieved by re-calibrating PCE's rates at a 3% discount from PG&E's July 1 rates, while providing a 5% discount is estimated to require ~$15M from the newly established rate stabilization fund. Rate and budget impact analysis was run assuming a single rate schedule accounting for Vintage 2016 PCIA and

franchise fee surcharges (FFS) across PCE's full customer base.

DISCUSSION

Since launching service in 2016, PCE has calculated rates for San Mateo County customers that include PG&E Vintage 2016 PCIA and FFS into the ratemaking. When PCE launched service in Los Banos in 2022 a different set of rates was implemented for those customers based off the 2021 Vintage PCIA and FFS to ensure that the newly enrolled Los Banos customers would also receive a total 5% discount in generation service costs. At the time PCE launched service in Los Banos, the differential between the 2016 and 2021 Vintage surcharges was such that Los Banos customers would not have been able to realize savings from PCE service without a separate rate schedule being created and applied to their service territory.

During our last major rate change in 2023, PCE again created and implemented a separate rate schedule for a subset of Los Banos customers, the net energy metering (NEM) customers, and other new services enrolled after July 1 2022 with a 2022 PCIA Vintage assignment to again ensure a minimum 5% generation rate discount across PCE's customer base. This last adjustment in February 2023 assigned most PCE customers to the 2016 Vintage rate table while only a small subset of of Los Banos customers (~2,000) were assigned to the 2022 Vintage rate table.

As we approach the upcoming rate change that would take effect in August, staff is proposing to move back to a single rate table with rates based off the 2016 PCIA Vintage and FFS to apply throughout our service territory to all customers. The reasons are as follows:

1) Over 95% of PCE customers are assigned to the 2016 PCIA Vintage, and using that baseline for ratemaking this next cycle will ensure a minimum 5% discount to all customers regardless of their current Vintage year assignment;
2) Since starting service in San Mateo County, PCE has always had a mix of Vintages within our customer base due to a variety of specific enrollment circumstances. The differential of mixed vintages became more pronounced with the enrollment of Los Banos as we now have a fixed new bulk of customers in a secondary PCIA Vintage to consider as we continue to balance transitioning to a hybrid 'cost of service' ratemaking model while also ensuring value and a minimum level of affordability for all customers regardless of their Vintage year; and,
3) Moving to a single rate schedule would reduce confusion and complexity for customers when trying to determine which of our published rate schedule applies to them, and it also ensures that all customers receive a minimum 5% discount on generation rates.

The circumstances around PCIA Vintage surcharges do fluctuate annually and it's possible that there may be a time in the future when staff and/or the Board may determine that splitting rates back into Vintage specific tables makes more sense for PCE and its customers. But for now, staff believes that a single rate schedule applied to all customers is the best option.

This item was brought to the Executive Committee for discussion earlier this month. As a discussion only item, no vote as taken at the meeting but EC members did not raise any concerns about moving this forward for approval by the full Board.

FISCAL IMPACT

PCE's Finance team has modeled a single rate schedule at a proposed 5% net discount from PG&E's projected July generation rates and is projecting to need $15,000,000 from our rate stabilization fund to cover a 5% discount utilizing the 2016 PCIA Vintage surcharges.

STRATEGIC PLAN

Recalculating PCE rates to bet set at a net 5% discount to PG&E's July 1, 2024 rates aligns with PCE's strategic plan to provide customers with more affordable rates.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

APPROVAL OF UPDATES TO PENINSULA CLEAN ENERGY'S RATE TABLES AND RATES TO BE EFFECTIVE AUGUST 1, 2024 (ACTION)

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California ("Peninsula Clean Energy" or "PCE"), that

WHEREAS, the Peninsula Clean Energy Authority ("PCEA") was formed on February 29, 2016 as a Community Choice Aggregation program ("CCA"); and

WHEREAS, on April 1, 2022 Peninsula Clean Energy began offering service to residents and businesses in the City of Los Banos; and

WHEREAS, the Board has established a set of strategic goals to guide PCE, including maintaining a cost-competitive electric-generation rate for residents and businesses; and

WHEREAS, on July 1, 2024, PG&E will implement adjustments to its own generation rates; and

WHEREAS, PG&E's rate changes necessitate changes to PCE's ECOplus rates to maintain a minimum discount for PCE customers; and

WHEREAS, PCE customers are assigned a PCIA Vintage year based on when they departed PG&E bundled service; and

WHEREAS, the majority of PCE customers have been assigned a PCIA Vintage of 2016; and

WHEREAS, PCE has previously calculated different rates for San Mateo County and Los Banos to ensure customers with different PCIA Vintage assignments received a net 5% discount from PG&E; and

WHEREAS, PCE staff proposes calculating one set of ECOplus rates based off of the 2016 PCIA Vintage to apply to all customers; and

WHEREAS, all PCE customers will receive at least a 5% discount from PG&E regardless of which territory or PCIA Vintage they have been assigned or where they reside;

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board of Directors approve staff proposal to recalculate Peninsula Clean Energy ECOplus rates to be set at a net 5% discount to July 1, 2024 PG&E rates based off of the 2016 PCIA and

Franchise Fee Surcharges and apply this rate to all PCE customers effective August 1, 2024.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 17, 2024
MEETING DATE: June 27, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Leslie Brown Director of Account Services, Nick Bajur CFO, Roy Xu Director of Power Resources

SUBJECT: Authorization to Adjust Pricing Premium for ECO100 Product Effective January 1, 2025 (Action)

RECOMMENDATION

Recommend Board Approval of proposed increase of the voluntary ECO100 product to $0.015 kWh (1.5 cents per kWh) from current $0.01kWh (1 cent per kWh).

BACKGROUND

Over the past several months, staff have been evaluating PCE's voluntary ECO100 service offering. This initially started as an exercise around how to sunset the program under the now revised assumption that our ECOplus offering would become 100% renewable by 2025. In addition, proposed external changes to the Green-e certification of our ECO100 product potentially included material and costly changes that may have altered PCE's ability to maintain the certification. Analysis of the program included a review of ECO100 sales (customer type and volume of purchase), actual historical and projected future costs to procure qualified energy products, available alternatives to ECO100 for existing customers, customer impacts as a result of a price adjustments, and potential alternative structures to the ECO100 program to mitigate costs.

DISCUSSION

Fortunately, the external issues surrounding Green-e certification have since been resolved and there are no anticipated associated changes. However, during the evaluative analysis of ECO100 and PCE's procurement goals, our Power Resources team determined that our legacy $0.01 per kWh (1 cent/Kwh) no longer recovers the true cost of providing this product, which has increased with the increase in RECs and GHG attributes. Through much analysis, including evaluating the primary buyers of our ECO100 product, their requirements for a third party (Green-e) 'certified' product, and the past and future 'true cost' of providing this premium product, staff is recommending that the premium for ECO100 be increased to $0.015 per kWh (1.5 cents) effective January 1, 2025. Staff will reevaluate the premium on an annual basis in parallel with fiscal year rate adoption and recommend changes as necessary. Staff expect the

cost of ECO100 service to decrease as the cost of RECs decrease and as more contracted renewable resources come online.

Staff are recommending a January 1, 2025 effective date to allow time for customers to be sufficiently notified of the price increase as well as reducing complexity with compliance reporting for the Green-e certification which operates on a calendar year. Most large commercial customers enrolled in the ECO100 product also budget and report sustainability goals on the calendar year. If adopted, Staff will prepare email and mail notices for impacted ECO100 customers with clear instructions on how to opt down to the ECOplus product. Staff will also engage directly with the large commercial and municipal customers enrolled in the ECO100 program that comprise 85% of the ECO100 program load and are already coordinating with Portola Valley to assist with messaging the default ECO100 customer base. PG&E's 100% renewable Solar Choice program continues to be closed to new customer enrollments until new contracts come online or current subscribers un-enroll from the program.

FISCAL IMPACT

Increasing the premium of ECO100 to $0.015 per kWh is expected to increase revenue by $1.5M annually ($750K for FYE25) assuming energy sales stay at current levels. Increasing the ECO100 premium will allow PCE to collect revenues that more closely align with the true cost to provide this product to customers.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

AUTHORIZATION TO ADJUST PRICING PREMIUM FOR ECO100 PRODUCT EFFECTIVE JANUARY 1, 2025 (ACTION)

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California ("Peninsula Clean Energy" or "PCE"), that

WHEREAS, PCE was formed on February 29, 2016 as a Community Choice Aggregation program ("CCA"); and

WHEREAS, the Board has established a set of strategic goals to guide PCE, including maintaining a cost-competitive electric-generation rate for residents and businesses; and

WHEREAS, PCE has offered two rate options to customers, a lower cost ECOplus rate and an optional 100% Renewable ECO100 rate; and
WHEREAS, the premium for ECO100 has historically been $0.01 per kWh; and

WHEREAS, staff has determined through thorough analysis that the cost to serve ECO100 customers has increased above the current $0.01 premium; and

WHEREAS, ECO100 is a voluntary premium product purchased mostly by commercial and municipal customers; and

WHEREAS, adjusting the ECO100 premium would require additional noticing to customers ; and

WHEREAS, compliance reporting for Green-e follows a calendar year schedule ; and

WHEREAS, PCE staff recommends adjusting the ECO100 premium on the calendar year to better reflect budgeting and compliance reporting cycles for its primary ECO100 customers.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board of Directors approve the staff proposal to adjust the ECO100 premium to $0.015 kWh (1.5 cents per kWh) to be effective January 1, 2025.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 21, 2024
MEETING DATE: June 27, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Shawn Marshall, Chief Executive Officer, and Roy Xu, Director of Power Resources

SUBJECT: Approval of a Resolution Delegating Authority to the Chief Executive Officer to Execute Two Energy Storage and Services Agreements (ESSA) with San Gabriel Project II, LLC for the Gabriel Storage I & II Projects, and Any Necessary Ancillary Documents, with a Delivery Term of 15 Years Starting at the Commercial Operation Date on or About June 1, 2027, in a Total Amount Not-to-Exceed $208 Million (Action)

RECOMMENDATION

Approve Resolution Delegating Authority to the Chief Executive Officer to Execute Two Energy Storage and Services Agreements (ESSA) with San Gabriel Project II, LLC for the Gabriel Storage I & II Projects, and Any Necessary Ancillary Documents, with a Delivery Term of 15 Years Starting at the Commercial Operation Date on or about June 1, 2027, in a Total Amount Not-to-Exceed $208 Million.

BACKGROUND

In April 2024, the Board set a goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable sources by 2030 through strategic and cost-effective procurement of resources that maximize 24/7 hourly matching of renewable supply and customer load. One set of technologies that will help Peninsula Clean Energy to meet this goal is energy storage, which can shift grid energy from times when there is excess supply, which generally correlates to daytime solar production hours, to times when there is high demand for energy on the grid. With the current resource fleet in Peninsula Clean Energy's portfolio, staff has determined that additional storage capacity is needed to meet regulatory mandates, optimize the overall resource portfolio, and serve customers' load more economically. The Gabriel Storage I (65MW/4-hour) and II (10MW/8-hour) Projects will be the fifth and sixth standalone storage resources to be added to Peninsula Clean Energy's portfolio.

CPUC MTR Procurement Mandate

On June 24, 2021, the California Public Utilities Commission (CPUC) adopted D.21-06-035, and further adopted D.23-02-040 on February 23, 2023. These decisions are commonly known as the mid-term reliability (MTR) procurement mandates. They direct load serving

entities (LSEs) to collectively procure 15,500 MW[1] of new resources between 2023 to 2028 to meet mid-term grid reliability needs. The decisions require that contracts have a term of at least ten (10) years and that resources be zero-emission or eligible under the California renewable portfolio standard (RPS). The generic requirement for new capacity may include standalone energy storage.

State-Wide MTR Procurement Requirements (MW NQC)

Procurement Category	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**Total**
New Generic Capacity	2,000	6,000	1,500	2,000	2,000	--	13,500
Zero-emissions generation, generation paired with storage, or demand response resources[2]	--	--	*2,500*	--	--	--	*2,500*
New firm zero-emitting resources	--	--	--	--	--	1,000	1,000
New long-duration storage resources	--	--	--	--	--	1,000	1,000
Total Annual net Qualifying Capacity (NQC) Requirements	**2,000**	**6,000**	**1,500**	**2,000**	**2,000**	**2,000**	**15,500**

Peninsula Clean Energy's MTR Procurement Requirements (MW NQC)

Procurement Category	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**Total**
New Generic Capacity	38	113	51.4	35	35	--	272.4
Zero-emissions generation, generation paired with storage, or demand response resources[2]	--	--	*47*	--	--	--	*47*

New firm zero-emitting resources	--	--	--	--	--	19	19
New long-duration storage resources	--	--	--	--	--	19	19
Total Annual net Qualifying Capacity (NQC) Requirements	**38**	**113**	**51.4**	**35**	**35**	**38**	**310.4**

The requirements were allocated to each LSE based on load share. Under the decision, Peninsula Clean Energy was allocated a requirement to bring online a total of 287 MW of new capacity by 2028. Peninsula Clean Energy filed an advice letter to the CPUC to count two of its resources that were already online towards the 2023 generic requirement, which added 23.4 MW of generic capacity needs to its 2025 requirement, resulting in a total of 310.4 MW of total capacity required. Peninsula Clean Energy is planning for the Gabriel Projects to satisfy about 48 MW of the New Generic Capacity requirement, as well as almost 9 MW of the New Long-Duration Storage requirement, which are the amounts of net qualifying capacity (NQC) that a 65 MW four-hour and a 10 MW eight-hour storage projects such as Gabriel I& II qualify for under the MTR.

2023 Request for Offers
Peninsula Clean Energy launched a request for offers (RFO) in late 2022 targeting procurement of renewable energy and stand-alone energy storage resources to satisfy both internal goals and compliance requirements.

Peninsula Clean Energy received a robust response to the RFO from twenty-eight (28) participants for fifty-eight (58) different projects. Staff evaluated these projects based on value to Peninsula Clean Energy, development status, project viability, project team experience, compliance with workforce policy, and environmental impact.

Staff conducted extensive analysis to identify the top projects to shortlist. The Gabriel project was determined to be in the top tier of standalone energy storage projects that would provide the most value to Peninsula Clean Energy.

Staff reviewed the project with the CEO and then entered into exclusive negotiations with the project. Since early 2023, Peninsula Clean Energy has worked with the project developer on negotiating the Energy Storage and Services Agreements.

Overview of Project

Project Name	Gabriel Storage Project I & II
Technology	Lithium-ion Standalone Storage
Capacity	65 MW / 260 MWh (4-hour) and 10 MW / 80 MWh (8-hour)
Commercial Operation Date	6/1/2027

Project Owner	San Gabriel Project II LLC
Developer	Aypa Power Development LLC
Location	City of Irwindale, Los Angeles County, CA

The Gabriel Storage I & II Projects are new standalone storage projects located within the City of Irwindale in Los Angeles County, California. Peninsula Clean Energy would enter into two separate contracts: a four (4) hour duration project with 65 MW (260 MWh) of capacity; and an eight (8) hour duration project with 10 MW (80 MWh) of capacity. The projects are part of a larger battery storage development totaling 400 MW. The battery storage project is part of a larger commercial-industrial development project called the Irwindale Gateway within the City of Irwindale, which will redevelop an existing landfill and quarry into an industrial logistics and distribution center. The project is located in a Disadvantaged Community (DAC) per the CalEnviroScreen4.0.

The expected Commercial Operation Date is June 1, 2027. The energy storage projects are expected to start construction by October 1, 2026. The projects have received a Full Capacity Deliverability Status allocation from the CAISO, which allows the projects to provide Resource Adequacy attributes to Peninsula Clean Energy. Peninsula Clean Energy will retain the scheduling coordinator rights for its contracted portions of the larger energy storage project. The project is capable of interconnecting and delivering full nameplate capacity without the need for any long lead system upgrades to the CAISO grid The project will be interconnected to the Southern California Edison Rio Hondo 230 kV substation.

Under the contracts, Peninsula Clean Energy will pay for 65 MW of four (4) hour storage capacity and 10 MW of eight (8) hour storage capacity at fixed price rates per kW-month with no escalation for the full term of the contracts (15 years). Peninsula Clean Energy is entitled to all product attributes from the facility, including storage capacity (used for charging and discharging energy), ancillary services, and resource adequacy. The project will also help to meet Peninsula Clean Energy's long-duration storage MTR requirements, generic 2027 MTR requirements, and may also serve as a bridge resource to allow extensions for long-lead-time resources ordered under the MTR.

Developer
The Gabriel Storage I & II Projects are being developed by Aypa Power Development, LLC, the primary U.S. corporate entity of Aypa Power (Aypa), a Blackstone Portfolio Company. Aypa develops, owns, and operates standalone battery storage and hybrid projects. It has 365 MW of capacity in operation, and 20 GW of storage, hybrid, and renewable generation in development across North America.

Environmental Review and Permitting
The Project site is located on 16 acres within an existing landfill and quarry in the City of Irwindale. The Project is a clean energy project being developed on a brownfield site. Peninsula Clean Energy has analyzed the project footprint relative to protected areas at the federal, state, regional, and local-level, as well as important habitat and habitat linkages for special status species. Specifically, staff reviewed the Aypa project against the USGS Protected Area Database[3], and has found that the Project is not located in a protected area, and the Project is not expected to impact important habitat or habitat linkages.

The City of Irwindale has completed a Draft EIR[4] for the project. The impacts due to the

energy storage project are limited to construction impacts that will be mitigated.

The project site is currently zoned for Heavy Manufacturing. The project development requires the City of Irwindale to complete a General Plan Amendment, Specific Plan[5], Zone Change, and a Site Plan review. Due to the previous use of the site as a landfill and quarry, site remediation is required and includes removing the inert materials, processing, and recompacting all materials to allow for future development. This site remediation for the storage project is currently underway and funded by Aypa. The site remediation will have benefits for the surrounding neighbors and community as a whole. Due to the urban location, the project does not impact any federal, state, local, or other conservation designations or planning efforts.

Workforce Requirements
Aypa has agreed that the construction of the project will be conducted using a Project Labor Agreement or other similar agreement providing for terms and conditions of employment with applicable labor organizations. It is expected that 184 new constructions jobs and 4 new full-time permanent jobs will be created by the overall storage development.

Additional Community Benefits

The Gabriel storage development will be contributing significant property taxes over the life of the project. Forecasted property taxes for the entire 400 MW project are expected to be just over $86 million, with the amount attributed to Peninsula Clean Energy offtake expected to be $18 million. Additionally, as part of the required land use entitlements, the project will enter into a Development Agreement with the City of Irwindale. It is expected that a component of the Agreement will be a payment that will benefit the City's community at large.

DISCUSSION

Priority 1 of Peninsula Clean Energy's Strategic Plan is to deliver 100% renewable energy annually by 2030 through strategic and cost-effective procurement of resources that maximize 24/7 hourly matching of renewable supply and customer demand. Energy storage will play a key role in meeting Peninsula Clean Energy's renewable energy goals by shifting an oversupply of generation in the middle of the day to later hours when the energy is needed to meet demand.

The Gabriel Storage I & II Projects will provide 65 MW of four (4) hour energy storage capacity and 10 MW of eight (8) hour energy storage capacity. The storage capacities from the Gabriel projects will not directly produce energy to serve customer demand, but they will help shift renewable generation from Peninsula Clean Energy's portfolio to serve customer load when energy is most needed.

The Gabriel projects will contribute to Peninsula Clean Energy meeting its regulatory requirements under the Mid-Term Reliability Orders issued by the CPUC, fulfilling its Resource Adequacy obligations, and optimizing its hourly renewable matching.

FISCAL IMPACT

The fiscal impact of the Gabriel Storage I & II Projects will not exceed $208 million over the 15-year term of the Agreement.

STRATEGIC PLAN

The Gabriel Storage I & II Projects support the following objectives in Peninsula Clean Energy's Strategic Plan:

- Priority 1: Deliver 100% renewable energy on an annual basis by 2030 through strategic and cost-effective procurement of resources that maximize Peninsula Clean Energy's 24/7 hourly matching of renewable energy and load
- Power Resources Goal 1: Secure sufficient, low-cost, clean sources of electricity that achieve Peninsula Clean Energy's priorities while ensuring reliability and meeting regulatory mandates

1 Requirement measured as net qualifying capacity (NQC) rather than nameplate capacity. The CPUC issued a report identifying what percent of a technology's nameplate capacity would count toward this requirement. This means that each LSE's required nameplate capacity is higher than the requirement identified in the decision.
2 Zero-emissions resources required to replace Diablo Canyon must be procured by 2025 and are a subset of New Generic Capacity Required and may occur in any of the years 2023-2025; therefore, this row is not additive with the other rows.
3 USGS PAD-US: https://www.usgs.gov/core-science-systems/science-analytics-and-synthesis/gap/science/protected-areas
4 Link to Draft EIR: https://www.irwindaleca.gov/DocumentCenter/View/9077/IrwindaleGatewaySpecificPlan-DraftEIR?bidId=
5 Link to the Specific Plan: https://www.irwindaleca.gov/590/13620-Live-Oak-Lane---Irwindale-Gateway-

ATTACHMENTS:

PCE - Aypa ESA Execution Version 4 hour_Redacted.pdf
PCE - Aypa ESA Execution Version 8 Hour_Redacted.pdf

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

APPROVAL OF A RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE TWO ENERGY STORAGE AND SERVICES AGREEMENTS (ESSA) WITH SAN GABRIEL PROJECT II, LLC FOR THE GABRIEL STORAGE I & II PROJECTS, AND ANY NECESSARY ANCILLARY DOCUMENTS, WITH A DELIVERY TERM OF 15 YEARS STARTING AT THE COMMERCIAL OPERATION DATE ON OR ABOUT JUNE 1, 2027, IN A TOTAL AMOUNT NOT-TO-EXCEED $208 MILLION (ACTION)

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

WHEREAS, the Peninsula Clean Energy Authority ("Peninsula Clean Energy") was formed on February 29, 2016; and

WHEREAS, Peninsula Clean Energy is purchasing energy, renewable energy, carbon-free energy, and related products and services (the "Products") to supply its customers; and

WHEREAS, Peninsula Clean Energy conducted a request for offers for renewable energy and storage resources including standalone storage and engaged in negotiations for the Gabriel Storage I & II Projects; and

WHEREAS, Peninsula Clean Energy seeks to execute two separate Energy Storage and Services Agreements (ESSAs) to procure 65 MW of 4-hour standalone storage capacity and related products and 10 MW of 8-hour standalone storage capacity and related products from the Gabriel Storage I & II Projects, based on the project's desirable attributes, pricing, and terms; and

WHEREAS, the Gabriel projects will contribute toward the regulatory requirements set by the California Public Utilities Commission to procure new capacity by 2028 to ensure better reliability for the California grid; and

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute the Agreements and any other ancillary documents required for said purchase of storage capacity and related products from San Gabriel Project II LLC; and

WHEREAS, the Board's decision to delegate to the Chief Executive Officer the authority to execute the Agreements is contingent on San Gabriel Project II LLC approving the Agreement's terms consistent with those presented to the Board.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board

delegates authority to the Chief Executive Officer to execute two Energy Storage and Services Agreements (ESSA) with San Gabriel Project II, LLC for the Gabriel Storage I & II Projects, and any necessary ancillary documents, with a delivery term of 15 Years starting at the Commercial Operation Date on or about June 1, 2027, in a total amount not-to-exceed $208 Million.

EXECUTION VERSION

ENERGY STORAGE AND SERVICES AGREEMENT

COVER SHEET

Seller: San Gabriel Project II LLC, a Delaware limited liability company

Buyer: Peninsula Clean Energy Authority, a California joint powers authority

Description of Facility: A 65 MW energy storage facility with four (4) hours of continuous discharging at the maximum rate of discharge, located in Los Angeles County, California (as further defined herein, the **"Facility"**).

Guaranteed Construction Start Date: October 1, 2026

Guaranteed Commercial Operation Date: June 1, 2027

Milestones:

Milestone	Expected Completion Date
Site Control	**Complete**
Obtain Specific Plan Approval	**11/1/2025**
Phase II Interconnection Study Results	**Complete**
Executed Interconnection Agreement	**1/15/2025**
Obtain Full Capacity Deliverability Status Allocation	**Complete**
Procure Major Equipment	**9/1/2026**
Financial Close	**9/1/2026**
Construction Start	**10/1/2026**
Initial Synchronization	**1/1/2027**
CAISO Commercial Operation	**5/20/2027**
Commercial Operation Date	**6/1/2027**

Delivery Term: **15 Contract Years**

Guaranteed Storage Capacity: **65** MW at four (4) hours of continuous discharging at the maximum rate of discharge (**260** MWh).

Guaranteed Interconnection Capacity: **65** MW

Guaranteed Round-Trip Efficiency:

Contract Year	Guaranteed Round-Trip Efficiency
1	[redacted]
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

The "**Storage Rate**" shall be as specified below:

Contract Years	Storage Rate ($/kW-month)
All	[redacted]

Contract Years	Storage Rate ($/kW-month)
	[redacted]

Product:

- x Discharging Energy
- x Capacity Attributes
- x Storage Capacity
- x Ancillary Services

Scheduling Coordinator: Buyer or Buyer's Agent

Development Security: [redacted]

Performance Security: [redacted]

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

SELLER	BUYER
San Gabriel Project II LLC	Peninsula Clean Energy Authority
By: _____	By: _____
	PCE Executive Officer
Name: _____	
Title: _____	

TABLE OF CONTENTS

Page

ARTICLE 1 DEFINITIONS 1

1.1 Contract Definitions 1
1.2 Rules of Interpretation 18

ARTICLE 2 TERM; CONDITIONS PRECEDENT 19

2.1 Contract Term 19
2.2 Conditions Precedent 20
2.3 Progress Reports 21
2.4 Remedial Action Plan 21

ARTICLE 3 PURCHASE AND SALE 22

3.1 Sale of Product 22
3.2 Compensation 22
3.3 Imbalance Energy 22
3.4 Future Environmental Attributes 23
3.5 Capacity Attributes 23
3.6 Resource Adequacy Failure 24
3.7 Buyer's Re-Sale of Product 25
3.8 Compliance Expenditure Cap 26

ARTICLE 4 OBLIGATIONS AND DELIVERIES 26

4.1 Delivery 26
4.2 Title and Risk of Loss 27
4.3 Scheduling Coordinator Responsibilities 27
4.4 Forecasting 29
4.5 Curtailment 30
4.6 Charging and Discharging Energy 31
4.7 Financial Statements 33
4.8 Access to Data and Installation and Maintenance of Weather Station. 33
4.9 Storage Availability and Efficiency 34
4.10 Storage Capacity Tests 35
4.11 Facility Modifications 36
4.12 Ancillary Services 36
4.13 Workforce Agreement 36
4.14 Diverse Business Enterprises. During the Delivery Term, n 36
4.15 Shared Facilities 37

ARTICLE 5 TAXES 37

5.1 Allocation of Taxes and Charges 37
5.2 Cooperation 37
5.3 Ownership 38

ARTICLE 6 MAINTENANCE OF THE FACILITY 38

6.1 Maintenance of the Facility 38
6.2 Maintenance of Health and Safety 39
6.3 Permits and Approvals 39
6.4 Energy to Serve Station Use 39

ARTICLE 7 METERING 40

7.1 Metering 40
7.2 Meter Verification 40

ARTICLE 8 INVOICING AND PAYMENT; CREDIT 40

8.1 Invoicing 40
8.2 Payment 41
8.3 Books and Records 41
8.4 Payment Adjustments; Billing Errors 41
8.5 Billing Disputes 42
8.6 Netting of Payments 42
8.7 Seller's Development Security 42
8.8 Seller's Performance Security 42
8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral 43

ARTICLE 9 NOTICES 44

9.1 Addresses for the Delivery of Notices 44
9.2 Acceptable Means of Delivering Notice 44

ARTICLE 10 FORCE MAJEURE 44

10.1 Definition 44
10.2 No Liability If a Force Majeure Event Occurs 45
10.3 Notice 45
10.4 Termination Following Force Majeure Event 46

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION 46

11.1 Events of Default 46
11.2 Remedies; Declaration of Early Termination Date 49
11.3 Damage Payment; Termination Payment 49
11.4 Notice of Payment of Termination Payment or Damage Payment 50
11.5 Disputes With Respect to Damage Payment or Termination Payment 50
11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date 50
11.7 Rights And Remedies Are Cumulative 51
11.8 Mitigation 51
11.9 [redacted] 51

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES. 51

12.1 No Consequential Damages 51
12.2 Waiver and Exclusion of Other Damages 52

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY 53

13.1 Seller's Representations and Warranties 53
13.2 Buyer's Representations and Warranties 54
13.3 General Covenants 55
13.4 Prohibition Against Forced Labor 55

ARTICLE 14 ASSIGNMENT 55

14.1 General Prohibition on Assignments 55
14.2 Permitted Assignment; Change of Control of Seller 55
14.3 Permitted Assignment; Change of Control of Buyer 56

ARTICLE 15 LENDER ACCOMMODATIONS 56

15.1 Granting of Lender Interest 56
15.2 Rights of Lender 56
15.3 Cure Rights of Lender 57

ARTICLE 16 DISPUTE RESOLUTION 57

16.1 Governing Law 57
16.2 Dispute Resolution 57
16.3 Attorneys' Fees 58
16.4 Venue 58

ARTICLE 17 INDEMNIFICATION 58

17.1 Indemnification 58
17.2 Claims 58

ARTICLE 18 INSURANCE 59

18.1 Insurance 59

ARTICLE 19 CONFIDENTIAL INFORMATION 59

19.1 Definition of Confidential Information 59
19.2 Duty to Maintain Confidentiality 60
19.3 Irreparable Injury; Remedies 60
19.4 Disclosure to Lender 60
19.5 Disclosure to Credit Rating Agency 61
19.6 Public Statements 61

ARTICLE 20 MISCELLANEOUS 61

20.1 Entire Agreement; Integration; Exhibits 61
20.2 Amendments 61
20.3 No Waiver 61
20.4 No Agency, Partnership, Joint Venture or Lease 61
20.5 Severability 61
20.6 Mobile-Sierra 62
20.7 Counterparts 62
20.8 Facsimile or Electronic Delivery 62
20.9 Binding Effect 62
20.10 No Recourse to Members of Buyer 62
20.11 Change in Electric Market Design 62

Exhibits:

Exhibit A Description of Facility
Exhibit B Facility Construction and Commercial Operation
Exhibit C [Intentionally Omitted]
Exhibit D [Intentionally Omitted]
Exhibit E Progress Reporting Form
Exhibit F [Reserved]
Exhibit G-1 Form of Commercial Operation Date Certificate
Exhibit G-2 Form of Installed Storage Capacity Certificate
Exhibit H Form of Construction Start Date Certificate
Exhibit I Form of Letter of Credit
Exhibit J Insurance
Exhibit K Form of Replacement RA Notice
Exhibit L Available Storage Capacity
Exhibit M Monthly Storage Availability
Exhibit N Storage Capacity Tests
Exhibit O Operating Restrictions
Exhibit P Metering Diagram
Exhibit Q RTE Shortfall Payments
Exhibit R Notices

ENERGY STORAGE AND SERVICES AGREEMENT

This Energy Storage and Services Agreement ("**Agreement**") is entered into as of **[_____]** (the "**Effective Date**"), between Seller and Buyer (each also referred to as a "**Party**" and collectively as the "**Parties**").

RECITALS

WHEREAS, Seller intends to develop, design, construct, own or otherwise have control over, 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 all 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 3.8(c).

"**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.

"**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 ancillary services that the Facility is capable of providing consistent with the Operating Restrictions, with characteristics and quantities determined in accordance with the CAISO Tariff, and any related services, including Spinning Reserve, Non-Spinning Reserve, Frequency Regulation, Frequency Response, Voltage Control, VAR Dispatch, and Power Factor Correction (as each is defined in the CAISO Tariff).

"**Availability Incentive Payment**" has the meaning set forth in the CAISO Tariff.

"**Availability Notice**" means the lower of (a) Seller's availability forecasts issued pursuant to Section 4.4 with respect to the Available Storage Capacity and Available Storage Capability, and (b) availability information reported to CAISO through OMS.

"Available Storage Capability" has the meaning defined in Exhibit M.

"Available Storage Capacity" has the meaning defined in Exhibit M.

"**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. 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.

"**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 Energy delivered by the Facility to the Delivery Point net of Electrical Losses and Station Use, in accordance with the CAISO Tariff.

"**CAISO Charges Invoice**" has the meaning set forth in Section 4.3(d).

"**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 that the Facility can provide, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

"**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-Penalized Shortfall**" has the meaning set forth in Section 3.6(b)(ii).

"**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.

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of Energy that the Facility can charge from, store and/or deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits. Capacity Attributes

shall also include all rights to provide and all benefits related to the provision of Ancillary Services (as defined in the CAISO Tariff) and reactive power.

"**Capacity Damages**" has the meaning set forth in Section 5 of Exhibit B.

"**Change of Control**", in the case of Seller, means any circumstance in which Seller's Ultimate Parent ceases to be the Ultimate Parent or 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 its Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards the Ultimate Parent's ownership interest in Seller unless the 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 directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its parent Affiliates, and any trustee or agent or similar representative acting on their behalf) shall be excluded from the total outstanding equity interests in Seller.

Notwithstanding the foregoing, (a) so long as the Ultimate Parent Controls Persons owning at least three hundred (300) MW of operating energy storage projects, a change in the Control of the Ultimate Parent, or (b) a change in the Control of Seller resulting from the exercise by Lender of its remedies under its financing agreements for the Facility with Seller or an Affiliate of Seller shall not be a Change of Control hereunder; provided that the entity acquiring Control of the Ultimate Parent or of Seller, directly or indirectly, is a Lender or a Qualified Transferee and Buyer is given Notice of the Change of Control within five (5) Business Days of its occurrence.

"**Charging Energy**" means all Energy delivered to the Facility pursuant to a Charging Notice, as measured by the Storage Facility Meter inclusive of Station Use.

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO, directing the Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction shall be in accordance with Section 4.6 and the Operating Restrictions.

"**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 [redacted]

"**Compliance Actions**" has the meaning set forth in Section 3.8(a).

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.8.

"**Confidential Information**" has the meaning set forth in Section 19.1.

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

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

"**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.

"**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 more than 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 more than 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**" 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.

"**CPM Soft Offer Cap**" has the meaning set forth in the CAISO Tariff.

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

"**CPUC-Penalized Shortfall**" has the meaning set forth in Section 3.6(b)(i).

"**CPUC System RA Penalty**" means the penalties for "System Procurement Deficiency" adopted by the CPUC in its Decision 10-06-036, as may be updated or supplemented from time to time.

"**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, in either case by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

"**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 Energy deliveries;

(b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if the Facility is interconnected to distribution or sub-transmission system) 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 Participating Transmission Owner's or distribution operator's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy to the Delivery Point; or

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

If Buyer or Buyer's Scheduling Coordinator submitted a Self-Schedule and/or an Energy Supply Bid in its final CAISO market participation in respect of a given time period that clears, in full, the applicable CAISO market for the full amount of Energy forecasted to be produced by or delivered from the Facility for such time period, any notice from the CAISO having the effect of requiring a reduction during the same time period (other than in accordance with the Schedule resulting from an Energy Supply Bid) is a Curtailment Order.

"**Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces energy delivered to or from the Facility pursuant to a Curtailment Order.

"**Daily Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by [redacted]

"**Damage Payment**" means the liquidated damages payment to be paid by Seller as the Defaulting Party to Buyer as the Non-Defaulting Party after a Terminated Transaction resulting from a Seller Event of Default occurring prior to the Commercial Operation Date, in a dollar amount that equals the amount set forth in Section 11.3(a).

"**Day-Ahead Forecast**" has the meaning set forth in Section 4.4(b).

"**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 Party**" has the meaning set forth in Section 11.1(a).

"**Delivery Point**" means the PNode designated by the CAISO for the Facility.

"**Delivery Term**" shall mean the period of Contract Years specified 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 specified for the Development Security on the Cover Sheet, deposited with Buyer in conformance with Section 8.7.

[redacted]

"**Discharging Energy**" means all Energy delivered to the Delivery Point from the Facility, net of Station Use and Electrical Losses, as measured by the Storage Facility Meter.

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO to Seller, directing the Facility to discharge Discharging Energy at a specific MWh rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with Section 4.6 and the Operating Restrictions.

"**Diverse Business Enterprises**" means a women, minority, disabled veteran, lesbian, gay, bisexual and /or transgender business enterprise, as more particularly set forth in CPUC General Order 156.

"**Early Termination Date**" has the meaning set forth in Section 11.2.

"**Effective Date**" has the meaning set forth on the Preamble.

"**Electrical Losses**" means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with (i) delivery of Discharging Energy to the Delivery Point and (ii) delivery of Charging Energy from the Delivery Point to the Facility.

"**Energy**" means electrical energy in MWh metered by the Storage Facility Meter.

"**Energy Supply Bid**" has the meaning set forth in the CAISO Tariff.

"**Estimated Placed-In-Service Date**" has the meaning set forth in Section 2.1(b).

"**Event of Default**" has the meaning set forth in Section 11.1.

"**Facility**" means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment and Seller's rights and interests in Shared Facilities required to deliver the Product, but excluding any portions of Shared Facilities other than Seller's rights and interests thereto.

"**FCDS Deficiency Notice**" has the meaning set forth in Section 2.1(b).

"**FERC**" means the Federal Energy Regulatory Commission or any successor government agency.

"**Flexible Capacity**" has the meaning set forth in the CAISO Tariff.

"**Flexible Capacity Category**" has the definition in the CAISO Tariff.

"**Flexible Resource Adequacy Benefits**" means the attributes, however defined, of a resource that can be used to satisfy the flexible resource adequacy obligations of a load serving entity, including Flexible Capacity.

"**FMM Instructed Imbalance Energy**" or "**FMM IIE**" has the definition in the CAISO Tariff.

"**FMM Schedule**" has the meaning set forth in the CAISO Tariff.

"**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 or any outage on the Transmission System that prevents Seller from providing Product and that is not the result of a Force Majeure Event.

"**Forced Labor**" has the meaning set forth in Section 13.4.

"**Forecasted Product**" has the meaning set forth in Section 4.4.

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

"**Full Network Model**" has the meaning set forth in the CAISO Tariff.

"**Future Environmental Attributes**" shall mean any and all emissions, air quality or other environmental attributes under any and all 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 in the future, to the Facility. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) investment or 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 and/or air quality permits.

"**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 includes the value of 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 and NERC; *provided*, *however*, that "Governmental Authority" shall not in any event include any Party.

"**Greenhouse Gas**" or "**GHG**" has the meaning set forth in the GHG Regulations or in any other applicable Laws.

"**Guaranteed Commercial Operation Date**" has the meaning set forth on the Cover Sheet, as such date may be extended by the Development Cure Period.

"**Guaranteed Construction Start Date**" has the meaning set forth on the Cover Sheet, as such date may be extended by the Development Cure Period.

"**Guaranteed Interconnection Capacity**" means the interconnection rights provided under the Interconnection Agreement in the amount set forth on the Cover Sheet.

"**Guaranteed Round-Trip Efficiency**" means the minimum guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

"**Guaranteed Storage Availability**" has the meaning set forth in Section 4.9(a).

"**Guaranteed Storage Capacity**" has the meaning set forth on the Cover Sheet, as may be adjusted pursuant to Exhibit B.

"**IIE**" means FMM IIE and RTD IIE.

"**Incentives**" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or operation of 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; and (c) any other form of incentive relating in any way to the Facility that is not a Future Environmental Attribute.

"**Indemnified Party**" has the meaning set forth in Section 17.1.

"**Indemnifying Party**" has the meaning set forth in Section 17.1.

"**Initial Synchronization**" means the initial delivery of Energy to the Facility from the interconnection point or from the Facility to the interconnection point, as specified in the Interconnection Agreement.

"**Installed Storage Capacity**" means the maximum dependable operating capability of the Facility to discharge electric energy for four (4) consecutive hours (up to but deemed not in to exceed the Guaranteed Storage Capacity), 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 G-2 hereto provided by Seller to Buyer.

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

"**Interconnection Delay Notice**" has the meaning set forth in Section 2.1(b).

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller or its Affiliate 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 Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System (or PTO's distribution system, as applicable) in accordance with the Interconnection Agreement.

"**Interest Rate**" has the meaning set forth in Section 8.2.

"**Internal Revenue Service Requirements**" means those requirements set forth in Section 48 of the Internal Revenue Code and associated regulations promulgated by the Internal Revenue Service that pertain to the eligibility of energy property to qualify for the federal investment tax credit.

"**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 February 29, 2016 under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"**kW**" means kilowatts in alternating current, unless expressly stated in terms of direct current.

"**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, and includes the CAISO Tariff.

"**Lender**" means, collectively, (A) in the case of Seller, any Person (i) providing senior or subordinated construction, interim or long-term debt, equity, tax equity or tax credit 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, 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 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 and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility, and (B) in the case of Buyer, any Person (i) providing senior or subordinated short-term or long-term debt or equity financing or refinancing for or in connection with the business or operations of Buyer, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form, and any trustee or agent acting on their behalf, and/or (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations.

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

"**Licensed Professional Engineer**" means an independent, professional engineer (a) reasonably acceptable to Buyer, (b) who has been retained by, or for the benefit of, the Lenders, as their "independent engineer" for the purpose of financing the Facility, or (c) who (i) is licensed to practice engineering in the State of California, (ii) has training and experience in the power industry specific to the technology of the Facility, (iii) is licensed in an appropriate engineering discipline for the required certification being made, and (iv) unless otherwise approved by Buyer, is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility.

"**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.

"Local Capacity Area Resource Adequacy Benefits" means the attributes, however defined, of a Local Capacity Area Resource that can be used to satisfy the local resource adequacy obligations of a load serving entity.

"**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 Capacity Attributes [redacted].

"**Main Power Transformer**" means the Facility's main step-up transformer as depicted on the one-line diagram set forth in Exhibit A.

"**Milestones**" means the development activities for significant permitting, interconnection, financing and construction milestones set forth in the Cover Sheet.

"**Monthly Storage Availability**" has the meaning set forth in Exhibit M.

"**Moody's**" means Moody's Investors Service, Inc., or its successor.

"**MW**" means megawatts measured 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.

"**NERC**" means North American Electric Reliability Corporation, or its successor.

"**Network Upgrades**" has the meaning set forth in the CAISO Tariff.

"**Non-Availability Charge**" 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 this Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

"**Operating Restrictions**" means the requirements and limitations set forth on Exhibit O.

"**Other Facility**" means the 10 MW/80 MWh energy storage facility by the name of Gabriel Storage II, also located at the Site.

"**Outage Management System**" or "**OMS**" has the meaning set forth in the CAISO Tariff.

"**Participating Transmission Owner**" or "**PTO**" means an 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 where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is Southern California Edison.

"**Party**" has the meaning set forth in the Preamble.

"**Performance Security**" means (i) cash, or (ii) a Letter of Credit, in the amount specified for the Performance Security on the Cover Sheet, deposited with Buyer in conformance with Section 8.8.

"**Performance Security End Date**" has the meaning set forth in Section 8.8.

"**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.

"**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 on the Cover Sheet.

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

"**Prudent Operating Practice**" means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry in the Western United States for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

"**Qualified Transferee**" means an entity that (a) (i) has or is owned by an entity that has a Tangible Net Worth of one hundred fifty million dollars ($150,000,000) or (ii) has or is owned by an entity that has (A) a Tangible Net Worth of fifty million dollars ($50,000,000) and (B) a Credit Rating of [redacted] or higher by Moody's or [redacted] or higher by S&P, if rated by only one such entity, or a Credit Rating of [redacted] or higher by Moody's and BBB or higher by S&P, if rated by both such entities, and, in any case, (b) is not a public utility regulated by the CPUC or an Affiliate thereof, and (c) has, or retains to operate the Facility a Person that has, at least three (3) years of experience operating at least two (2) or more storage facilities of the same technology and with at least as much installed storage capacity as the Installed Storage Capacity.

"**Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

"**RA Change in Law**" means any change in Law occurring after the Effective Date that changes the methodology for calculating the QC and/or the NQC applicable to the Facility due to (a) effective load carrying capability (ELCC) adjustments applicable to all stand-alone energy storage resources, including changes in Resource Adequacy Rulings defining slice of day

exceedance values, or (b) implementation of a methodology which reduces the Facility's QC and/or NQC based on either (i) the historical Forced Facility Outages rate (or metric of similar intent measuring relative availability) of the Facility or (ii) the average outage rates of all resources materially similar to the Facility in terms of type, market and operational characteristics.

"**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 3.6(b).

"**RA Guarantee Date**" means the earlier of either (a) the first day of the third month following the CAISO Commercial Operation or (b) during the Delivery Term, the first day of the first Showing Month that the Facility is able to be included in Buyer's RA Plan for such Showing Month.

"**RA Plan**" (a) has the meaning set forth for "Resource Adequacy Plan" in the CAISO Tariff, and (b) means Buyer's monthly and annual Resource Adequacy plans filed with the CPUC.

"**RA Shortfall**" means, for a given Showing Month commencing on the RA Guarantee Date, the difference, expressed in kW, of (a) the Facility's Qualifying Capacity minus (b) the sum of (i) the Resource Adequacy Benefits of the Facility for such month able to be shown on Buyer's monthly or annual RA Plan to the CAISO and CPUC and counted as Resource Adequacy Benefits plus (ii) Replacement RA, if any; *provided*, Buyer shall have no obligation to accept an increase in the amount of the Resource Adequacy Benefits of the Facility or Replacement RA after the date that is forty-five (45) days prior to the applicable Showing Deadline.

"**RA Shortfall Month**" means any Showing Month, commencing with the month in which the RA Guarantee Date occurs, during which Seller fails to provide Resource Adequacy Benefits (or Replacement RA in lieu thereof) in an amount equal to the Facility's Qualifying Capacity as required hereunder for purposes of calculating an RA Deficiency Amount under Section 3.6(b).

"**RA Substitute Capacity**" has the meaning set forth in the CAISO Tariff.

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**Reimbursable Station Use**" means, for each month during the Delivery Term, the amount of Station Use in a given month for which Seller was not charged as retail power pursuant to the retail service schedule for the Facility.

"**Reimbursable Station Use Payment**" means, for each month during the Delivery Term, the product of (a) the Reimbursable Station Use for such month, expressed in kWh, multiplied by (b) Buyer's average cost of Charging Energy for such month, expressed in dollars per kWh ($/kWh).

"**Remedial Action Plan**" has the meaning set forth in Section 2.4.

"**Replacement RA**" means Resource Adequacy Benefits that are equivalent to those that would have been provided by the Facility with respect to the applicable month for which the Replacement RA is being provided. Replacement RA shall (a) include, if applicable, Flexible Resource Adequacy Benefits that are of the same system or local designation, Flexible Capacity

Category, and Resource Category as the Facility; (b) be from a resource located in the same Transmission Access Charge Area (as described in the CAISO Tariff) as the Facility and, (c) to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, be located in the same Local Capacity Area as the Facility, and (d) provides Resource Adequacy Benefits in the same hourly periods as the Facility. Replacement RA shall not be provided from any generating facility or unit that utilizes coal or coal materials as a source of fuel.

"**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 CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 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, 19-10-021, and any subsequent CPUC ruling or decision or by any other entity including CAISO, and shall include System Resource Adequacy Benefits, Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits associated with the Facility.

"**Resource Category**" means the maximum cumulative capacity and resource categories (commonly known as "MCC buckets") for system and local resource adequacy as well as categories of must-offer for flexible resource adequacy described in the most recent filing guide for system, local, and flexible resource adequacy compliance filings issued or published on the CPUC's website by the CPUC or its staff specifying the guidelines, requirements, and instructions for load serving entities to demonstrate compliance with the CPUC's resource adequacy program.

"**Resource ID**" has the meaning set forth in the CAISO Tariff.

"**Round-Trip Efficiency**" means the tested round-trip efficiency rate calculated pursuant to PART II.J of Exhibit N, as the same is to be established as of the Commercial Operation Date and adjusted from time to time pursuant to Exhibit N to reflect the results of the most recently performed Storage Capacity Test.

"**Round-Trip Efficiency Factor**" has the meaning set forth in Exhibit Q.

"**RTE Shortfall Payment**" has the meaning set forth in Exhibit Q.

"**RTD Instructed Imbalance Energy**" or "**RTD IIE**" has the meaning set forth in the CAISO Tariff.

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

"**Schedule**" has the meaning set forth in the CAISO Tariff.

"**Scheduled Energy**" means the Energy reflected in a final Day-Ahead Schedule, FMM Schedule, and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time.

"**Scheduled Maintenance**" has the meaning set forth in Section 6.1(a).

"**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.

"**Secondary Unavailability**" has the meaning set forth in Exhibit M.

"**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 UIE Costs**" has the meaning set forth in Section 3.3(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).

"**Settlement Interval**" has the meaning set forth in the CAISO Tariff.

"**Settlement Period**" has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

"**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 to the Delivery Point, including the Interconnection Facilities and the Interconnection Agreement itself, if applicable, that are used in common with third parties or by Seller for electric generation or storage facilities owned by Seller or its Affiliates other than the Facility.

"Showing Deadline" means the initial deadline that a Scheduling Coordinator must meet to submit its RA Plan, as established by CAISO, the CPUC or any other Governmental Authority. For illustrative purposes only, as of the Effective Date, the CAISO monthly Showing Deadline is approximately 45 days prior to the RA delivery month.

"**Showing Month**" means 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, 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 to Buyer, in substantially the form of the Form of Construction Start Date Certificate in Exhibit H. 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 Seller or 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.

"**SP-15**" means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

"**Station Use**" means all electric energy that is used within the Facility to power lights, motors, control systems, thermal regulation equipment and other electrical loads.

"**Station Use Meter**" has the meaning set forth in Section 7.1.

"**Storage Availability Adjustment**" has the meaning set forth in Exhibit M.

"**Storage Capacity**" means the maximum dependable operating capability of the Facility (expressed in MW AC) to discharge electric energy at the maximum discharge rate that can be sustained for four (4) consecutive hours, as the same is to be established as of the Commercial Operation Date and adjusted from time to time pursuant to Exhibit N to reflect the results of the most recently performed Storage Capacity Test; provided that the Storage Capacity shall not at any time exceed the lesser of (a) the Guaranteed Storage Capacity, and (b) the Facility's then current PMax in the Facility's CAISO's Master Data File and Resource Data Template (or successor data systems).

"**Storage Capacity Payment**" has the meaning set forth in Section 3.2.

"**Storage Capacity Test**" or "**SCT**" means any test or retest of the capacity and round-trip efficiency of the Facility conducted in accordance with the testing procedures, requirements and protocols set forth in Exhibit N.

"**Storage Contract Capacity**" means the total capacity (in MW) of the Storage Facility initially equal to the Guaranteed Storage Capacity set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(b) of Exhibit B.

"**Storage Facility Meter**" means the CAISO Approved Meter (with a 0.3 accuracy class), sufficient for monitoring, recording and reporting, in real time, the amount of (i) Charging Energy, (ii) Discharging Energy and (iii) Energy directly from the grid that serves Station Use. For clarity, the Facility may include multiple measurement devices and calculations 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 calculations and the aggregated data of all such measurement devices and calculations, taken together.

"**Storage Rate**" has the meaning set forth on the Cover Sheet.

"**Stored Energy**" means the electric energy in the Facility available to be discharged as Discharging Energy.

"**Stored Energy Level**" means, at a particular time, the amount of electric energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

"**Subsequent Purchasers**" means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

"**Supplementary Storage Capacity Test Protocol**" has the meaning set forth in Exhibit N.

"**Supply Plan**" has the meaning set forth in the CAISO Tariff.

"**System Emergency**" means any (a) condition that: (i) requires, as determined and declared by CAISO or the PTO, 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) preserve Transmission System reliability, and (ii) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part, or (b) a "System Emergency" or equivalent term, as defined by CAISO or the PTO.

"System Resource Adequacy Benefits" means the attributes, however defined, of a resource that can be used to satisfy the resource adequacy obligations of a load serving entity, other than Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits.

"**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 generally accepted accounting principles.

"**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.

"**Terminated Transaction**" has the meaning set forth in Section 11.2.

"**Termination Payment**" has the meaning set forth in Section 11.3(b).

"**Transformer Failure**" means a failure of all or part of the Main Power Transformer that results in the Facility being unable receive Charging Energy or to deliver Facility Energy during such failure, and such failure was not caused by Seller and could not have been avoided through the exercise of Prudent Operating Practices.

"**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.

"**Ultimate Parent**" means (a) Aypa Power Holdings LP from the Effective Date until such Person no longer Controls, directly or indirectly, Seller, and (b) following the date on which Aypa

Power Holdings LP no longer Controls, directly or indirectly, Seller, the entity that does Control, directly or indirectly, Seller and that is not Controlled by any other entity.

"**Uninstructed Imbalance Energy**" or "**UIE**" has the meaning set forth in the CAISO Tariff.

"**WECC**" means the Western Electricity Coordinating Council or its successor.

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 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" means "include without limitation" or "including 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, and references to a LMP shall mean the LMP at the Delivery Point unless expressly provided otherwise;

(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**").

(b) Seller shall provide Notice to Buyer within ten (10) Business Days of Seller's receipt of any executed Interconnection Agreement that includes an estimated placed-in-service date ("**Estimated Placed-In-Service Date**") for Seller's Interconnection Facilities that is later than the date of Initial Synchronization as set forth in the Milestone schedule on the Cover Sheet ("**Interconnection Delay Notice**").

(i) [Reserved]

(ii) If, despite Seller's commercially reasonable efforts to have the Estimated Placed-In-Service Date be on or before the estimated date of Initial Synchronization as set forth in the Milestone schedule on the Cover Sheet, such Estimated Placed-In-Service Date is more than [redacted] days after the date of Initial Synchronization as set forth in the Milestone schedule on the Cover Sheet, then Buyer shall have the right to terminate this Agreement by providing Notice to Seller within ninety (90) days after Buyer's receipt of the Interconnection Delay Notice, and retain [redacted] of the Development Security as liquidated damages. [redacted]

(iii) [Intentionally Omitted.]

(iv) [Intentionally Omitted.]

(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 19 shall remain in full force and effect for three (3) years following the termination of this Agreement, 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 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller shall have installed and commissioned storage equipment with a capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity;

(b) Seller shall have delivered to Buyer certificates from a Licensed Professional Engineer substantially in the form of Exhibits G-1 and G-2;

(c) 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;

(d) An Interconnection Agreement between Seller or its Affiliate and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement, including all modifications and amendments thereto, delivered to Buyer;

(e) Authorization to parallel the Facility was obtained by the Participating Transmission Owner prior to the Commercial Operation Date.

(f) The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by the Commercial Operation Date.

(g) The CAISO has provided notification supporting Commercial Operation.

(h) Buyer, or its designee, is the Scheduling Coordinator for the Facility; provided that if this requirement is not met because of Buyer's (or its designee's) actions or failure to take actions, and this is the only requirement for Commercial Operation that has not been met, Seller shall be entitled to a day for day extension of the Guaranteed Commercial Operation Date for such Buyer (or its designee) actions or failure to act.

(i) Seller shall have delivered to Buyer a copy of all environmental impact reports, studies or assessments prepared by or obtained by Seller or its Affiliates, the conditional use permit or other principal land use approval for the Facility, and a certificate signed by an authorized representative of Seller stating that Seller or its Affiliate is in compliance with the requirements of the conditional use permit or other principal land use approval;

(j) Seller shall have caused the Facility to be included in the Full Network Model and has ability to offer Bids into CAISO Day-Ahead Markets and Real-Time Markets.

(k) Seller shall have completed all necessary steps to provide Ancillary Services from the Facility, including completing the certification and testing requirements in Section 8 and Appendix K of the CAISO Tariff;

(l) Seller has delivered the Performance Security to Buyer;

(m) Seller has paid Buyer for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any; and

(n) Seller has delivered to Buyer a plan that is reasonably acceptable to Buyer for the proper recycling and disposal of all project components, equipment, and materials at the end of the useful life of the Facility; *provided*, if Buyer does not find Seller's recycling and disposal plan acceptable, it shall provide Seller, within ten (10) Business Days after Seller's submission of its recycling and disposal plan, Notice thereof together with an explanation for such finding. If Buyer fails to provide such Notice within ten (10) Business Day-period, Buyer shall be deemed to have accepted Seller's recycling and disposal plan.

2.3 **Progress Reports**. Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (b) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

2.4 **Remedial Action Plan**. If Seller misses any Milestone by more than thirty (30) days, Seller shall submit to Buyer, within ten (10) Business Days of such missed 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), and 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 any extension thereof); provided, that 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. If the missed Milestone(s) is not the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date, and so long as Seller complies with its obligations under this Section 2.4, then Seller shall not be considered in default of its obligations under this Agreement as a result of missing such Milestone(s).

ARTICLE 3
PURCHASE AND SALE

3.1 **Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller all of the Product. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except with respect to Replacement RA.

3.2 **Compensation**. Buyer shall compensate Seller for the Product in accordance with this Section 3.2. For each month of the Delivery Term, Buyer shall pay Seller an amount equal to [(A x B x C) – D – E – F], (such amount, the "**Storage Capacity Payment**"), where:

A = the Storage Rate

B = the current Storage Capacity (in kW)

C = the applicable Storage Availability Adjustment determined in accordance with Exhibit M

D = the applicable RTE Shortfall Payment determined in accordance with Exhibit Q (if applicable)

E = the applicable Reimbursable Station Use Payment for such month

F = the applicable Seller UIE Costs for such month

The Storage Capacity Payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

3.3 **Imbalance Energy**. Buyer and Seller shall cooperate to minimize charges and imbalances associated with UIE to the extent possible. Each Party's respective responsibility with respect to CAISO costs and revenues associated with IIE and UIE are as follows:

(a) [redacted]



3.4 **Future Environmental Attributes**.

(a) The Parties acknowledge and agree that as of the Effective Date, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Buyer shall have the right to obtain such Future Environmental Attributes. Subject to Sections 3.6(b) and 3.8, 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 Storage Rate. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, Seller shall take all reasonable actions necessary to realize the full value of such Future Environmental Attributes for the benefit of Buyer, and shall cooperate with Buyer in Buyer's efforts to do the same. 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 modify the operation of the Project 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 3.4(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 appropriate transfer, delivery and risk of loss mechanisms,; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.5 **Capacity Attributes**. Seller shall request Full Capacity Deliverability Status in connection with the Facility in the CAISO generator interconnection process. As between Buyer

and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility throughout the Delivery Term.

(b) Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) For the duration of the Delivery Term, Seller shall maintain an interconnection capacity under its Interconnection Agreement of at least the amount of the Guaranteed Interconnection Capacity.

(e) If, as a result of Scheduled Maintenance or otherwise, CAISO requires RA Substitute Capacity in connection with Seller's provision of Resource Adequacy Benefits to Buyer from the Facility, Seller shall provide such RA Substitute Capacity in accordance with applicable CAISO requirements. Seller acknowledges and agrees that any failure by Seller to provide such RA Substitute Capacity may result in CAISO rejecting or cancelling Scheduled Maintenance or other outage of the Facility. Upon request by Seller, Buyer shall use commercially reasonable efforts to secure, on Seller's behalf, RA Substitute Capacity; provided that Seller shall reimburse Buyer for all out-of-pocket costs, including broker and outside counsel costs, associated with such RA Substitute Capacity. If Seller declines to provide RA Substitute Capacity, and notifies Buyer to that effect no less than five (5) Business Days before the applicable Showing Deadline, then Buyer will not include the Facility (or, if applicable, the portion of the Facility) in its Supply Plan for the Facility and Seller's sole liability will be payment of the RA Deficiency Amount for such RA Shortfall pursuant to Section 3.6.

(f) If Seller anticipates it will have an RA Shortfall in any month of the Delivery Term, Seller may provide Replacement RA up to the anticipated RA Shortfall, provided Seller provides Buyer with Replacement RA product information in a Notice substantially in the form of Exhibit K at least seventy-five (75) days before the applicable Showing Month.

3.6 **Resource Adequacy Failure**.

(a) RA Deficiency Determination. Notwithstanding Seller's obligations set forth in Section 4.3 or anything to the contrary herein, the Parties acknowledge and agree that if Seller has failed to obtain Full Capacity Deliverability Status for the Facility by the RA Guarantee Date, or if Seller otherwise fails to provide Resource Adequacy Benefits (or Replacement RA in lieu thereof) on or after the RA Guarantee Date and such failure results in an RA Shortfall hereunder, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month

as liquidated damages due to Buyer for the Capacity Attributes that Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the sum of:

(i) For any portion of the RA Shortfall for which Buyer incurs a CPUC System RA Penalty ("**CPUC-Penalized Shortfall**"), Seller's pro rata share of the amount of such CPUC System RA Penalty for such month actually incurred by Buyer (which shall be zero (0) if Buyer does not incur any CPUC System RA Penalty), plus,

(ii) For any portion of the RA Shortfall for which Buyer incurs CAISO costs, charges or penalties associated with such shortfall ("**CAISO-Penalized Shortfall**") Seller's pro rata share of the amount of such CAISO costs, charges or penalties associated with the RA Shortfall for such month actually incurred by Buyer (which shall be zero (0) if Buyer does not incur any CAISO costs, charges or penalties associated with the RA Shortfall), plus

(iii) For any portion of the RA Shortfall which is not a CPUC-Penalized Shortfall and/or a CAISO-Penalized Shortfall, and for which Buyer purchased replacement Resource Adequacy Benefits, the amount of Buyer's reasonably incurred cost of such replacement Resource Adequacy Benefits, plus

(iv) For any portion of the RA Shortfall which is not a CPUC-Penalized Shortfall and/or CAISO-Penalized Shortfall, and for which Buyer did not purchase replacement Resource Adequacy Benefits, the prevailing market value of such RA Shortfall, as reasonably determined by Buyer and substantiated based on two (2) price quotes from brokers or marketers not affiliated with either Party if readily available;

[redacted]

(c) Notwithstanding the foregoing, if any given month, following the Effective Date, an RA Change in Law creates an RA Shortfall, no RA Deficiency Amount shall be owed to Buyer except to the extent that such RA Shortfall pursuant to Section (b)(i) of the definition of "RA Change in Law" was more than [redacted] for such month.

3.7 **Buyer's Re-Sale of Product**. Subject to Section 5.2, Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. Subject to Section 3.8, if the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but

without increasing Seller's obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.7, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

3.8 **Compliance Expenditure Cap**. If a change in Law, other than an RA Change in Law, occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Capacity Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars ($25,000) per MW of Installed Storage Capacity ("**Compliance Expenditure Cap**").Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**"; *provided*, Compliance Actions shall not include increasing the Storage Capacity beyond the Guaranteed Storage Capacity.

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.8(c) 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.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall make available and Buyer shall accept at the Delivery Point all Product. Seller retains all rights to the Facility and to use and dispose of Product after the end of the Delivery Term. Each Party shall perform all obligations under this Agreement, including all generation,

scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

4.2 **Title and Risk of Loss**. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Title to and risk of loss related to the Charging Energy, if any, shall pass and transfer from Buyer to Seller at the Delivery Point.

4.3 **Scheduling Coordinator Responsibilities**.

(a) 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 the Product at the Delivery Point. At least thirty (30) days prior to the planned 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 as the Facility's Scheduling Coordinator 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 Schedules 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 or real time basis, as determined by Buyer.

(b) 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 Facility Outages, Forced Facility 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 (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below and in Section 3.3, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, fees, costs, and other charges, except as otherwise provided in this Agreement) and shall be entitled to all CAISO revenues (including credits 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 or fees resulting from any failure by Seller to abide by any Charging Notices, Discharging Notices, the CAISO Tariff or 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 are for the benefit of

the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). 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 the actions or inactions of Seller that are not in compliance with this Agreement, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) 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 charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement, including Section 3.3(b). 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 Section 4.3(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 these 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.

(e) 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.

(f) 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.

(g) Master Data File and Resource Data Template. Seller (and Buyer, if necessary due to Buyer's role as the Scheduling Coordinator) 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 this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent, not to be unreasonably withheld.

(h) 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.

4.4 **Forecasting**.

Seller shall provide the forecasts described below. Seller's (i) Available Storage Capacity and (ii) Available Storage Capability forecasts (items (i) and (ii) collectively referred to as the "**Forecasted Product**") shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Forecasted Product accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Monthly Forecast of Available Storage Capacity and Capability. 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 designee (if applicable) a non-binding forecast of the hourly Forecasted Product for each day of the following month in the form attached hereto as Exhibit L-1 and L-2, or as reasonably requested by Buyer.

(b) Daily Forecast of Available Storage Capacity. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Forecasted Product 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 Available Storage Capacity and Available Storage Capability.

(c) Real-Time Forecast. During the Delivery Term, Seller shall notify Buyer of any changes in Forecasted Product of one (1) MW or more, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Storage Capacity or Available Storage Capability, as applicable, the expected end date and time of such event, the expected Available Storage Capacity in MW or the expected Available Storage Capability in MWh, 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; *provided*, Seller shall only be required to notify Buyer of a Forced Facility Outage due to an outage on the Transmission System to the extent Seller has knowledge of such 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. These Notices and changes to Available Storage Capacity and Available Storage Capability shall be communicated in a method reasonably specified by 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 4.4(c), then Seller shall send such communications by telephone and e-mail to Buyer.

4.5 **Curtailment**.

(a) General. Subject to any limitations required by the Operation Restrictions, Seller agrees to reduce its consumption of Charging Energy and its delivery of Discharging Energy by the amount and for the period set forth in any Curtailment Order.

(b) Failure to Comply. If Seller fails to comply with a Curtailment Order as provided above, then (i) for each MWh of Charging Energy that is consumed by Seller in contradiction to the Curtailment Order, Seller shall pay Buyer for each MWh an amount equal to the sum of (A) + (B), where: (A) is an amount equal to the absolute value of LMPs, if any, for the Settlement Intervals during the Curtailment Period, times the applicable amount of MWh of Energy consumed by Seller in contradiction to the Curtailment Order, and (B) is any penalties or other charges resulting from Seller's failure to comply with the Curtailment Order; and (ii) for each MWh of Discharging Energy that is delivered to the Delivery Point in contradiction to the Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B), where: (A) is an amount equal to the absolute value of any negative LMPs, if any, for the Settlement Intervals during the Curtailment Period, times the applicable amount of MWh of Energy delivered to the Delivery Point during such Settlement Intervals with negative LMPs in contradiction to the Curtailment Order, and (B) is any penalties or other charges resulting from Seller's failure to comply with the Curtailment Order. Seller shall not be deemed to have failed to comply with a Curtailment Order to the extent the sole reason for such failure is due to the Curtailment Order being inconsistent with the limitations of the Facility set forth in the Master File.

(c) Seller Equipment Required for Operating 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 operating instructions from the CAISO and Buyer's SC, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility and required by CAISO or which Buyer reasonably determines are necessary to comply with this Agreement (provided, that in the event of any conflicts between the CAISO's requirements and the Buyer's requirements, Seller shall comply with the CAISO's requirements), Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall promptly repair and replace as necessary such facilities, communication links or other equipment, and shall notify Buyer as soon as Seller discovers any defect. If Seller is required to replace or upgrade equipment to comply with methodologies applicable to the Facility determined by Buyer to be reasonably necessary to comply with this Agreement after the Effective Date (except to the extent required by Law), then the cost of such equipment and the installation thereof shall be considered a Compliance Action under Section 3.8 and Seller's obligation to pay for such meters and power electronics shall be subject to the Compliance Expenditure Cap. If Buyer notifies Seller of the need for maintenance, repair, or replacement of any such facilities, communication links or other equipment, Seller shall repair or replace such equipment as necessary within five (5) days of receipt of such Notice;

provided that if Seller is unable to do so, then Seller shall make such repair or replacement as soon as reasonably practical. Seller shall be liable pursuant to Section 4.5(b) for failure to comply with a 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 Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.6 **Charging and Discharging Energy**.

(a) Buyer will be the Scheduling Coordinator for the Facility and will have sole and exclusive rights to direct Seller to charge and discharge the Facility and to bid and schedule the Facility in CAISO markets, subject to the terms of this Agreement, including compliance with the Operating Restrictions.

(b) Seller shall comply with Charging Notices and Discharging Notices that comply with the terms of this Agreement. Upon receipt of a valid Charging Notice, Seller shall accept the Charging Energy at the Facility in accordance with the terms of this Agreement (including the Operating Restrictions), at the times and in the quantities specified in such Charging Notice. Upon receipt of a valid Discharging Notice, Seller shall deliver the Discharging Energy to the Delivery Point in accordance with the terms of this Agreement (including the Operating Restrictions), at the times and in the quantities specified in such Discharging Notice.

(c) Buyer will have the right to direct Seller to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided that Buyer's right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including compliance with the Operating Restrictions and the CAISO Tariff. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.

(d) Seller shall not charge the Facility during the Contract Term other than pursuant to a valid Charging Notice or in connection with a Storage Capacity Test (for which Seller may request a Charging Notice from Buyer), pursuant to a notice from CAISO, the PTO, or any other Governmental Authority, or as may be required to comply with the Operating Restrictions. If, during the Contract Term, Seller (i) charges the Facility other than as provided for in a Charging Notice (except as permitted in the first sentence of this Section 4.6(d)), or (ii) charges the Facility in violation of the first or second sentence of Section 4.6(b), then, in addition to any other costs and charges for which Seller is responsible, including other amounts specified in Section 3.3(a), and without limiting any of Buyer's other rights under this Agreement, Buyer shall be entitled to retain all revenues associate therewith and any subsequent discharging of such Energy. During any period in which the Facility is subject to a Charing Notice or Discharging Notice, this Section 4.6(d) shall only apply to the extent [redacted] and that are not caused by unavailability of the Facility.

(e) Subject to compliance with the CAISO Tariff, other applicable Laws and the Operating Restrictions, Buyer will have the right to direct Seller to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing

Discharging Notices to Seller electronically and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(f) Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice or in connection with a Storage Capacity Test (for which Seller may request a Discharging Notice from Buyer), pursuant to a notice from CAISO, the PTO, or any other Governmental Authority, or as may be required to comply with the Operating Restrictions. Discharging for Station Use may occur only as specified in Section 6.4. In the case of a Storage Capacity Test, Buyer shall pay for costs associated with the Charging Energy and may retain any revenue from the discharge of such Energy (adjusted for efficiency losses) pursuant to a valid Discharging Notice; *provided*, (i) Seller shall pay the costs associated with the Charging Energy and may retain any revenue from the discharge of such Energy (adjusted for efficiency losses), and (ii) the Facility shall be deemed unavailable for purposes of calculating the Monthly Storage Availability pursuant to Exhibit M, if (A) Seller initiates the tests in accordance with Exhibit N or (B) a Buyer-initiated test indicates that the Storage Capacity is two percent (2%) or more lower than the then-current Storage Capacity. If, during the Contract Term, Seller (1) discharges the Facility other than as provided for in a Discharging Notice (except as permitted in the first sentence of this Section 4.6(f)), or (2) discharges the Facility in violation of the third sentence of Section 4.6(b), then, in addition to any other costs and charges for which Seller is responsible, including other amounts specified in Section 4.3(c), and without limiting any of Buyer's other rights under this Agreement:

(i) Buyer shall retain any positive revenues received from CAISO or otherwise associated with such discharge; and

(ii) Seller shall be responsible for and reimburse Buyer for all Energy costs associated with charging the Facility back to the Stored Energy Level specified by Buyer before the non-permitted discharge.

[redacted]

(g) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Charging Notices or Discharging Notices applicable to such Settlement Interval (but not over Charging Notices or Discharging Notices which are consistent with such Curtailment Orders), and Seller shall have no liability for violation of this Section 4.6 or any Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the PTO unless caused by Seller's fault or negligence. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Curtailment Order consistent with the Operating Restrictions and the Curtailment Order.

(h) Prior to the Commercial Operation Date, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to charge and discharge the Storage Facility (provided, Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility), (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy), and (iv) Buyer shall net all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO each month, and (x) if such net amount is a negative number, Seller shall reimburse Buyer such amount, and (y) if such net amount is a positive number, Buyer shall be entitled to retain such amount.

4.7 **Financial Statements**. Seller shall provide to Buyer, within 60 days of the end of Seller's first, second, and third fiscal quarters, and within 120 days of the end of the Seller's fiscal year, as applicable, unaudited quarterly and annual audited financial statements of the Seller (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

4.8 **Access to Data and Installation and Maintenance of Weather Station**.

(a) Commencing on the Commercial Operation Date, and continuing throughout the Delivery Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer and consistent with Prudent Operating Practice, the data set forth below on a real-time basis; provided that Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested by Buyer, throughout the Delivery Term, which changes Buyer reasonably determines are necessary in order for Buyer to forecast output from the Facility, and comply with Law:

(i) real time, read-only access to transformer availability, any other Facility availability information;

(ii) real time, read-only access to Charging Energy, Discharging Energy, Facility state-of-charge, and battery rack and inverter status (online or offline) information collected by the supervisory control and data acquisition (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 such information to Buyer in 1 minute 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;

(iii) read-only access to the Storage Facility Meter and all Facility meter data at the Site; and

(iv) full, real-time access to the Facility's Scheduling and Logging for the CAISO client application, or its successor system.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Facility's monthly actual Available Storage Capacity in a form reasonably acceptable to Buyer.

(b) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 4.8, which shall be available on a minimum time interval of one hour basis or an hourly average basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(c) Installation, Maintenance and Repair.

(i) Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 4.8(a) of this Agreement.

(ii) Seller shall maintain the telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Buyer's designee to enable Buyer to meet current CAISO scheduling requirements. Seller shall promptly repair and replace as necessary such telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(iii) If Buyer notifies Seller of the need for maintenance, repair or replacement of the telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice; provided that if Seller is unable to repair or replace such equipment within five (5) days, then Seller shall make such repair or replacement as soon as reasonably practical; provided further that Seller shall not be relieved from liability for any IIE or UIE costs incurred under Section 3.3(a) during this additional period for repair or replacement.

(iv) For any occurrence in which Seller's telecommunications system is not available or does not provide the quality of data required hereunder and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of verbal or written communication, including cellular communications from onsite personnel, facsimile, or equivalent mobile e-mail, or other method mutually agreed upon by the Parties, until the telecommunications link is re-established.

(d) Seller agrees and acknowledges that Buyer may seek and obtain from third parties any information relevant to its duties as Scheduling Coordinator for the Facility, including from the Participating Transmission Operator. Seller shall execute within a commercially reasonable timeframe upon request such instruments as are reasonable and necessary to enable Buyer to obtain from the Participating Transmission Operator information concerning Seller and the Facility that may be necessary or useful to Buyer in furtherance of Buyer's duties as Scheduling Coordinator for the Facility.

4.9 **Storage Availability and Efficiency**. The provisions of this Section 4.9 apply during the Delivery Term.

(a) Storage Availability. During the Delivery Term, the Facility shall maintain a Monthly Storage Availability (calculated in accordance with Exhibit M) during each Month of no less than [redacted] (the **"Guaranteed Storage Availability"**). If, in any Month after the Commercial Operation Date, the Monthly Storage

Availability is less than the Guaranteed Storage Availability, then, except as provided in Section 11.1(b)(iii), Buyer's sole and exclusive remedy for such shortfall shall be the application of the Storage Availability Adjustment to reduce the Storage Capacity Payment due for the Product as provided in Section 3.2.

(b) Round-Trip Efficiency. During the Delivery Term, the Facility shall maintain a Round-Trip Efficiency during each month of no less than the Guaranteed Round-Trip Efficiency. If, in any month during the Delivery Term, the Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency, then, except as provided in Section 11.1(b)(iv), Buyer's sole and exclusive remedy (and Seller's sole and exclusive liability) for such shortfall shall be the RTE Shortfall Payment calculated in accordance with Exhibit Q.

4.10 **Storage Capacity Tests**.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit N. Thereafter, Seller and Buyer shall have the right to conduct additional Storage Capacity Tests in accordance with Exhibit N.

(b) Buyer shall have the right to send one or more representatives to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representatives witnessing any Storage Capacity Test. Buyer shall (i) comply with all reasonable and notified Seller health and safety policies and procedures and instructions while present at the Site, and (ii) shall conduct itself in a manner that will not unreasonably interfere with the operation of the Facility or other activities of Seller and its subcontractors on the Site. Buyer acknowledges that it will be escorted at all times while on the Site.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit N. If the actual capacity or round-trip efficiency determined pursuant to a Storage Capacity Test deviates from the then current Storage Capacity or Round-Trip Efficiency, then the actual capacity or round-trip efficiency determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Capacity) shall become the new Storage Capacity or Round-Trip Efficiency, effective as of the first day of the month following the completion of the Storage Capacity Test, for all purposes under this Agreement, including compensation under Section 3.2 until the next such Storage Capacity Test.

(d) It is acknowledged that Seller shall have the right and option in its sole discretion to install Facility capacity in excess of the Storage Contract Capacity; *provided*, for all purposes of this Agreement the amount of Installed Battery Capacity and Storage Capacity shall never be deemed to exceed the Storage Contract Capacity, and (A) Buyer shall have no rights to instruct Seller to (i) charge or discharge the Facility at an instantaneous rate (in MW) in excess of the lesser of the Storage Contract Capacity, the Installed Battery Capacity or the Storage Capacity or (ii) charge the Facility to a level (in MWh) in excess of the lesser of the Storage Contract Capacity, the Installed Battery Capacity or Storage Capacity times four (4) hours, (B) Buyer shall have no obligation to dispatch such excess capacity on behalf of Seller, or to make payment to Seller for such excess capacity, and (C) for purposes of calculating the Monthly Storage Availability of the Facility, the unavailability of such excess capacity will not be considered in such calculations.

4.11 **Facility Modifications**. Seller shall not modify or supplement all or any part of the Facility without Buyer's prior written consent, which consent shall be not be unreasonably withheld, conditioned or delayed; *provided*, Seller may, without Buyer's consent, perform routine maintenance and undertake augmentation, improvement or modification of the Facility, including repairs and replacements of all or portions thereof with newer technology, if such work is done in accordance with Prudent Operating Practice and does not change the Facility's ability to meet the availability and performance specifications of this Agreement or the Operating Requirements and does not have any material adverse impact on Buyer's ability to receive Product from the Facility or charge or discharge the Facility in the manner provided for in this Agreement; provided, further that (i) Seller shall provide Buyer with prior written notice before undertaking any of the foregoing that would result in any reduction in the availability of the Facility, and (ii) all outages and derates associated with the foregoing shall count toward the maximum Scheduled Maintenance hours specified in Section 6.1(a).

4.12 **Ancillary Services**. Buyer shall have the exclusive rights to all Ancillary Services that the Facility is capable of providing consistent with the Operating Restrictions, with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Contract Term so as to be able to provide such Ancillary Services in accordance with the specifications set forth in the Facility's initial CAISO Certification associated with the Installed Storage Capacity (subject to any changes required by Law or CAISO requirements). Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the 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 without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any costs Seller incurs in connection with conducting such additional CAISO Certification.

4.13 **Workforce Agreement**. The Parties acknowledge that in connection with Buyer's energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall cause that work performed in connection with construction of the Facility to be conducted using a project labor agreement, or similar agreement, providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof. Seller shall provide documentation reasonably satisfactory to Buyer demonstrating Seller's compliance with the requirements of this Section 4.13.

4.14 **Diverse Business Enterprises**. During the Delivery Term, no later than twenty (20) days after each semi-annual period ending on June 30th or December 31st, Seller shall provide to Buyer a report listing all Diverse Business Enterprises that supplied goods or services to Seller during such period, including any certifications or other documentation of such Diverse Business Enterprises status as such and the aggregate amount paid to Diverse Business Enterprises during such period.

(a) Buyer has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 4.14.

(b) Seller shall make reasonable efforts to accommodate requests by the CPUC (or by Buyer in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 4.14.

4.15 **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities may be subject to shared facilities and/or co-tenancy agreements entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties. If applicable, Seller agrees that any agreements regarding Shared Facilities (i) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, (ii) shall provide for separate metering of the Facility; (iii) shall not limit Buyer's ability to provide Charging Notices or Discharging Notices for the Facility; (iv) shall 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 ID; and (iv) shall provide that any curtailment or restriction of Shared Facility capacity not attributable to a specific project or projects shall be allocated to all generating or storage facilities utilizing the Shared Facilities based on their pro rata allocation of the Shared Facility capacity prior to such curtailment or reduction. Seller shall not, and shall not permit any Affiliate of Seller to, allocate to other Persons a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements, minus the Guaranteed Interconnection Capacity.

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 delivery or making available to Buyer, including on Discharging Energy prior to the Delivery Point. 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 from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees) and on Charging Energy prior to delivery by Buyer to the Delivery Point. Seller shall be solely responsible for all taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Contract Term, but expressly excluding any taxes, charges or fees related to Greenhouse Gases imposed on Charging Energy or Discharging Energy. 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 Buyer is subject to an exemption for any sale of Energy or other Product hereunder that would otherwise be subject to a Tax under Applicable Law, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. 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 Energy and Ancillary Services delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy and Ancillary Services.

5.3 **Ownership**. Seller shall be the owner of the Facility for federal income tax purposes and, as such, Seller (or its Affiliates or Lenders) shall be entitled to all depreciation deductions associated with the Facility and to any and all tax benefits associated with the Facility, including any such tax credits or tax benefits under the Internal Revenue Code of 1986, as amended. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended. The Parties will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of the Product from the Seller or that this agreement is anything other than a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended.

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.

(a) Seller shall provide to Buyer no later than ninety (90) days prior to the Commercial Operation Date for the period from the Commercial Operation Date through the end of the then-current calendar year, and no later than September 1 of each calendar year thereafter for the following calendar year, a schedule of all planned outages or derates of the Facility for maintenance purposes ("**Scheduled Maintenance**"). Scheduled Maintenance conducted in accordance with all the requirements and limits in this Agreement is "**Permitted Scheduled Maintenance**". Seller shall not conduct any Scheduled Maintenance between June 1 and October 31 of each year. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to adjusting the timing of Scheduled Maintenance. Seller may modify its schedule of Permitted Scheduled Maintenance upon reasonable advance notice to Buyer, subject to reasonable requests of Buyer and consistent with Section 4.4 and this Section 6.1.

(b) Seller shall use commercially reasonable efforts to perform during periods of Permitted Scheduled Maintenance all maintenance that will reduce the Facility's output or availability. Seller shall arrange for any necessary non-emergency maintenance that is not Permitted Scheduled Maintenance and that reduces the Available Storage Capacity of the Facility by more than ten percent (10%) to occur only between November 1 and May 31 of each year, unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through October, or (iii) the Parties agree otherwise in writing.

(c) Seller shall use commercially reasonable efforts to schedule all maintenance outages, including those associated with Permitted Scheduled Maintenance (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require

resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer, provided that Seller shall not be required to consolidate preventative maintenance activities into a single month where such consolidation is inconsistent with vendor-recommended maintenance schedules.

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 on Exhibit R Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 **Permits and Approvals**. As between Buyer and Seller, Seller shall obtain any required permits and approvals in connection with the development, construction, and operation of the Facility (except for any approvals required of Buyer as SC for the Facility), including without limitation, environmental clearance under the California Environmental Quality Act or other environmental law, from the local jurisdiction where the Facility will be constructed.

6.4 **Energy to Serve Station Use**. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (a) Seller is responsible for providing all energy to serve Station Use (including paying the cost of any Energy used to serve Station Use and the cost of energy provided by third parties used to serve Station Use); and (b) Seller may utilize Energy to serve Station Use to the extent permissible in accordance with the CAISO Tariff and subject to the following requirements and restrictions:

(i) Seller shall not bill Buyer and Buyer will not pay Seller for any Energy that serves Station Use;

(ii) Seller shall separately meter all Station Use to ensure that records and invoices to Buyer are accurate and do not improperly bill Buyer for Energy that serves Station Use and to enable Buyer to invoice Seller for Reimbursable Station Use Payments;

(iii) Seller shall ensure that any use of Energy to serve Station Use complies with and does not interfere with or impair Buyer's or the CAISO's dispatch of or schedule for the Facility, and if Seller fails to comply with such requirements, then, without prejudice to Buyer's other rights and remedies hereunder, Seller shall reimburse Buyer for (A) any charges, costs, and penalties imposed by the CAISO for the Facility's failure to comply with dispatch instructions, the CAISO schedule, or any CAISO requirements; and (B) any loss of revenue if the CAISO adjusts dispatch instructions due to the use of Energy discharged from the Facility to serve Station Use, in each case only to the extent imposed or incurred as a direct result of Seller's use of Energy discharged from the Facility to serve Station Use;

(iv) Seller shall not use Stored Energy to serve Station Use; *provided*, Seller may use Energy stored in storage capacity installed in excess of the Installed Storage Capacity to serve Station Use during periods when the Facility is not charging or discharging pursuant to a Charging Notice or a Discharging Notice; *provided*, any use of such excess Energy

discharged from the Facility for Station Use shall not (A) reduce Seller's obligations to achieve the Guaranteed Storage Availability and Guaranteed Round-Trip Efficiency, or (B) count toward limits (including daily and/or annual discharging energy limits) specified in the Operating Restrictions; and

(v) Seller shall provide to Buyer upon Buyer's request all records and data, including detailed meter, charging, discharging, and state of charge data, that may be necessary or useful for Buyer to verify that service of Station Use occurred in compliance with this Section 6.4, and to calculate and verify the accuracy of invoices and amounts required to be reimbursed hereunder.

ARTICLE 7
METERING

7.1 **Metering**. Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), the Facility shall have its own CAISO Resource ID and shall be a CAISO Metered Entity (as defined in the CAISO Tariff). Seller shall measure the Charging Energy and Discharging Energy using the Storage Facility Meter and CAISO approved methodologies. Seller shall measure Station Use using a separate revenue-grade meter ("**Station Use Meter**"). The Storage Facility Meter and Station Use Meter shall be installed and maintained at Seller's cost. Metering will be consistent with the Metering Diagram set forth in Exhibit P. The meter(s) 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 that 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 applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter at the Facility.

7.2 **Meter Verification**. If Buyer or Seller has reason to believe there may be a meter malfunction, Seller shall test the meter. Annually, upon Buyer's reasonable request, Seller shall test the meters. 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; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall deliver an invoice to Buyer for Product no later than ten (10) days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data to the extent available and other

data sufficient to document and verify the amount of Charging Energy, Discharging Energy and Station Use and Reimbursable Station Use for any Settlement Period during the preceding month, (b) the amount of Product and Replacement RA, if any, delivered to Buyer during the preceding month, and the Storage Rate applicable to such Product and Replacement RA, and (c) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount. Invoices shall be in a format 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.

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within [redacted] days after receipt of the invoice. 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. Either Party, upon fifteen (15) days written Notice to the other Party but not more often than twice per Contract Year, 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, 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. Except for adjustments required due to a correction of data by the CAISO, any adjustment described in this Section 8.4 is waived if Notice of the adjustment is not provided within twelve (12) months after the invoice is rendered or subsequently adjusted.

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 upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. 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 party other than the Party seeking the adjustment and such 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 under this Agreement 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, 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 Development Security**. To secure Seller's obligations under this Agreement, including the obligations of Seller to pay liquidated damages to Buyer as provided in this Agreement, Seller shall deliver Development Security to Buyer within [redacted] Business Days after the Effective Date. Buyer will have the right to draw upon the Development Security if Seller fails to pay liquidated damages owed to Buyer pursuant to Exhibit B to this Agreement, or if Seller fails to pay a Damage Payment or Termination Payment owed to Buyer pursuant to Section 11.2. Seller shall maintain the Development Security in full force and effect and Seller shall 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 other than to satisfy a Damage Payment or a Termination Payment. Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly 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. Seller shall maintain the Performance Security in full force and effect and Seller shall 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 within five (5) Business Days after such draw, other than to satisfy a Termination Payment. Seller shall maintain the Performance

Security in full force and effect until the date on which the following have occurred ("**Performance Security End Date**"): (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, and indemnification payments or other damages, in each case of a determined amount, are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of the Performance Security End Date, Buyer shall promptly return to Seller the unused portion of the Performance Security. Provided that no Event of Default has occurred [redacted] with respect to Seller, Seller may replace or change the form of Performance Security to another form of Performance Security from time to time upon reasonable prior written notice to Buyer.

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 [redacted] 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 to the extent of damages or other amounts owed by Seller to Buyer hereunder.

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.

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 R 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, facsimile, or other electronic means) and either (i) the receiving Party sends a written acknowledgment of receipt, or (ii) concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of commercially 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 that render a Party's performance of this Agreement at the Storage Rate 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 Product at a higher price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility unless the cause of such inability is an event that would otherwise constitute 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 that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, 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 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; (viii) variations in weather, including wind, rain and insolation, within one in fifty (1 in 50) year occurrence as of the Effective Date; or (ix) failure to complete the Interconnection Facilities or network upgrades required to connect the Facility and to deliver Product to the Delivery Point by the Guaranteed Commercial Operation Date except to the extent such inability is caused by a Force Majeure Event; or (x) Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date, it being understood and agreed that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **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. Buyer shall not be obligated to pay for any Product that Seller was not able to deliver as a result of 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*, *however*, that a Party's failure to give timely Notice shall not affect

such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event**.

(a) If a Force Majeure Event has occurred prior to the Commercial Operation Date that has caused the cumulative extensions granted under the Development Cure Period to equal or exceed [redacted] days, 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 and either Party elects, in its sole discretion, to terminate this Agreement pursuant to Section 10.4(a), then upon such termination and notwithstanding the provisions of Exhibit B, neither Party shall have any liability to the other Party, save and except for those obligations specified in Sections 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer.

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 five (5) 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 [redacted];

(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 or for which an exclusive remedy is explicitly provided for in this Agreement) and such failure is not remedied within thirty (30) days after Notice thereof [redacted]

[redacted];

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Sections 14.1, 14.2 or 14.3, as 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 to the Delivery Point for sale under this Agreement Product that was not produced by the Facility, except with respect to Replacement RA except as expressly permitted hereunder;

(ii) the failure by Seller to achieve the Construction Start Date within [redacted] days after the Guaranteed Construction Start Date, or the failure by Seller to achieve Commercial Operation within [redacted] days after the Guaranteed Commercial Operation Date;

(iii) if, in the first Contract Year during the Delivery Term, the average Monthly Storage Availability multiplied by the Storage Capacity is not at least fifty percent (50%) multiplied by the Installed Storage Capacity, or for any Contract Year thereafter, the average Monthly Storage Availability multiplied by the Storage Capacity is not at least seventy percent (70%) multiplied by the Installed Storage Capacity; *provided*, it will not be an Event of Default under this Section 11.1(b)(iii) if (a) the failure to meet the respective standard results from Transformer Failure, (b) during the three hundred sixty five (365) day period following the date of such Transformer Failure Seller diligently pursues a cure to such Transformer Failure and delivers to Buyer a certificate from a Licensed Professional Engineer within thirty (30) days following the date of the Transformer Failure that cure can be made within such three hundred sixty five (365) day period, and (c) Seller completes the cure of such Transformer Failure within such three hundred sixty five (365) day period; *provided further*, such opportunity to cure a default under this Section 11.1(b)(iii) (and under Section 11.1(b)(v)) shall only be allowed for one Transformer Failure during the Contract Term;

(iv) if, for any two (2) consecutive Contract Years, the annual weighted-average [redacted] Round-Trip Efficiency is not at least [redacted];

(v) if Seller fails to maintain a Storage Capacity determined pursuant to a Storage Capacity Test equal to at least seventy-five percent (75%) of the Guaranteed Storage Capacity for longer than three hundred sixty (360) days; *provided*, it will not be an Event of Default under this Section 11.1(b)(v) if (a) the failure to meet such standard results from a Transformer

Failure, (b) during the three hundred sixty five (365) day period following the date of such Transformer Failure Seller diligently pursues a cure to such Transformer Failure and delivers to Buyer a certificate from a Licensed Professional Engineer within thirty (30) days following the date of the Transformer Failure that cure can be made within such three hundred sixty five (365) day period, and (c) Seller completes the cure of such Transformer Failure within such three hundred sixty five (365) day period; *provided further*, such opportunity to cure a default under this Section 11.1(b)(v) (and under Section 11.1(b)(iii)) shall only be allowed for one Transformer failure during the Contract Term;

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Development Security or 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, if such failure is not remedied within five (5) Business Days after Notice thereof;

(vii) except for the Other Facility, if at any time Seller owns, operates or manages any equipment, facility, property or other asset, other than the Facility or engages in any business or activity other than the development, financing, ownership or operation of the Facility, entering into this Agreement with Buyer and other ancillary agreements, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing, including with respect to the Shared Facilities;

(viii) 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 five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred [redacted], 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 the Damage Payment or the Termination Payment, as applicable, in accordance with Section 11.3;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and/or

(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**.

(a) For an Early Termination Date designated as a result of a Seller Event of Default prior to the Commercial Operation Date, Buyer shall be entitled to the Damage Payment, pursuant to Section 11.2(b)(i), which shall be equal to the entire Development Security amount and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer shall 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.

(b) For all other Events of Default, the Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from

the termination of this Agreement, the net Settlement Amount shall be zero. 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; [redacted] 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 is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this section 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, 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 Damage Payment or Termination 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 Damage Payment or Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Damage Payment or Termination 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 Damage Payment or Termination Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Damage Payment or Termination Payment, as applicable, shall be determined in accordance with Article 16.

11.6 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date**.

(a) If the Agreement is terminated prior to the Commercial Operation Date for any reason other than (i) a Buyer Event of Default, or (ii) a termination pursuant to Section 2.1(b)(iv), 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, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions

materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

(b) If the Agreement is terminated prior to the Commercial Operation Date pursuant to Section 2.1(b)(iv), 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, 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 other than price, which shall not be offered to any third party lower than that offered to Buyer pursuant to this Section 11.6(b), and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

(c) 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.

(d) 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 are 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 mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

11.9 [redacted]

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY, THIRD-PARTY CLAIM SUBJECT TO INDEMNIFICATION UNDER AN INDEMNITY PROVISION, OR MEASURE OF DAMAGES HEREIN, 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. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

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.

[redacted]

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 BENEFITS, 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) SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING THE DAMAGE PAYMENT UNDER SECTION 11.2 AND THE TERMINATION PAYMENT UNDER SECTION 11.3, AND AS PROVIDED IN SECTION 3.6, SECTION 4.9, EXHIBIT B, EXHIBIT M AND EXHIBIT Q, 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, AND (UNLESS EXPRESSLY STATED TO THE CONTRARY) AN EXCLUSIVE REMEDY. 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.

EXCEPT AS EXPRESSLY PROVIDED ELSEWHERE IN THIS AGREEMENT, INCLUDING PARAGRAPH 19.3, 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 State of Delaware, 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 corporate 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 California.

(f) The Facility has been allocated FCDS for the Guaranteed Capacity, subject to Seller achieving CAISO Commercial Operation.

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 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, (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.

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 any contracts to which it is a party and in material compliance with any Law.

13.4 **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**"). 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. Seller shall certify that it will not utilize such equipment or resources in connection with the construction, operation or maintenance of the Facility.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is not otherwise permitted by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 **Permitted Assignment; Change of Control of Seller**. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; (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 Qualified 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 Qualified Transferee or (c) subject to Section 15.1, a Lender as collateral. Any direct or indirect Change of Control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Article 14 and will require the prior written consent of

Buyer (except as otherwise provided in this Section 14.2), which consent shall not be unreasonably withheld, conditioned or delayed.

14.3 **Permitted Assignment; Change of Control of Buyer**. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided*, that in each of the foregoing situations, the assignee (a) has a Credit Rating equal to or greater than that of Buyer as of the Effective Date, or if Buyer has no Credit Rating, then a Credit Rating of Baa2 or higher by Moody's or BBB or higher by S&P, and (b) is a community choice aggregator or publicly-owned electric utility with retail customers located in the state of California; *provided*, *further*, that in each such case, no fewer than fifteen (15) Business Days before such assignment Buyer (x) notifies Seller of such assignment and (y) provides to Seller a written agreement, reasonably acceptable to Seller, signed by the Person to which Buyer wishes to assign its interests stating that such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b). Any assignment by Buyer, 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 Seller.

ARTICLE 15
LENDER ACCOMMODATIONS

15.1 **Granting of Lender Interest**. Notwithstanding Section 14.2 or Section 14.3, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the other Party in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

15.2 **Rights of Lender**. If a Party grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 11.2 and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such

Lender that provide that the non-granting Party recognizes the Lender's security interest and such other provisions as may be reasonably requested by the granting Party or any such Lender; *provided*, however, that all costs and expenses (including reasonable attorney's fees) incurred by the non-granting Party in connection therewith shall be borne by the granting Party, and that the non-granting Party shall have no obligation to modify this Agreement or to reduce its benefits or increase its risks or burdens under this Agreement.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; *provided* that the non-granting Party shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3 **Cure Rights of Lender**. The non-granting Party shall provide Notice of the occurrence of any Event of Default to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder as documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party pursuant to Section 15.2(b). The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder. The cure rights of Lender may be documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party pursuant to Section 15.2(b).

ARTICLE 16
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.

16.2 **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.

16.3 **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.

16.4 **Venue**. The Parties agree that any litigation arising with respect to this Agreement is to be venued in the Superior Court for the county of San Mateo, California.

ARTICLE 17
INDEMNIFICATION

17.1 **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 third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' 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 violation of Law or the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 17.1 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.

17.2 **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 17 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 such Party and satisfactory to the Indemnified Party, *provided*, *however*, that 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 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, 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 18
INSURANCE

18.1 **Insurance**.

(a) General. Seller shall comply at all times during the Contract Term with the requirements of Exhibit J.

(b) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance in amounts equal to those set forth for Seller in Exhibit J; (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, in each case, in amounts equal to those set forth for Seller in Exhibit J. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(b).

(c) Evidence of Insurance. Within ten (10) Business Days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These 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. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(d) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 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 19
CONFIDENTIAL INFORMATION

19.1 **Definition of Confidential Information**. The following constitutes "**Confidential Information**," whether oral or written, and whether delivered by Seller to Buyer or by Buyer to Seller: (a) proposals and negotiations of the Parties in the negotiation of this Agreement; (b) the

terms and conditions of this Agreement; and (c) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" or words of similar import 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; (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.

19.2 **Duty to Maintain Confidentiality**. The Party receiving Confidential Information shall treat it as confidential, and shall adopt reasonable information security measures to maintain its confidentiality, employing the higher of (a) the standard of care that the receiving Party uses to preserve its own confidential information, or (b) a standard of care reasonably tailored to prevent unauthorized use or disclosure of such Confidential Information. Confidential Information may be disclosed by the recipient if and to the extent such disclosure is required (a) by Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The Party that originally discloses Confidential Information may use such information for its own purposes, and may publicly disclose such information at its own discretion. **Notwithstanding the foregoing, Seller acknowledges that Buyer is required to make portions of this Agreement available to the public in connection with the process of seeking approval from its board of directors for execution of this Agreement. Buyer may, in its discretion, redact certain terms of this Agreement as part of any such public disclosure, and will use reasonable efforts to consult with Seller prior to any such public disclosure.** Seller further acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Upon request or demand from any third person not a Party to this Agreement for production, inspection and/or copying of this Agreement or other Confidential Information provided by Seller to Buyer, Buyer shall, to the extent permissible, notify Seller in writing in advance of any disclosure that the request or demand has been made; provided that, upon the advice of its counsel that disclosure is required, Buyer may disclose this Agreement or any other requested Confidential Information, whether or not advance written notice to Seller has been provided. Seller shall be solely responsible for taking whatever steps it deems necessary to protect Confidential Information that is the subject of any Public Records Act request submitted by a third person to Buyer.

19.3 **Irreparable Injury; Remedies**. Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at Law or in equity, including injunctive relief and/or notwithstanding Section 12.2, consequential damages.

19.4 **Disclosure to Lender**. Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender or any of their respective agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions at least as restrictive as this Article 19 to the same extent as if it were a Party or are otherwise bound by a duty of confidentiality with respect to such Confidential Information.

19.5 **Disclosure to Credit Rating Agency.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by either Party to any nationally recognized credit rating agency (e.g., Moody's Investors Service, Standard & Poor's, or Fitch Ratings) in connection with the issuance of a credit rating for that Party or its Affiliates, provided that any such credit rating agency agrees in writing to maintain the confidentiality of such Confidential Information.

19.6 **Public Statements**. 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 press release.

ARTICLE 20
MISCELLANEOUS

20.1 **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.

20.2 **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.

20.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

20.4 **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).

20.5 **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.**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, a non-Party or the FERC acting *sua sponte* 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).

20.7 **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.

20.8 **Facsimile or Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and facsimile or 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 facsimile or other 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.

20.9 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

20.10 **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.

20.11 **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 16. 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, or constitute, or form the

basis of, a Force Majeure Event, and (ii) this Agreement shall remain in full force and effect, subject to any necessary changes, if any, agreed to by the Parties or determined through dispute resolution.

EXHIBIT A

DESCRIPTION OF THE FACILITY

Facility Name: Gabriel Storage I

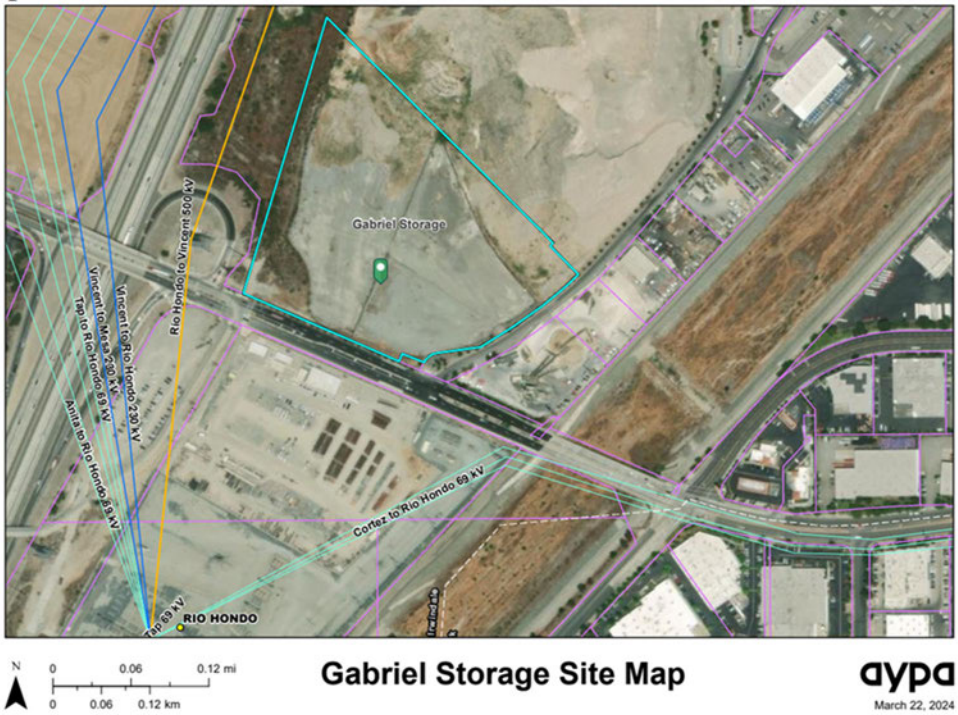
Site Name: Gabriel Storage

Site Description: The site (APN: 8532-002-046) is in the western area of the City of Irwindale, immediately east of I-605, and north of Live Oak Avenue and south of Arrow Highway. The City of Baldwin Park is located to the southeast. The I-605 Freeway forms the western boundary of the project area with the I-605/Live Oak Avenue interchange located immediately southwest of the project area and the I-605/Arrow Highway interchange located immediately northwest of the project area. The Project Area is the site of a former construction debris landfill. An inert debris remedial grading operation is bringing the site back to productive use with geotechnically certified fill.

Site Address: N/A

GPS Coordinates: 34.108839, -117.978002

Site Map:



APNs: 8532-002-046

County: Los Angeles County

CEQA Lead Agency: City of Irwindale

Storage Technology: Lithium-ion

P-node/Delivery Point: The PNode designated by CAISO for the Facility at the Rio Hondo 220kV Substation

Point of Interconnection: Rio Hondo Substation 220kV Bus

Description of Interconnection Facilities and Metering: The site is located directly north of SCE's Rio Hondo substation. A gen-tie will cross Live Oak Ave and enter SCE's Rio Hondo substation. Connecting the project to the SCE transmission system will require work at SCE's Rio Hondo substation. Equipment to be added is expected to include a 220kV circuit breaker, three disconnect switches, an H-frame dead end structure, 220kV buswork, support structures, a conduit trench and conduit, and breaker/line protection. The preliminary metering configuration is shown in the one-line diagram below.

CAISO Queue Number: **2113**

One-Line Diagram:



EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

a. Seller shall cause construction to begin on the Facility by October 1, 2026, (as such date may be extended by the Development Cure Period, the "**Guaranteed Construction Start Date**"). Seller shall demonstrate the beginning of construction through execution of Seller's engineering, procurement and construction contract, Seller's issuance of a notice to proceed under such contract, mobilization to site by Seller and/or its designees, and includes the physical movement of soil at the Site ("**Construction Start**"). On the date of the beginning of construction (the "**Construction Start Date**"), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit H hereto.

b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date until the earlier of [redacted] days after the Guaranteed Construction Start Date, or the date on which Seller reaches Construction Start of the Facility. If Seller anticipates it will not achieve Construction Start by the Guaranteed Construction Start Date, on or before the date that is ten (10) days prior to the Guaranteed Construction Start Date or the date the Daily Delay Damages will no longer cover additional days of delay to achieve Construction Start, as applicable, Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days (or additional days, if Seller has previously paid Daily Delay Damages) by which Seller anticipates the Construction Start Date will be later than the Guaranteed Construction Start Date. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Daily Delay Damages shall be Buyer's sole and exclusive remedy for the first [redacted] days of the delay in achieving the Construction Start Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to 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.

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. The "**Commercial Operation Date**" shall be the later of (x) six (6) months prior to the Guaranteed 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 June 1, 2027 (as such date may be extended by the Development Cure Period (defined below), 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. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the

request for refund of the Daily Delay Damages with the first invoice to Buyer after the Commercial Operation Date.

c. If Commercial Operation is not achieved by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer on account of such delay. Commercial Operation Delay Damages shall be payable for each day for which Commercial Operation has not been achieved by the Guaranteed Commercial Operation Date until the earlier of [redacted] days after the Guaranteed Commercial Operation Date, or the date on which Seller reaches Commercial Operation. If Seller anticipates it will not achieve Commercial Operation by the Guaranteed Commercial Operation Date, on or before the date that is ten (10) days prior to the Guaranteed Commercial Operation Date or the date the Commercial Operation Delay Damages will no longer cover additional days of delay to achieve Commercial Operation, as applicable, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days (or additional days, if Seller has previously paid Daily Delay Damages) by which Seller anticipates the Commercial Operation Date will be later than the Guaranteed Commercial Operation Date. The Parties agree that Buyer's retention of Daily Delay Damages and receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for the first [redacted] days of delay beyond the Guaranteed Commercial Operation Date in achieving the Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default under Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

3. **Termination for Failure to Timely Achieve Construction Start or Commercial Operation**. If the Facility has not achieved Construction Start within [redacted] days after the Guaranteed Construction Start Date, or Commercial Operation within [redacted] days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement pursuant to Sections 11.1(b)(ii) and 11.2(a), which termination shall become effective as provided in Section 11.2(a).

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of each of the following delays:

a. a Force Majeure Event occurs; or

b. [redacted]

c. Buyer has not made all necessary arrangements to receive the Discharging 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(c) above) shall not exceed one hundred eighty (180) days, for any reason, and, without limiting the provisions of Section 10.3, no extension shall be given to the extent that (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines; (ii) Seller failed to provide prompt written notice to Buyer of a delay due to a Force Majeure Event, but in no case more than thirty (30) days after Seller became aware of an actual delay (not including Seller's receipt of generic notices of potential delays due to a Force Majeure Event) affecting the Facility, except that in the case of a delay occurring within ninety (90) days of the Guaranteed Commercial Operation Date, or after such date, Seller must provide written notice within seven (7) Business Days of Seller becoming aware of such delay; or (iii) Seller failed, upon written request from Buyer, to provide documentation demonstrating to Buyer's reasonable satisfaction that the delay was a result of a Force Majeure Event and did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Storage Capacity**. If, at Commercial Operation, the Installed Storage Capacity is at least ninety-five percent (95%) of the Guaranteed Storage Capacity but less than the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional storage capacity such that the Installed Storage Capacity is increased, but not to exceed the Guaranteed Storage Capacity. If Seller installs additional storage capacity pursuant to the immediately preceding sentence, Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit G-2 hereto specifying the new Installed Storage Capacity. In the event that the Installed Storage Capacity is still less than the Guaranteed Storage Capacity as of such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity, and the Guaranteed Storage Capacity and other applicable portions of the Agreement shall be reduced based on the ratio of the Installed Storage Capacity as of such date to the original Guaranteed Storage Capacity.

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, and Seller shall replenish the Development Security to its full amount within five (5) Business Days after such draw.

EXHIBIT C

[Intentionally Omitted]

EXHIBIT D

[Intentionally Omitted]

EXHIBIT E

PROGRESS REPORTING FORM

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 written Progress Report in the form specified below.

Each Progress Report must include the following items:

1. Executive summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any 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 could 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. Progress and schedule of all 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

[RESERVED]

EXHIBIT G-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____[*Licensed Professional Engineer*] ("**Engineer**") to Peninsula Clean Energy Authority **(**"**Buyer**") in accordance with the terms of that certain Energy Storage and Services 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.

Engineer hereby certifies and represents to Buyer the following:

(1) Seller has installed and commissioned storage equipment with a capacity of at least ninety-five percent (95%) of the Guaranteed Storage Capacity in accordance with Exhibit N of the Agreement.

(2) The Facility is capable of receiving Charging Energy and delivering Discharging Energy to the Delivery Point and commissioning of equipment at the Facility has been completed in accordance with the manufacturer's specifications.

(3) Authorization to parallel the Facility was obtained by the Participating Transmission Owner, [Name of Participating Transmission Owner as appropriate] on___[DATE]____

(4) The Participating Transmission Owner or Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _____[DATE]_____.

(5) The CAISO has provided notification supporting the Facility's Commercial Operation, inclusion in the Full Network Model and authorization to provide Ancillary Services, all in accordance with the CAISO tariff on _____[DATE]_____.

(6) Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by **[**licensed professional engineer**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:_____

Its:_____

Date:_____

EXHIBIT G-2

FORM OF INSTALLED STORAGE CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Storage Capacity is delivered by [Licensed Professional Engineer] ("**Engineer**") to PENINSULA CLEAN ENERGY AUTHORITY ("**Buyer**") in accordance with the terms of that certain Energy Storage and Services 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.

The initial Facility performance test under Seller's engineering, procurement and construction contract or primary energy storage system supply agreement for the Facility demonstrated peak Facility electrical output of __MW AC at the Delivery Point ("**Installed Storage Capacity**").

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:_____

Its:_____

Date:_____

EXHIBIT H

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification ("**Certification**") of the Construction Start Date is delivered by [SELLER ENTITY] ("**Seller**") to PENINSULA CLEAN ENERGY AUTHORITY ("**Buyer**") in accordance with the terms of that certain Energy Storage and Services 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. the engineering, procurement and construction contract related to the Facility was executed on _____;

2. the limited notice to proceed with the construction of the Facility was issued on _____ (attached);

3. the Construction Start Date has occurred;

4. 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).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of _____.

[SELLER ENTITY]

By:

Its:

Date:_____

EXHIBIT I

FORM OF LETTER OF CREDIT

BANCO SANTANDER, S.A., NEW YORK BRANCH

437 MADISON AVENUE, 6TH FLOOR,
NEW YORK, NY 10022

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$**[XXXXXXX]**
Expiry Date:

Applicant:

[INSERT APPLICANT DETAILS]

Beneficiary:
Peninsula Clean Energy Authority
[Address]

Ladies and Gentlemen:

On behalf of **[XXXXXXX]** ("Applicant"), we, BANCO SANTANDER, S.A., NEW YORK BRANCH, ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. **[XXXXXXX]** (the "Letter of Credit") in favor of Peninsula Clean Energy Authority, Address_____, for an amount not to exceed the aggregate sum of U.S. $**[XXXXXXX]** (United States Dollars **[XXXXXXX]** and 00/100), pursuant to that certain **[Agreement]** dated as of _____ (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall have an initial expiry date of _____ __, 201_ subject to the automatic extension provisions herein.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, mentioning thereon our Letter of Credit No. **[XXXXXXX]** accompanied by your 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.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer (a) in person, by courier or (b) as a PDF attachment to an e-mail to [redacted]. If in person or by courier, at 437 MADISON AVENUE, 6TH FLOOR, NEW YORK, NY 10022. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds.

THIS LETTER OF CREDIT MAY BE DELIVERED TO THE BENEFICIARY IN ELECTRONIC FORM, AND SUCH ELECTRONIC COPY SHALL BE DEEMED TO BE THE ORIGINAL AND VALID FOR PURPOSES OF PRESENTATION HEREUNDER.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for additional one year periods beginning on the present expiry date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to permit this Letter of Credit to be so extended, in which case it will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry 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 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 expiry 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 437 MADISON AVENUE, 6TH FLOOR, NEW YORK, NY 10022, referring specifically to Issuer's Letter of Credit No. **[XXXXXXX]**. For telephone assistance, please contact Issuer's TRADE SERVICES Department at [redacted] and have this Letter of Credit available.

THIS LETTER OF CREDIT SETS FORTH IN FULL OUR UNDERTAKING, AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED OR LIMITED BY REFERENCE TO ANY DOCUMENT, INSTRUMENT OR AGREEMENT REFERRED TO HEREIN.

ALL COMMISSIONS, EXPENSES, AND CHARGES INCURRED WITH THIS LETTER OF CREDIT ARE FOR THE ACCOUNT OF THE APPLICANT.

VERY TRULY YOURS,

BANCO SANTANDER, S.A., NEW YORK BRANCH

_____	_____
AUTHORIZED SIGNATURE	AUTHORIZED SIGNATURE

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 Peninsula Clean Energy 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 **[XXXXXXX]** (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of **[XXXXXXX]** (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____.

   or

3. 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 the Bank has provided notice of its intent to not extend the expiry date of the Letter of Credit and Applicant failed to provide acceptable replacement security to Beneficiary at least thirty (30) days prior to the expiry date of the Letter of Credit.

4. The undersigned is a duly authorized representative of Peninsula Clean Energy 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 Peninsula Clean Energy Authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Peninsula Clean Energy Authority

_____
Name and Title of Authorized Representative

Date_____

EXHIBIT J

INSURANCE

Liability Insurance

To the fullest extent allowable by law, Seller shall purchase and maintain such insurance as will protect it from the claims set forth below which may arise out of or result from Seller's operations under this Agreement whether such operations be by itself or by anyone directly or indirectly employed by them, or by anyone for whose acts any of them may be liable. Limits shall be all the Insurance Coverage and/or limits carried by or available to the Seller, the minimum limits as required herein.

General Conditions

Seller shall maintain completed operations liability insurance for the entire Contract Term plus the period of time Seller may be held legally liable for.

Seller shall maintain policies of insurance in full force and effect, at all times during the performance of the Agreement, plus any statute of repose or statute of limitations applicable to the jurisdiction where any work is performed.

All insurance companies shall have a Best's rating of A-VII or better.

In addition, Seller shall provide Buyer with 45 days' notice in case of cancellation or non- renewal, except 10 days for non-payment of premium.

Certificates of Insurance Acord Form 25 and all required Endorsements shall be filed with Buyer within ten (10) Business Days of execution of the contract and/or prior to commencement of any work performed.

If requested by the Buyer, Seller shall provide a certified and true copy of any or all policies.

Acceptance of the certificates or endorsements by the Buyer shall not constitute a waiver of Seller's obligations hereunder.

If Seller fails to secure and/or pay the premiums for any of the policies of insurance required herein, or fails to maintain such insurance, Buyer may, in addition to any other rights it may have under this Agreement or at law or in equity, terminate this Agreement or secure such policies or policies of insurance for the account of Seller and charge Seller for the premiums paid therefore, or withhold the amount thereof from sums otherwise due from Buyer to Seller. Neither the Buyer's rights to secure such policy or policies nor the securing thereof by Buyer shall constitute an undertaking by Buyer on behalf of or for the benefit of Seller or others to determine or warrant that such policies are in effect.

Seller shall be fully and financially responsible for all deductibles or self-insured retentions.

Coverage Forms & Limits

Seller's Commercial General Liability insurance shall be written on an industry standard Commercial General Liability Occurrence from (CG 00 01, 12/07) or its equivalent and shall include but not be limited to products/completed operations; premises and operations; blanket contractual; advertising/personal injury; independent Buyers.

Coverage shall be on an occurrence form with policy limits of not less than:

- $1,000,000 Each Occurrence Bodily Injury & Property Damage
- $1,000,000 Personal & Advertising Injury
- $2,000,000 General Aggregate to apply on a Per Project basis
- $2,000,000 Products/Completed Operations Aggregate

Business Auto Liability – Coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) form CA 00 01, written on an occurrence basis to apply to "any auto" or at a minimum "all owned, hired and non-owned autos", with policy limits of not less than $1,000,000 per accident for bodily injury and property damage.

If applicable, Broadened Pollution for Covered Autos shall apply. This requirement may also be satisfied by providing proof of separate Pollution Liability that includes coverage for transportation exposures.

Workers' Compensation and (b) employers' liability – to the extent applicable, Sellers shall provide coverage for industrial injury to their employees (or leased employees as applicable) in strict accordance with the provisions of the State or States in which project work is performed or where jurisdiction is deemed to be applicable. Workers' Compensation shall be provided in a statutory form on either a state or, where applicable, federal (U.S. Longshore & Harbor Workers Act, Maritime- Jones Act, etc.) basis as required in the applicable jurisdiction.

Such insurance shall be in an amount of not less than:

- Workers Compensation: Statutory
- Employers Liability
    - $1,000,000 Bodily Injury by Accident – Each Accident
    - $1,000,000 Bodily Injury by Disease – Total Limit
    - $1,000,000 Bodily Injury by Disease – Each Employee

Commercial Umbrella or Excess Liability Insurance over Seller's primary Commercial General Liability, Business Auto Liability and Employers Liability. All coverage terms required under the Commercial General Liability, Business Auto Liability and Employers Liability above must be included on the Umbrella or Excess Liability Insurance.

Coverage shall be written on an occurrence form with policy limits not less than:

- $5,000,000 Each Occurrence
- $5,000,000 Personal & Advertising Injury
- $5,000,000 Aggregate (where applicable, following the terms of the underlying)

Pollution liability – Seller shall provide evidence prior to the Construction Start Date of Pollution Liability; covering all operations necessary or incidental to the fulfillment of all contract obligations hereunder. Such insurance shall provide coverage for bodily injury, property damage (including loss of use of damaged property or of property that has not been physically injured), clean- up costs and remediation expenses (including costs for investigation, sampling, characterization, and monitoring), legal costs, defense costs, natural resource damage, transportation of pollutants on and off the project site, and non-owned disposal site liability if Seller's scope of work (or Seller's consultants) includes the responsibility of manifesting and disposing of contaminated material or waste from its activities. Coverage shall also extend to pollution conditions arising out of the Seller's operations including coverage for sudden as well as gradual release arising from Seller's operations including operations of any of its Seller's or consultants. Such insurance shall provide coverage for wrongful acts, which may arise from all activities from the first point of Seller engagement and shall continue on a practice basis for not less than 36 months after completion, or the period of time Seller may be held legally liable for its work, whichever is longer. The retro date if any such coverage shall be prior to the commencement of Seller's work.

Such insurance shall be in an amount of not less than $5,000,000 per claim or occurrence and $5,000,000 annual aggregate.

If Seller maintains Pollution Liability limits greater than what is required herein, such limits carried become what we require under this contract.

Professional Liability and/or Errors & Omissions – During construction, Seller shall cause to be maintained by Seller's balance of plant contractors for the Facility evidence of Professional Liability insurance covering claims that arise from the errors, omissions or acts of the contractors, for the provision of all professional services necessary or incidental to the fulfillment of the contract obligations contractor. Such insurance shall be in an amount of not less than $5,000,000 each claim / $5,000,000 aggregate

The policy shall be effective from the date of commencement of construction in connection with the fulfillment of all contract obligations of contractor. The retroactive date in the current and future policies shall be prior to the commencement of the services. Coverage shall be maintained for a period not less than 48 months following the substantial completion; or an extended reporting period of 48 months following completion of the work shall be purchased.

Additional Insured / Primary-Noncontributory / Waiver of Subrogation Requirements To the fullest extent of coverage allowed under applicable law, Buyer shall be named as additional insured on a primary and non-contributory basis for all required lines of coverage except Statutory Workers Compensation and Professional Liability, arising out of all operations performed by or for the Seller under this Agreement. Buyer shall accept General Liability Additional Insured forms CG 20 10 11/85, CG 20 10 10/01 & CG 20 37 10/01 or their equivalent.

Additional Insured status shall be for all limits carried, not limited to the minimum acceptable as required herein. Seller's insurance shall be Primary as respects to Buyer and Owner, and any other insurance maintained by Buyer and Owner shall be excess and not contributing insurance with

Seller's insurance until such time as all limits available under the Seller's insurance policies have been exhausted.

Additional Insured endorsements that contain comparative fault, vicarious liability or sole negligence limitations of the Buyer / Owner or any other party required by the contract, will not be accepted.

In the event that any policy provided in compliance with this Agreement states that the coverage provided to an additional insured shall be no broader than that required by contract, or words of similar meaning, the Parties agree that nothing in this Agreement is intended to restrict or limit the breadth of coverage or limits available.

The additional insured status shall remain in full force and effect for the Contract Term plus the applicable statute of repose, or the amount of time you are legally liable, whichever is longer.

It is further agreed that the additional insured coverage required under this Agreement shall not be subject to any Defense Costs Endorsements such as Form IL 01 23 11 13, allowing for the recovery of defense costs by the insurer if the insurer initially pays defense costs but later determines the claims are not covered.

Buyer reserves the right, in its sole and subjective discretion, to reject any Additional Insured forms that are deemed not equivalent to what is required herein.

Waiver of Subrogation – Seller shall provide a Waiver of Subrogation Endorsement naming Buyer for all lines of coverage.

Additional Requirements

Property Insurance

Seller shall procure and maintain or ensure that its suppliers procure and maintain, at the Seller's own expense, Builder's Risk, property and equipment insurance, including for any property stored off the Site, in transit or any of the Buyer's property in the care, custody or control of Seller. Seller and Seller's insurance carrier(s) hereby waive all rights of subrogation against Buyer for damage including loss of use.

Buyer neither represents nor assumes responsibility for the adequacy of the Builders Risk Insurance to protect the interests of the Seller. It shall be the obligation of the Seller to purchase and maintain any supplementary property insurance that it deems necessary to protect its interest in the Work, including without limitation off site stored materials and materials in transit.

Seller is solely responsible for loss or damage to its personal property.

EXHIBIT K

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [ ], a [ ] ("**Seller**") to Peninsula Clean Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage and Services 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 3.6(b) of the Agreement, Seller hereby provides the below Replacement RA product information (to be repeated for each unit if more than one):

Name	
Location	
CAISO Resource ID	
Unit SCID	
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	
Deliverability Period	
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Resource Category (MCC Bucket e.g., 1, 2, 3, or 4)	
Flexible Capacity Category (e.g., 1, 2, 3, or N/A)	

Month	**Unit CAISO NQC (MW)**	**Unit CAISO EFC (MW)**	**Unit Contract Quantity (MW)**	**Unit EFC Contract Quantity (MW)**
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

[SELLER]

By:_____

Its:_____

Date:_____

Whereas, the following definitions apply to the terms in the above Replacement RA product information:

"**CPUC RA Filing Guide**" means the Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings published annually by the CPUC.

"**Deliverability Period**" means the period in which the unit has rights to deliver energy to the CAISO Grid.

"**Flexible Capacity Category**" means the category of Effective Flexible Capacity, as described in the CPUC RA Filing Guide, applicable to the unit.

"**LCR Area (if any)**" means the Local Capacity Requirement area, as used in the CPUC RA Filing Guide, applicable to the unit, if any.

"**Prorated Percentage of Unit Factor**" means the percentage of the Unit CAISO NQC that is designated as Unit Contract Quantity.

"**Prorated Percentage of Unit Flexible Factor**" means the percentage of Unit CAISO EFC that is designated as Unit EFC Contract Quantity.

"**Resource Category**" means the Maximum Cumulative Capacity category, as described in the CPUC RA Filing Guide, applicable to the unit.

"**Resource Type**" means the type of storage resource.

"**Run Hour Restrictions**" means any restrictions on the ability of the unit to run during any hours of the day.

"**Unit CAISO EFC**" means the unit's Effective Flexible Capacity, as described in the CPUC RA Filing Guide, as determined by CPUC and CAISO.

"**Unit CAISO NQC**" means the NQC (as defined in the CAISO Tariff) for the unit, as determined by CPUC and CAISO.

"**Unit Contract Quantity**" means the amount of Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Installed Storage Capacity.

"**Unit EFC Contract Quantity**" means the amount of Flexible Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Installed Storage Capacity.

"**Unit SCID**" means the unit's "Scheduling Coordinator ID Code", as defined in the CAISO Tariff.

EXHIBIT L1

Monthly Expected Available Storage Capacity

The following table is provided for informational purposes only.

Please adjust the table for the appropriate number of days in the month for each month of the year.

Monthly Expected Available 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
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day of the month]																								
Day 26																								
Day 27																								
Day 28																								
Day 29**																								
Day 30**																								
Day 31**																								

*All times are designated as "Hour-Ending [__]".

**Include these rows if needed for each month.

EXHIBIT L2

Monthly Expected Available Storage Capability

The following table is provided for informational purposes only.

Please adjust the table for the appropriate number of days in the month for each month of the year.

Monthly Expected 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 of the month]																								
Day 26																								
Day 27																								
Day 28																								
Day 29**																								
Day 30**																								
Day 31**																								

*All times are designated as "Hour-Ending [__]".

**Include these rows if needed for each month.

EXHIBIT M

MONTHLY STORAGE AVAILABILITY

1. Monthly Storage Availability.

(a) For each monthly period after the Commercial Operation Date, Seller shall calculate the "**Monthly Storage Availability**" using the formula set forth below:

$$\textbf{Monthly Storage Availability}\ (\%) =$$

$$1 - \frac{\textbf{Monthly Unavailable Calculation Intervals}}{\textbf{Total Calculation Intervals}}$$

where:

CALCULATION INTERVAL or "C.I." = each successive five-minute interval.

SCHEDULED MAINTENANCE INTERVAL = any Calculation Interval that is Scheduled Maintenance in full or in part provided that the sum of all Scheduled Maintenance Percentage divided by twelve (12) in a Contract Year may not exceed fifty (50) hours.

SCHEDULED MAINTENANCE PERCENTAGE = the greater of (a) the Storage Capacity unavailable due to Scheduled Maintenance divided by the Storage Capacity or (b) the quotient of (A) Storage Capability unavailable due to Scheduled Maintenance divided by (B) the product of (i) Storage Capacity and (ii) 4hrs.

MONTHLY UNAVAILABLE CALCULATION INTERVALS = the sum of all Unavailable Calculation Intervals for the applicable Month.

UNAVAILABLE CALCULATION INTERVAL = For each Calculation Interval, the Unavailable Calculation Interval is defined using the formula set forth below. Except as otherwise expressly provided in this Agreement, the calculations of Available Storage Capacity and Available Storage Capability in the foregoing sentence shall be based solely on the availability of the Storage Facility to receive Charging Energy from or deliver Discharging Energy to the Delivery Point, as applicable. Any Calculation Interval in which the Storage Facility fails to maintain connectivity to the CAISO such that it cannot receive ADS or AGC signals shall result in an Unavailable Calculation Interval of one (1) for that Calculation Interval.

$$\textbf{Unavailable Calculation Interval} = 1 - \begin{bmatrix} \textit{the lesser of}: \left(\frac{A}{\textit{Storage Capacity}}\right) \textit{or} \\ \left(\frac{\textit{Available Storage Capability}}{\textit{Storage Capacity X 4 hrs}}\right) \textit{or} \\ \left(1 - \frac{\textit{Failure to Comply Capacity}}{\textit{Storage Capacity}} - \frac{\textit{AS Failure to Comply Capacity}}{\textit{Storage Capacity}}\right) \end{bmatrix} \text{- Scheduled}$$

Maintenance Percentage

where:

"A" is the "**AVAILABLE STORAGE CAPACITY**", which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC, from all system inverters expected to receive Charging Energy from or deliver Discharging Energy to the Delivery Point, in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer's guidelines), provided that the Available Storage Capacity shall be the lower of (i) such amounts reported by Seller's real-time EMS data feed to Buyer for the Facility for such Calculation Interval, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.4), and further provided that "A" shall never exceed the Storage Capacity.

"**AVAILABLE STORAGE CAPABILITY**" = the sum of the following (taking into account the SOC at the time of calculation):

i. The battery capability (in MWh) available to receive Charging Energy from the Delivery Point in the applicable Calculation Interval

ii. The battery capability (in MWh) available to deliver Discharging Energy to the Delivery Point in the applicable Calculation Interval

In calculating Available Storage Capability, the "battery capability available to receive Charging Energy" and "battery capability available to receive Discharging Energy" are calculated as the product of (1) the count of available system cells in such Calculation Interval, multiplied by (2) the capability, in Wh, expected from each such system cell (based on normal operating conditions pursuant to the manufacturer's guidelines), that are able (considering the conditions of the Facility in total) to receive Charging Energy from or deliver Discharging Energy to the Delivery Point, provided that the Available Storage Capability 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 4.4), and further provided that Storage Capability shall never exceed the Storage Capacity x four (4) hours. To the extent cell level data is not reasonably available, the Parties shall negotiate in good faith to determine another data point to be provided by Facility's EMS that reflects the real-time Available Storage Capability.

"**FAILURE TO COMPLY CAPACITY**" = Any portion of the facility, in MW, which failed to comply with a valid Charging Notice or Discharging Notice that complies with this Agreement except to the extent such Failure to Comply is attributable to any actions or inactions of Buyer, the SC or the CAISO or resulting from Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the PTO unless caused by Seller's fault or negligence, including (i) any such failure to charge or discharge at the times, in the quantities, and at the levels specified in such Charging Notice or Discharging

Notice (*provided*, with respect to any such failure not caused by a change in the availability of the Facility, the Facility shall not be deemed to be unavailable for the portion of such failure within the Deviation Tolerance Band); and (ii) any charge or discharge of the Facility other than pursuant to a valid Charging Notice or Discharging Notice that complies with this Agreement, or pursuant to a notice from the CAISO, any PTO, or any other Governmental Authority during which period the Facility shall be deemed to be one hundred percent (100%) unavailable. Failure To Comply Capacity will be measured as [redacted] the difference, in MW, between (i) the average DOT communicated to the Facility by the CAISO for the Calculation Interval and (ii) the average metered energy flow for the Calculation Interval; [redacted] *provided*, for clarity, such calculation will not include any energy related to Ancillary Services as it is already captured in the AS Failure to Comply Capacity below.

"**AS FAILURE TO COMPLY CAPACITY**" = If any Calculation Interval results in a CAISO No Pay associated with failure to provide Ancillary Services sold to the CAISO, then the AS Failure to Comply Capacity shall equal the Ancillary Service Capacity sold in MW. AS Failure to Comply Capacity will be zero to the extent such Failure to Comply is attributable to any actions or inactions of Buyer, the SC or the CAISO or resulting from Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the PTO unless caused by Seller's fault or negligence.

"**TOTAL CALCULATION INTERVALS**" = the total number of Calculation Intervals in the applicable Month.

(b) If the total rated power of the Storage Facility inverters associated with the Installed Storage Capacity as measured to the Delivery Point is less than the Guaranteed Storage Capacity when charging and the Guaranteed Storage Capacity when discharging, in each case at or above 45°C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient temperature derate to the applicable Calculation Interval.

2. Storage Availability Adjustment. The "**Storage Availability Adjustment**" shall be calculated as follows and applied to the Storage Capacity Payment due for the next month after the end of the monthly period for which the Monthly Storage Availability is calculated provided the Storage Availability Adjustment may never be less than zero (0).

(a) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

Storage Availability Adjustment = 100% (expressed as a decimal)

(b) If the Monthly Storage Availability is less than the Guaranteed Storage Availability but greater than or equal to seventy percent (70%), then:

Storage Availability Adjustment = 100% - [(Guaranteed Storage Availability - Monthly Storage Availability) x [redacted]] + ([redacted] x Secondary Unavailability) (expressed as a decimal)

(c) If (i) the Monthly Storage Availability is less than seventy percent (70%), then:

[redacted]

where:

Secondary Unavailability = the sum of all Unavailable Calculation Intervals in the applicable Month that resulted from either (i) a Force Majeure Event for which Seller is the claiming party, or (ii) a Curtailment Order, divided by the Total Calculation Intervals for the Month.

EXHIBIT N

STORAGE CAPACITY TESTS AND ROUND-TRIP EFFICIENCY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days' Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit N and shall establish the initial Storage Capacity and Round-Trip Efficiency hereunder based on the actual capacity and round-trip efficiency of the Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, but not more than once per Contract Year, upon no less than ten (10) Business Days' Notice to Seller, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test and to update the Facility's PMax and other relevant information and values in the CAISO's Master Data File and Resource Data Template (or successor data systems). In addition, Buyer shall have the right to require a retest of the most recent Storage Capacity Test (and to update the Facility's PMax and other relevant information and values as specified above) 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 Storage Capacity has varied materially from the results of the most recent Storage Capacity Test or any other guaranteed operational characteristics are not being met. Seller shall have the right to perform a Storage Capacity Test or run a retest of any Storage Capacity Test at any time during any Contract Year upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Subsequent Round-Trip Efficiency Tests. Following the Commercial Operation Date, upon no less than five (5) Business Days' Notice to Seller, if Buyer provides data with such Notice reasonably indicating that the actual Round-Trip Efficiency is lower than the then-current tested Round-Trip Efficiency, Buyer shall have the right to require Seller to schedule and complete a Round-Trip Efficiency Test (which shall be conducted in the same manner as a Storage Capacity Test) and to update the Facility's Round-Trip Efficiency, if applicable. Seller shall have the right to perform a Round-Trip Efficiency Test or run a retest of any Round-Trip Efficiency Test at any time during any Contract Year upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice); provided, however, that if Seller has already conducted a retest of a Round-Trip Efficiency Test, then Seller shall have the right to conduct a subsequent retest of such Round-Trip Efficiency Test within three (3) months of such prior retest only if Seller provides an explanation with such Notice reasonably indicating that Seller has a reasonable basis for expecting the re-test to yield a Round-Trip Efficiency that is higher than the then-current tested Round-Trip Efficiency.

Test Results and Re-Setting of Storage Capacity. No later than ten (10) Business Days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.10(c) of this

Agreement and Part II(I) below, the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Capacity, as such Guaranteed Storage Capacity may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Capacity, effective as of the first day of the month following completion of the Storage Capacity Test for calculating the payment for the Product and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test, each subsequent Storage Capacity Test, and all re-tests thereof permitted under paragraph B above) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit N. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit N as a "**SCT**". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Test Elements. Each SCT shall include the following test elements:

- Electrical output at Maximum Discharging Capacity at the Storage Facility Meter (MW);
- Electrical input at Maximum Charging Capacity at the Storage Facility Meter (MW);
- Amount of time between the Facility's electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Facility's electrical input going from 0 to Maximum Charging Capacity;
- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

B. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Facility, at ten (10) minute intervals:

(1) Time;

(2) Charging Energy;

(3) Discharging Energy;

(4) Stored Energy Level (MWh);

(5) Station Use.

C. Site Conditions. During each SCT, the following ambient 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 Facility; and

(3) Ambient air temperature (°F).

D. Test Showing. Each SCT must demonstrate that the Facility:

(1) successfully started;

(2) operated for at least four (4) consecutive hours at Maximum Discharging Capacity;

(3) operated for at least four (4) consecutive hours at Maximum Charging Capacity;

(4) is able to ramp upward and downward at the contract Ramp Rate; and

(5) is able to deliver Discharging Energy to the Delivery Point as measured by the Storage Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity.

E. Test Conditions.

(i) General. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity.

(ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, either Party may postpone or reschedule all or part of such SCT in accordance with Part II.F below.

(iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

(iv) Ambient Temperature. For tests requested by Buyer (and not for any CAISO-initiated test, which shall occur when directed by CAISO), the

average ambient temperature, based on an aggregate of 1-minute resolution data collected throughout the SCT, must be within the range of 8 – 33 degrees Celsius.

F. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within ten (10) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

(1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;

(3) the level of Installed Storage Capacity or Storage Capacity (as applicable), charging capacity, discharging capacity, charging ramp rate, discharging ramp rate, Round-Trip Efficiency, and Stored Energy Level determined by the SCT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor, provided that if Buyer does not provide notice of acceptance or rejection within such ten (10) Business Days the SCT shall be deemed accepted.

If either Party reasonably rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.F.

H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing 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 N with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("**Supplementary Storage 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 Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit N.

I. Adjustment to Storage Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first four hours of discharge (up to, but not in excess of, the product of (i) the Guaranteed Storage Capacity, as such Guaranteed Storage Capacity may have been adjusted (if at all) under this Agreement, multiplied by (ii) 4 hours) shall be divided by four hours to determine the Storage Capacity, which shall be expressed in MW AC, and shall be the new Storage Capacity in accordance with Section 4.10(c) of this Agreement.

J. Adjustment to Round-Trip Efficiency. The Round-Trip Efficiency determined pursuant to the Storage Capacity Test will be equal to the quotient of (i) the total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the Storage Capacity Test, *divided by* (ii) the difference of (a) the total amount of Charging Energy delivered to the Delivery Point (expressed in MWh AC) during the Storage Capacity Test (such Charging Energy not to be adjusted for any Electrical Losses incurred during the Storage Capacity Test) *minus* (b) the reimbursable Station Use during the Capacity Test, and shall be the new Round-Trip Efficiency in accordance with Section 4.11(c) of this Agreement.

K. Following the initial Storage Capacity Test conducted prior to the Commercial Operation Date, upon request of Seller, Buyer shall consider in good faith an alternate methodology for conducting a Storage Capacity Test by reference to the operational data reflecting the net output of the Facility from the point of interconnection. Upon Seller's request, Seller and Buyer shall work in good faith to establish a mutually acceptable methodology for demonstrating the Storage Capacity through such operational data. If Buyer and Seller mutually agree in writing on an alternate methodology, such alternate methodology shall become the Storage Capacity Test used to establish the Storage Capacity for all purposes of this Agreement, including compensation under Section 3.2.

EXHIBIT O

OPERATING RESTRICTIONS

All Operating Restrictions shall be generally subject to any CAISO or PTO restrictions applicable to facilities similar to the Facility to the extent such limitations are more limiting to the operations of the Facility than the technical limitations of the Facility.

Maximum Discharging Energy:

Annual: 94,900 MWh

Daily: 520 MWh

Ramp Rates:

Dmin to Dmax: up to 100%/s

Cmin to Cmax: up to 100%/s

Dmax to Dmin: up to 100%/s

Cmax to Cmin: up to 100%/s

Frequency ramp rate: 100% MW/Hz

Regulation ramp rate: 655 MW/min

System Response Time:

Idle to Dmax: <4s

Idle to Cmax: <4s

Dmax to Cmax: <4s

Cmax to Dmax: <4s

Dmin to Cmin: <2s

Cmin to Dmin: <2s

Maximum Stored Energy Level:	260 MWh, number in MWh representing maximum amount of energy that may be charged to the Facility
Minimum Stored Energy Level:	0 MWh, number in MWh representing the lowest level to which the Facility may be discharged
Maximum Charging Capacity:	65 MW, number in MW representing the highest level to which the Facility may be charged

Minimum Charging Capacity:	0.1 MW, number in MW representing the lowest level at which the Facility may be charged
Maximum Discharging Capacity:	65 MW, number in MW representing the highest level at which the Facility may be discharged
Minimum Discharging Capacity:	0.1 MW, number in MW representing the lowest level at which the Facility may be discharged
Maximum State of Charge (SOC) during Charging:	100%
Minimum State of Charge (SOC) during Discharging:	0%
Ramp Rate:	655 MW/minute
[redacted]	[redacted]

EXHIBIT P

METERING DIAGRAM

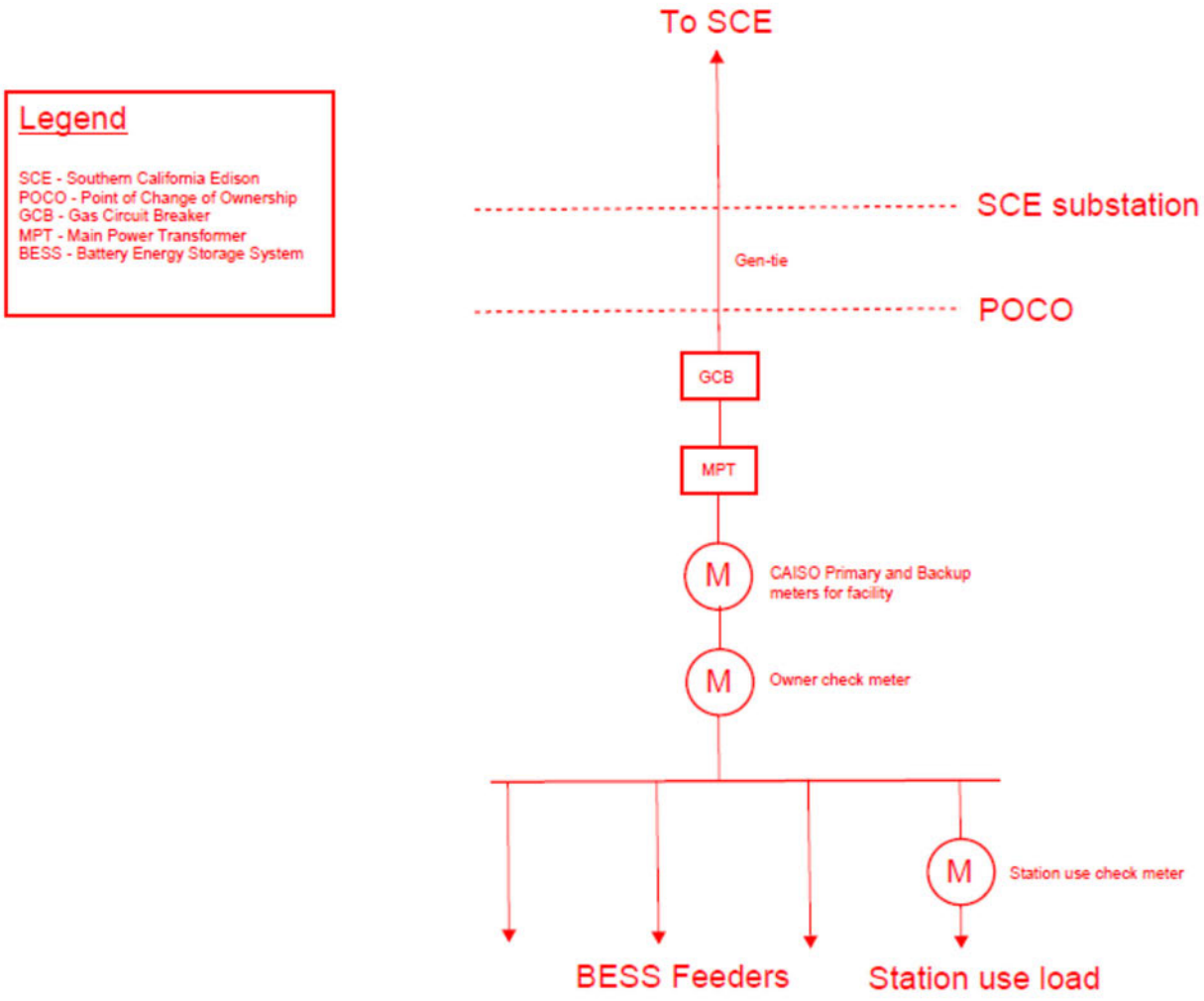


EXHIBIT Q

RTE SHORTFALL PAYMENTS

In the event that the RTE_M is less than the GRTE, the monthly Storage Capacity Payment under Section 3.2 shall be reduced by the "**RTE Shortfall Payment**", calculated as follows:

$$(GRTE - RTE_M) \times \text{Average Monthly T4B5 Price} \times RTEF_M \times TCE_M$$

where:

GRTE = the Guaranteed Round-Trip Efficiency

RTE_M = the Round-Trip Efficiency, [redacted].

The "**Average Monthly T4B5 Price**" means the average of the four (4) highest hourly average Day-Ahead Market LMPs and the five (5) lowest hourly average Day-Ahead Market LMPs, in each case in the applicable month.

The "**Round-Trip Efficiency Factor**" or "$RTEF_M$" for each month is determined as follows:

If $RTE_M \geq GRTE$, then $RTEF_M = 0$

If $RTE_M < GRTE$ and $RTE_M \geq 70\%$, then $RTEF_M = 1.2$

If $RTE_M < 70\%$, then $RTEF_M = 1.5$

TCE_M = the total Charging Energy charged to the Facility in the applicable month.

EXHIBIT R

NOTICES

San Gabriel Project II LLC, a Delaware limited liability company ("Seller")	**PENINSULA CLEAN ENERGY, a California joint powers authority** ("Buyer")
All Notices: Street: 11801 Domain Blvd, Suite 450 City: Austin, TX 78758 Attn: Chief Commercial Officer Phone: [redacted] Email: [redacted] **With additional Notices of an Event of Default to:** c/o Aypa Power Development LLC Street: 11801 Domain Blvd, Suite 450 City: Austin, TX 78758 Attn: General Counsel Email: [redacted]	**All Notices:** Street: 2075 Woodside Road City: Redwood City, CA 94061 Attn: Director of Power Resources Phone: [redacted] Email: [redacted] with a copy, which will not constitute notice, to: Peninsula Clean Energy Authority 400 County Center, 6th Floor Attention: David Silberman, General Counsel Email: [redacted]
Emergency Contact: Attn: Dan Santelli Phone: [redacted] E-mail: [redacted]	**Emergency Contact:** Attn: Director of Power Resources Phone: [redacted] E-mail: [redacted]
Reference Numbers: Duns: 119276196 Federal Tax ID Number: 99-2461677	**Reference Numbers:** Duns: 08-026-2114 Federal Tax ID Number: 81-2708786
Invoices: Attn: Accounting Department Phone: E-mail: [redacted]	**Invoices:** Attn: Settlements Phone: [redacted] E-mail: [redacted]
Scheduling: Attn: Director of Operations Phone: Email: [redacted]	**Scheduling:** Attn: Market Operations Phone: [redacted] Email: [redacted]
Payments: Attn: Phone: E-mail: [redacted]	**Payments:** Attn: Settlements Phone: [redacted] E-mail: [redacted]
Wire Transfer: BNK: ABA: ACCT:	**Wire Transfer:** BNK: JP Morgan ABA: [redacted] ACCT: [redacted]

EXECUTION VERSION

ENERGY STORAGE AND SERVICES AGREEMENT

COVER SHEET

Seller: San Gabriel Project II LLC, a Delaware limited liability company

Buyer: Peninsula Clean Energy Authority, a California joint powers authority

Description of Facility: A 10 MW energy storage facility with eight (8) hours of continuous discharging at the maximum rate of discharge, located in Los Angeles County, California (as further defined herein, the **"Facility"**).

Guaranteed Construction Start Date: October 1, 2026

Guaranteed Commercial Operation Date: June 1, 2027

Milestones:

Milestone	Expected Completion Date
Site Control	**Complete**
Obtain Specific Plan Approval	**11/1/2025**
Phase II Interconnection Study Results	**Complete**
Executed Interconnection Agreement	**1/15/2025**
Obtain Full Capacity Deliverability Status Allocation	**Complete**
Procure Major Equipment	**9/1/2026**
Financial Close	**9/1/2026**
Construction Start	**10/1/2026**
Initial Synchronization	**1/1/2027**
CAISO Commercial Operation	**5/20/2027**
Commercial Operation Date	**6/1/2027**

Delivery Term: **15 Contract Years**

Guaranteed Storage Capacity: **10** MW at eight (8) hours of continuous discharging at the maximum rate of discharge (**80** MWh).

Guaranteed Interconnection Capacity: **10** MW

Guaranteed Round-Trip Efficiency:

Contract Year	Guaranteed Round-Trip Efficiency
1	[redacted]
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

The "**Storage Rate**" shall be as specified below:

Contract Years	Storage Rate ($/kW-month)
All	[redacted]

Contract Years	Storage Rate ($/kW-month)
	[redacted]

Product:

- x Discharging Energy
- x Capacity Attributes
- x Storage Capacity
- x Ancillary Services

Scheduling Coordinator: Buyer or Buyer's Agent

Development Security: [redacted]

Performance Security: [redacted]

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

SELLER	BUYER
San Gabriel Project II LLC	Peninsula Clean Energy Authority
By: _____	By: _____
	PCE Executive Officer
Name: _____	
Title: _____	

TABLE OF CONTENTS

Page

ARTICLE 1 DEFINITIONS 1

1.1 Contract Definitions 1
1.2 Rules of Interpretation 18

ARTICLE 2 TERM; CONDITIONS PRECEDENT 19

2.1 Contract Term 19
2.2 Conditions Precedent 20
2.3 Progress Reports 21
2.4 Remedial Action Plan 21

ARTICLE 3 PURCHASE AND SALE 22

3.1 Sale of Product 22
3.2 Compensation 22
3.3 Imbalance Energy 22
3.4 Future Environmental Attributes 23
3.5 Capacity Attributes 23
3.6 Resource Adequacy Failure 24
3.7 Buyer's Re-Sale of Product 25
3.8 Compliance Expenditure Cap 26

ARTICLE 4 OBLIGATIONS AND DELIVERIES 26

4.1 Delivery 26
4.2 Title and Risk of Loss 27
4.3 Scheduling Coordinator Responsibilities 27
4.4 Forecasting 29
4.5 Curtailment 30
4.6 Charging and Discharging Energy 31
4.7 Financial Statements 33
4.8 Access to Data and Installation and Maintenance of Weather Station. 33
4.9 Storage Availability and Efficiency 34
4.10 Storage Capacity Tests 35
4.11 Facility Modifications 36
4.12 Ancillary Services 36
4.13 Workforce Agreement 36
4.14 Diverse Business Enterprises. During the Delivery Term, n 36
4.15 Shared Facilities 37

ARTICLE 5 TAXES 37

5.1 Allocation of Taxes and Charges 37
5.2 Cooperation 37
5.3 Ownership 38

ARTICLE 6 MAINTENANCE OF THE FACILITY 38

6.1 Maintenance of the Facility 38
6.2 Maintenance of Health and Safety 39
6.3 Permits and Approvals 39
6.4 Energy to Serve Station Use 39

ARTICLE 7 METERING 40

7.1 Metering 40
7.2 Meter Verification 40

ARTICLE 8 INVOICING AND PAYMENT; CREDIT 40

8.1 Invoicing 40
8.2 Payment 41
8.3 Books and Records 41
8.4 Payment Adjustments; Billing Errors 41
8.5 Billing Disputes 42
8.6 Netting of Payments 42
8.7 Seller's Development Security 42
8.8 Seller's Performance Security 42
8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral 43

ARTICLE 9 NOTICES 44

9.1 Addresses for the Delivery of Notices 44
9.2 Acceptable Means of Delivering Notice 44

ARTICLE 10 FORCE MAJEURE 44

10.1 Definition 44
10.2 No Liability If a Force Majeure Event Occurs 45
10.3 Notice 45
10.4 Termination Following Force Majeure Event 46

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION 46

11.1 Events of Default 46
11.2 Remedies; Declaration of Early Termination Date 49
11.3 Damage Payment; Termination Payment 49
11.4 Notice of Payment of Termination Payment or Damage Payment 50
11.5 Disputes With Respect to Damage Payment or Termination Payment 50
11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date 50
11.7 Rights And Remedies Are Cumulative 51
11.8 Mitigation 51
11.9 [redacted] 51

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES. 51

12.1 No Consequential Damages 51
12.2 Waiver and Exclusion of Other Damages 52

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY 53

13.1 Seller's Representations and Warranties 53
13.2 Buyer's Representations and Warranties 54
13.3 General Covenants 55
13.4 Prohibition Against Forced Labor 55

ARTICLE 14 ASSIGNMENT 55

14.1 General Prohibition on Assignments 55
14.2 Permitted Assignment; Change of Control of Seller 55
14.3 Permitted Assignment; Change of Control of Buyer 56

ARTICLE 15 LENDER ACCOMMODATIONS 56

15.1 Granting of Lender Interest 56
15.2 Rights of Lender 56
15.3 Cure Rights of Lender 57

ARTICLE 16 DISPUTE RESOLUTION 57

16.1 Governing Law 57
16.2 Dispute Resolution 57
16.3 Attorneys' Fees 58
16.4 Venue 58

ARTICLE 17 INDEMNIFICATION 58

17.1 Indemnification 58
17.2 Claims 58

ARTICLE 18 INSURANCE 59

18.1 Insurance 59

ARTICLE 19 CONFIDENTIAL INFORMATION 59

19.1 Definition of Confidential Information 59
19.2 Duty to Maintain Confidentiality 60
19.3 Irreparable Injury; Remedies 60
19.4 Disclosure to Lender 60
19.5 Disclosure to Credit Rating Agency 61
19.6 Public Statements 61

ARTICLE 20 MISCELLANEOUS ..... ~61

20.1 Entire Agreement; Integration; Exhibits 61
20.2 Amendments 61
20.3 No Waiver 61
20.4 No Agency, Partnership, Joint Venture or Lease 61
20.5 Severability 61
20.6 Mobile-Sierra 62
20.7 Counterparts 62
20.8 Facsimile or Electronic Delivery 62
20.9 Binding Effect 62
20.10 No Recourse to Members of Buyer 62
20.11 Change in Electric Market Design 62

Exhibits:

Exhibit A Description of Facility
Exhibit B Facility Construction and Commercial Operation
Exhibit C [Intentionally Omitted]
Exhibit D [Intentionally Omitted]
Exhibit E Progress Reporting Form
Exhibit F [Reserved]
Exhibit G-1 Form of Commercial Operation Date Certificate
Exhibit G-2 Form of Installed Storage Capacity Certificate
Exhibit H Form of Construction Start Date Certificate
Exhibit I Form of Letter of Credit
Exhibit J Insurance
Exhibit K Form of Replacement RA Notice
Exhibit L Available Storage Capacity
Exhibit M Monthly Storage Availability
Exhibit N Storage Capacity Tests
Exhibit O Operating Restrictions
Exhibit P Metering Diagram
Exhibit Q RTE Shortfall Payments
Exhibit R Notices

ENERGY STORAGE AND SERVICES AGREEMENT

This Energy Storage and Services Agreement ("**Agreement**") is entered into as of **[_____]** (the "**Effective Date**"), between Seller and Buyer (each also referred to as a "**Party**" and collectively as the "**Parties**").

RECITALS

WHEREAS, Seller intends to develop, design, construct, own or otherwise have control over, 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 all 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 3.8(c).

"**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.

"**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 ancillary services that the Facility is capable of providing consistent with the Operating Restrictions, with characteristics and quantities determined in accordance with the CAISO Tariff, and any related services, including Spinning Reserve, Non-Spinning Reserve, Frequency Regulation, Frequency Response, Voltage Control, VAR Dispatch, and Power Factor Correction (as each is defined in the CAISO Tariff).

"**Availability Incentive Payment**" has the meaning set forth in the CAISO Tariff.

"**Availability Notice**" means the lower of (a) Seller's availability forecasts issued pursuant to Section 4.4 with respect to the Available Storage Capacity and Available Storage Capability, and (b) availability information reported to CAISO through OMS.

"Available Storage Capability" has the meaning defined in Exhibit M.

"Available Storage Capacity" has the meaning defined in Exhibit M.

"**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. 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.

"**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 Energy delivered by the Facility to the Delivery Point net of Electrical Losses and Station Use, in accordance with the CAISO Tariff.

"**CAISO Charges Invoice**" has the meaning set forth in Section 4.3(d).

"**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 that the Facility can provide, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

"**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-Penalized Shortfall**" has the meaning set forth in Section 3.6(b)(ii).

"**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.

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of Energy that the Facility can charge from, store and/or deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits. Capacity Attributes

shall also include all rights to provide and all benefits related to the provision of Ancillary Services (as defined in the CAISO Tariff) and reactive power.

"**Capacity Damages**" has the meaning set forth in Section 5 of Exhibit B.

"**Change of Control**", in the case of Seller, means any circumstance in which Seller's Ultimate Parent ceases to be the Ultimate Parent or 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 its Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards the Ultimate Parent's ownership interest in Seller unless the 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 directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its parent Affiliates, and any trustee or agent or similar representative acting on their behalf) shall be excluded from the total outstanding equity interests in Seller.

Notwithstanding the foregoing, (a) so long as the Ultimate Parent Controls Persons owning at least three hundred (300) MW of operating energy storage projects, a change in the Control of the Ultimate Parent, or (b) a change in the Control of Seller resulting from the exercise by Lender of its remedies under its financing agreements for the Facility with Seller or an Affiliate of Seller shall not be a Change of Control hereunder; provided that the entity acquiring Control of the Ultimate Parent or of Seller, directly or indirectly, is a Lender or a Qualified Transferee and Buyer is given Notice of the Change of Control within five (5) Business Days of its occurrence.

"**Charging Energy**" means all Energy delivered to the Facility pursuant to a Charging Notice, as measured by the Storage Facility Meter inclusive of Station Use.

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO, directing the Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction shall be in accordance with Section 4.6 and the Operating Restrictions.

"**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) [redacted]

"**Compliance Actions**" has the meaning set forth in Section 3.8(a).

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.8.

"**Confidential Information**" has the meaning set forth in Section 19.1.

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

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

"**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.

"**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 more than 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 more than 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**" 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.

"**CPM Soft Offer Cap**" has the meaning set forth in the CAISO Tariff.

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

"**CPUC-Penalized Shortfall**" has the meaning set forth in Section 3.6(b)(i).

"**CPUC System RA Penalty**" means the penalties for "System Procurement Deficiency" adopted by the CPUC in its Decision 10-06-036, as may be updated or supplemented from time to time.

"**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, in either case by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

"**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 Energy deliveries;

(b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if the Facility is interconnected to distribution or sub-transmission system) 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 Participating Transmission Owner's or distribution operator's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy to the Delivery Point; or

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

If Buyer or Buyer's Scheduling Coordinator submitted a Self-Schedule and/or an Energy Supply Bid in its final CAISO market participation in respect of a given time period that clears, in full, the applicable CAISO market for the full amount of Energy forecasted to be produced by or delivered from the Facility for such time period, any notice from the CAISO having the effect of requiring a reduction during the same time period (other than in accordance with the Schedule resulting from an Energy Supply Bid) is a Curtailment Order.

"**Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces energy delivered to or from the Facility pursuant to a Curtailment Order.

"**Daily Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) [redacted].

"**Damage Payment**" means the liquidated damages payment to be paid by Seller as the Defaulting Party to Buyer as the Non-Defaulting Party after a Terminated Transaction resulting from a Seller Event of Default occurring prior to the Commercial Operation Date, in a dollar amount that equals the amount set forth in Section 11.3(a).

"**Day-Ahead Forecast**" has the meaning set forth in Section 4.4(b).

"**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 Party**" has the meaning set forth in Section 11.1(a).

"**Delivery Point**" means the PNode designated by the CAISO for the Facility.

"**Delivery Term**" shall mean the period of Contract Years specified 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 specified for the Development Security on the Cover Sheet, deposited with Buyer in conformance with Section 8.7.

[redacted]

"**Discharging Energy**" means all Energy delivered to the Delivery Point from the Facility, net of Station Use and Electrical Losses, as measured by the Storage Facility Meter.

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO to Seller, directing the Facility to discharge Discharging Energy at a specific MWh rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with Section 4.6 and the Operating Restrictions.

"**Diverse Business Enterprises**" means a women, minority, disabled veteran, lesbian, gay, bisexual and /or transgender business enterprise, as more particularly set forth in CPUC General Order 156.

"**Early Termination Date**" has the meaning set forth in Section 11.2.

"**Effective Date**" has the meaning set forth on the Preamble.

"**Electrical Losses**" means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with (i) delivery of Discharging Energy to the Delivery Point and (ii) delivery of Charging Energy from the Delivery Point to the Facility.

"**Energy**" means electrical energy in MWh metered by the Storage Facility Meter.

"**Energy Supply Bid**" has the meaning set forth in the CAISO Tariff.

"**Estimated Placed-In-Service Date**" has the meaning set forth in Section 2.1(b).

"**Event of Default**" has the meaning set forth in Section 11.1.

"**Facility**" means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment and Seller's rights and interests in Shared Facilities required to deliver the Product, but excluding any portions of Shared Facilities other than Seller's rights and interests thereto.

"**FCDS Deficiency Notice**" has the meaning set forth in Section 2.1(b).

"**FERC**" means the Federal Energy Regulatory Commission or any successor government agency.

"**Flexible Capacity**" has the meaning set forth in the CAISO Tariff.

"**Flexible Capacity Category**" has the definition in the CAISO Tariff.

"**Flexible Resource Adequacy Benefits**" means the attributes, however defined, of a resource that can be used to satisfy the flexible resource adequacy obligations of a load serving entity, including Flexible Capacity.

"**FMM Instructed Imbalance Energy**" or "**FMM IIE**" has the definition in the CAISO Tariff.

"**FMM Schedule**" has the meaning set forth in the CAISO Tariff.

"**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 or any outage on the Transmission System that prevents Seller from providing Product and that is not the result of a Force Majeure Event.

"**Forced Labor**" has the meaning set forth in Section 13.4.

"**Forecasted Product**" has the meaning set forth in Section 4.4.

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

"**Full Network Model**" has the meaning set forth in the CAISO Tariff.

"**Future Environmental Attributes**" shall mean any and all emissions, air quality or other environmental attributes under any and all 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 in the future, to the Facility. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) investment or 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 and/or air quality permits.

"**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 includes the value of 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 and NERC; *provided*, *however*, that "Governmental Authority" shall not in any event include any Party.

"**Greenhouse Gas**" or "**GHG**" has the meaning set forth in the GHG Regulations or in any other applicable Laws.

"**Guaranteed Commercial Operation Date**" has the meaning set forth on the Cover Sheet, as such date may be extended by the Development Cure Period.

"**Guaranteed Construction Start Date**" has the meaning set forth on the Cover Sheet, as such date may be extended by the Development Cure Period.

"**Guaranteed Interconnection Capacity**" means the interconnection rights provided under the Interconnection Agreement in the amount set forth on the Cover Sheet.

"**Guaranteed Round-Trip Efficiency**" means the minimum guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

"**Guaranteed Storage Availability**" has the meaning set forth in Section 4.9(a).

"**Guaranteed Storage Capacity**" has the meaning set forth on the Cover Sheet, as may be adjusted pursuant to Exhibit B.

"**IIE**" means FMM IIE and RTD IIE.

"**Incentives**" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or operation of 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; and (c) any other form of incentive relating in any way to the Facility that is not a Future Environmental Attribute.

"**Indemnified Party**" has the meaning set forth in Section 17.1.

"**Indemnifying Party**" has the meaning set forth in Section 17.1.

"**Initial Synchronization**" means the initial delivery of Energy to the Facility from the interconnection point or from the Facility to the interconnection point, as specified in the Interconnection Agreement.

"**Installed Storage Capacity**" means the maximum dependable operating capability of the Facility to discharge electric energy for eight (8) consecutive hours (up to but deemed not in to exceed the Guaranteed Storage Capacity), 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 G-2 hereto provided by Seller to Buyer.

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

"**Interconnection Delay Notice**" has the meaning set forth in Section 2.1(b).

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller or its Affiliate 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 Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System (or PTO's distribution system, as applicable) in accordance with the Interconnection Agreement.

"**Interest Rate**" has the meaning set forth in Section 8.2.

"**Internal Revenue Service Requirements**" means those requirements set forth in Section 48 of the Internal Revenue Code and associated regulations promulgated by the Internal Revenue Service that pertain to the eligibility of energy property to qualify for the federal investment tax credit.

"**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 February 29, 2016 under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"**kW**" means kilowatts in alternating current, unless expressly stated in terms of direct current.

"**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, and includes the CAISO Tariff.

"**Lender**" means, collectively, (A) in the case of Seller, any Person (i) providing senior or subordinated construction, interim or long-term debt, equity, tax equity or tax credit 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, 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 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 and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility, and (B) in the case of Buyer, any Person (i) providing senior or subordinated short-term or long-term debt or equity financing or refinancing for or in connection with the business or operations of Buyer, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form, and any trustee or agent acting on their behalf, and/or (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations.

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

"**Licensed Professional Engineer**" means an independent, professional engineer (a) reasonably acceptable to Buyer, (b) who has been retained by, or for the benefit of, the Lenders, as their "independent engineer" for the purpose of financing the Facility, or (c) who (i) is licensed to practice engineering in the State of California, (ii) has training and experience in the power industry specific to the technology of the Facility, (iii) is licensed in an appropriate engineering discipline for the required certification being made, and (iv) unless otherwise approved by Buyer, is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility.

"**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.

"Local Capacity Area Resource Adequacy Benefits" means the attributes, however defined, of a Local Capacity Area Resource that can be used to satisfy the local resource adequacy obligations of a load serving entity.

"**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 Capacity Attributes [redacted]

"**Main Power Transformer**" means the Facility's main step-up transformer as depicted on the one-line diagram set forth in Exhibit A.

"**Milestones**" means the development activities for significant permitting, interconnection, financing and construction milestones set forth in the Cover Sheet.

"**Monthly Storage Availability**" has the meaning set forth in Exhibit M.

"**Moody's**" means Moody's Investors Service, Inc., or its successor.

"**MW**" means megawatts measured 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.

"**NERC**" means North American Electric Reliability Corporation, or its successor.

"**Network Upgrades**" has the meaning set forth in the CAISO Tariff.

"**Non-Availability Charge**" 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 this Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

"**Operating Restrictions**" means the requirements and limitations set forth on Exhibit O.

"**Other Facility**" means the 65 MW/260 MWh energy storage facility by the name of Gabriel Storage I, also located at the Site.

"**Outage Management System**" or "**OMS**" has the meaning set forth in the CAISO Tariff.

"**Participating Transmission Owner**" or "**PTO**" means an 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 where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is Southern California Edison.

"**Party**" has the meaning set forth in the Preamble.

"**Performance Security**" means (i) cash, or (ii) a Letter of Credit, in the amount specified for the Performance Security on the Cover Sheet, deposited with Buyer in conformance with Section 8.8.

"**Performance Security End Date**" has the meaning set forth in Section 8.8.

"**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.

"**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 on the Cover Sheet.

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

"**Prudent Operating Practice**" means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry in the Western United States for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

"**Qualified Transferee**" means an entity that (a) (i) has or is owned by an entity that has a Tangible Net Worth of one hundred fifty million dollars ($150,000,000) or (ii) has or is owned by an entity that has (A) a Tangible Net Worth of fifty million dollars ($50,000,000) and (B) a Credit Rating of [redacted] or higher by Moody's or [redacted] or higher by S&P, if rated by only one such entity, or a Credit Rating of [redacted] or higher by Moody's and BBB or higher by S&P, if rated by both such entities, and, in any case, (b) is not a public utility regulated by the CPUC or an Affiliate thereof, and (c) has, or retains to operate the Facility a Person that has, at least three (3) years of experience operating at least two (2) or more storage facilities of the same technology and with at least as much installed storage capacity as the Installed Storage Capacity.

"**Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

"**RA Change in Law**" means any change in Law occurring after the Effective Date that changes the methodology for calculating the QC and/or the NQC applicable to the Facility due to (a) effective load carrying capability (ELCC) adjustments applicable to all stand-alone energy storage resources, including changes in Resource Adequacy Rulings defining slice of day

exceedance values, or (b) implementation of a methodology which reduces the Facility's QC and/or NQC based on either (i) the historical Forced Facility Outages rate (or metric of similar intent measuring relative availability) of the Facility or (ii) the average outage rates of all resources materially similar to the Facility in terms of type, market and operational characteristics.

"**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 3.6(b).

"**RA Guarantee Date**" means the earlier of either (a) the first day of the third month following the CAISO Commercial Operation or (b) during the Delivery Term, the first day of the first Showing Month that the Facility is able to be included in Buyer's RA Plan for such Showing Month.

"**RA Plan**" (a) has the meaning set forth for "Resource Adequacy Plan" in the CAISO Tariff, and (b) means Buyer's monthly and annual Resource Adequacy plans filed with the CPUC.

"**RA Shortfall**" means, for a given Showing Month commencing on the RA Guarantee Date, the difference, expressed in kW, of (a) the Facility's Qualifying Capacity minus (b) the sum of (i) the Resource Adequacy Benefits of the Facility for such month able to be shown on Buyer's monthly or annual RA Plan to the CAISO and CPUC and counted as Resource Adequacy Benefits plus (ii) Replacement RA, if any; *provided*, Buyer shall have no obligation to accept an increase in the amount of the Resource Adequacy Benefits of the Facility or Replacement RA after the date that is forty-five (45) days prior to the applicable Showing Deadline.

"**RA Shortfall Month**" means any Showing Month, commencing with the month in which the RA Guarantee Date occurs, during which Seller fails to provide Resource Adequacy Benefits (or Replacement RA in lieu thereof) in an amount equal to the Facility's Qualifying Capacity as required hereunder for purposes of calculating an RA Deficiency Amount under Section 3.6(b).

"**RA Substitute Capacity**" has the meaning set forth in the CAISO Tariff.

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**Reimbursable Station Use**" means, for each month during the Delivery Term, the amount of Station Use in a given month for which Seller was not charged as retail power pursuant to the retail service schedule for the Facility.

"**Reimbursable Station Use Payment**" means, for each month during the Delivery Term, the product of (a) the Reimbursable Station Use for such month, expressed in kWh, multiplied by (b) Buyer's average cost of Charging Energy for such month, expressed in dollars per kWh ($/kWh).

"**Remedial Action Plan**" has the meaning set forth in Section 2.4.

"**Replacement RA**" means Resource Adequacy Benefits that are equivalent to those that would have been provided by the Facility with respect to the applicable month for which the Replacement RA is being provided. Replacement RA shall (a) include, if applicable, Flexible Resource Adequacy Benefits that are of the same system or local designation, Flexible Capacity

Category, and Resource Category as the Facility; (b) be from a resource located in the same Transmission Access Charge Area (as described in the CAISO Tariff) as the Facility and, (c) to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, be located in the same Local Capacity Area as the Facility, and (d) provides Resource Adequacy Benefits in the same hourly periods as the Facility. Replacement RA shall not be provided from any generating facility or unit that utilizes coal or coal materials as a source of fuel.

"**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 CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 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, 19-10-021, and any subsequent CPUC ruling or decision or by any other entity including CAISO, and shall include System Resource Adequacy Benefits, Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits associated with the Facility.

"**Resource Category**" means the maximum cumulative capacity and resource categories (commonly known as "MCC buckets") for system and local resource adequacy as well as categories of must-offer for flexible resource adequacy described in the most recent filing guide for system, local, and flexible resource adequacy compliance filings issued or published on the CPUC's website by the CPUC or its staff specifying the guidelines, requirements, and instructions for load serving entities to demonstrate compliance with the CPUC's resource adequacy program.

"**Resource ID**" has the meaning set forth in the CAISO Tariff.

"**Round-Trip Efficiency**" means the tested round-trip efficiency rate calculated pursuant to PART II.J of Exhibit N, as the same is to be established as of the Commercial Operation Date and adjusted from time to time pursuant to Exhibit N to reflect the results of the most recently performed Storage Capacity Test.

"**Round-Trip Efficiency Factor**" has the meaning set forth in Exhibit Q.

"**RTE Shortfall Payment**" has the meaning set forth in Exhibit Q.

"**RTD Instructed Imbalance Energy**" or "**RTD IIE**" has the meaning set forth in the CAISO Tariff.

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

"**Schedule**" has the meaning set forth in the CAISO Tariff.

"**Scheduled Energy**" means the Energy reflected in a final Day-Ahead Schedule, FMM Schedule, and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time.

"**Scheduled Maintenance**" has the meaning set forth in Section 6.1(a).

"**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.

"**Secondary Unavailability**" has the meaning set forth in Exhibit M.

"**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 UIE Costs**" has the meaning set forth in Section 3.3(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).

"**Settlement Interval**" has the meaning set forth in the CAISO Tariff.

"**Settlement Period**" has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

"**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 to the Delivery Point, including the Interconnection Facilities and the Interconnection Agreement itself, if applicable, that are used in common with third parties or by Seller for electric generation or storage facilities owned by Seller or its Affiliates other than the Facility.

"Showing Deadline" means the initial deadline that a Scheduling Coordinator must meet to submit its RA Plan, as established by CAISO, the CPUC or any other Governmental Authority. For illustrative purposes only, as of the Effective Date, the CAISO monthly Showing Deadline is approximately 45 days prior to the RA delivery month.

"**Showing Month**" means 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, 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 to Buyer, in substantially the form of the Form of Construction Start Date Certificate in Exhibit H. 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 Seller or 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.

"**SP-15**" means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

"**Station Use**" means all electric energy that is used within the Facility to power lights, motors, control systems, thermal regulation equipment and other electrical loads.

"**Station Use Meter**" has the meaning set forth in Section 7.1.

"**Storage Availability Adjustment**" has the meaning set forth in Exhibit M.

"**Storage Capacity**" means the maximum dependable operating capability of the Facility (expressed in MW AC) to discharge electric energy at the maximum discharge rate that can be sustained for eight (8) consecutive hours, as the same is to be established as of the Commercial Operation Date and adjusted from time to time pursuant to Exhibit N to reflect the results of the most recently performed Storage Capacity Test; provided that the Storage Capacity shall not at any time exceed the lesser of (a) the Guaranteed Storage Capacity, and (b) the Facility's then current PMax in the Facility's CAISO's Master Data File and Resource Data Template (or successor data systems).

"**Storage Capacity Payment**" has the meaning set forth in Section 3.2.

"**Storage Capacity Test**" or "**SCT**" means any test or retest of the capacity and round-trip efficiency of the Facility conducted in accordance with the testing procedures, requirements and protocols set forth in Exhibit N.

"**Storage Contract Capacity**" means the total capacity (in MW) of the Storage Facility initially equal to the Guaranteed Storage Capacity set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(b) of Exhibit B.

"**Storage Facility Meter**" means the CAISO Approved Meter (with a 0.3 accuracy class), sufficient for monitoring, recording and reporting, in real time, the amount of (i) Charging Energy, (ii) Discharging Energy and (iii) Energy directly from the grid that serves Station Use. For clarity, the Facility may include multiple measurement devices and calculations 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 calculations and the aggregated data of all such measurement devices and calculations, taken together.

"**Storage Rate**" has the meaning set forth on the Cover Sheet.

"**Stored Energy**" means the electric energy in the Facility available to be discharged as Discharging Energy.

"**Stored Energy Level**" means, at a particular time, the amount of electric energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

"**Subsequent Purchasers**" means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

"**Supplementary Storage Capacity Test Protocol**" has the meaning set forth in Exhibit N.

"**Supply Plan**" has the meaning set forth in the CAISO Tariff.

"**System Emergency**" means any (a) condition that: (i) requires, as determined and declared by CAISO or the PTO, 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) preserve Transmission System reliability, and (ii) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part, or (b) a "System Emergency" or equivalent term, as defined by CAISO or the PTO.

"System Resource Adequacy Benefits" means the attributes, however defined, of a resource that can be used to satisfy the resource adequacy obligations of a load serving entity, other than Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits.

"**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 generally accepted accounting principles.

"**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.

"**Terminated Transaction**" has the meaning set forth in Section 11.2.

"**Termination Payment**" has the meaning set forth in Section 11.3(b).

"**Transformer Failure**" means a failure of all or part of the Main Power Transformer that results in the Facility being unable receive Charging Energy or to deliver Facility Energy during such failure, and such failure was not caused by Seller and could not have been avoided through the exercise of Prudent Operating Practices.

"**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.

"**Ultimate Parent**" means (a) Aypa Power Holdings LP from the Effective Date until such Person no longer Controls, directly or indirectly, Seller, and (b) following the date on which Aypa

Power Holdings LP no longer Controls, directly or indirectly, Seller, the entity that does Control, directly or indirectly, Seller and that is not Controlled by any other entity.

"**Uninstructed Imbalance Energy**" or "**UIE**" has the meaning set forth in the CAISO Tariff.

"**WECC**" means the Western Electricity Coordinating Council or its successor.

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 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" means "include without limitation" or "including 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, and references to a LMP shall mean the LMP at the Delivery Point unless expressly provided otherwise;

(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**").

(b) Seller shall provide Notice to Buyer within ten (10) Business Days of Seller's receipt of any executed Interconnection Agreement that includes an estimated placed-in-service date ("**Estimated Placed-In-Service Date**") for Seller's Interconnection Facilities that is later than the date of Initial Synchronization as set forth in the Milestone schedule on the Cover Sheet ("**Interconnection Delay Notice**").

(i) [Reserved]

(ii) If, despite Seller's commercially reasonable efforts to have the Estimated Placed-In-Service Date be on or before the estimated date of Initial Synchronization as set forth in the Milestone schedule on the Cover Sheet, such Estimated Placed-In-Service Date is more than [redacted] days after the date of Initial Synchronization as set forth in the Milestone schedule on the Cover Sheet, then Buyer shall have the right to terminate this Agreement by providing Notice to Seller within ninety (90) days after Buyer's receipt of the Interconnection Delay Notice, and retain [redacted] of the Development Security as liquidated damages. [redacted]

(iii) [Intentionally Omitted.]

(iv) [Intentionally Omitted.]

(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 19 shall remain in full force and effect for three (3) years following the termination of this Agreement, 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 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller shall have installed and commissioned storage equipment with a capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity;

(b) Seller shall have delivered to Buyer certificates from a Licensed Professional Engineer substantially in the form of Exhibits G-1 and G-2;

(c) 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;

(d) An Interconnection Agreement between Seller or its Affiliate and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement, including all modifications and amendments thereto, delivered to Buyer;

(e) Authorization to parallel the Facility was obtained by the Participating Transmission Owner prior to the Commercial Operation Date.

(f) The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by the Commercial Operation Date.

(g) The CAISO has provided notification supporting Commercial Operation.

(h) Buyer, or its designee, is the Scheduling Coordinator for the Facility; provided that if this requirement is not met because of Buyer's (or its designee's) actions or failure to take actions, and this is the only requirement for Commercial Operation that has not been met, Seller shall be entitled to a day for day extension of the Guaranteed Commercial Operation Date for such Buyer (or its designee) actions or failure to act.

(i) Seller shall have delivered to Buyer a copy of all environmental impact reports, studies or assessments prepared by or obtained by Seller or its Affiliates, the conditional use permit or other principal land use approval for the Facility, and a certificate signed by an authorized representative of Seller stating that Seller or its Affiliate is in compliance with the requirements of the conditional use permit or other principal land use approval;

(j) Seller shall have caused the Facility to be included in the Full Network Model and has ability to offer Bids into CAISO Day-Ahead Markets and Real-Time Markets.

(k) Seller shall have completed all necessary steps to provide Ancillary Services from the Facility, including completing the certification and testing requirements in Section 8 and Appendix K of the CAISO Tariff;

(l) Seller has delivered the Performance Security to Buyer;

(m) Seller has paid Buyer for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any; and

(n) Seller has delivered to Buyer a plan that is reasonably acceptable to Buyer for the proper recycling and disposal of all project components, equipment, and materials at the end of the useful life of the Facility; *provided*, if Buyer does not find Seller's recycling and disposal plan acceptable, it shall provide Seller, within ten (10) Business Days after Seller's submission of its recycling and disposal plan, Notice thereof together with an explanation for such finding. If Buyer fails to provide such Notice within ten (10) Business Day-period, Buyer shall be deemed to have accepted Seller's recycling and disposal plan.

2.3 **Progress Reports**. Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (b) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

2.4 **Remedial Action Plan**. If Seller misses any Milestone by more than thirty (30) days, Seller shall submit to Buyer, within ten (10) Business Days of such missed 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), and 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 any extension thereof); provided, that 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. If the missed Milestone(s) is not the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date, and so long as Seller complies with its obligations under this Section 2.4, then Seller shall not be considered in default of its obligations under this Agreement as a result of missing such Milestone(s).

ARTICLE 3
PURCHASE AND SALE

3.1 **Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller all of the Product. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except with respect to Replacement RA.

3.2 **Compensation**. Buyer shall compensate Seller for the Product in accordance with this Section 3.2. For each month of the Delivery Term, Buyer shall pay Seller an amount equal to [(A x B x C) – D – E – F], (such amount, the "**Storage Capacity Payment**"), where:

A = the Storage Rate

B = the current Storage Capacity (in kW)

C = the applicable Storage Availability Adjustment determined in accordance with Exhibit M

D = the applicable RTE Shortfall Payment determined in accordance with Exhibit Q (if applicable)

E = the applicable Reimbursable Station Use Payment for such month

F = the applicable Seller UIE Costs for such month

The Storage Capacity Payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

3.3 **Imbalance Energy**. Buyer and Seller shall cooperate to minimize charges and imbalances associated with UIE to the extent possible. Each Party's respective responsibility with respect to CAISO costs and revenues associated with IIE and UIE are as follows:

(a) [redacted]



3.4 **Future Environmental Attributes**.

(a) The Parties acknowledge and agree that as of the Effective Date, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Buyer shall have the right to obtain such Future Environmental Attributes. Subject to Sections 3.6(b) and 3.8, 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 Storage Rate. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, Seller shall take all reasonable actions necessary to realize the full value of such Future Environmental Attributes for the benefit of Buyer, and shall cooperate with Buyer in Buyer's efforts to do the same. 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 modify the operation of the Project 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 3.4(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 appropriate transfer, delivery and risk of loss mechanisms,; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.5 **Capacity Attributes**. Seller shall request Full Capacity Deliverability Status in connection with the Facility in the CAISO generator interconnection process. As between Buyer

and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility throughout the Delivery Term.

(b) Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) For the duration of the Delivery Term, Seller shall maintain an interconnection capacity under its Interconnection Agreement of at least the amount of the Guaranteed Interconnection Capacity.

(e) If, as a result of Scheduled Maintenance or otherwise, CAISO requires RA Substitute Capacity in connection with Seller's provision of Resource Adequacy Benefits to Buyer from the Facility, Seller shall provide such RA Substitute Capacity in accordance with applicable CAISO requirements. Seller acknowledges and agrees that any failure by Seller to provide such RA Substitute Capacity may result in CAISO rejecting or cancelling Scheduled Maintenance or other outage of the Facility. Upon request by Seller, Buyer shall use commercially reasonable efforts to secure, on Seller's behalf, RA Substitute Capacity; provided that Seller shall reimburse Buyer for all out-of-pocket costs, including broker and outside counsel costs, associated with such RA Substitute Capacity. If Seller declines to provide RA Substitute Capacity, and notifies Buyer to that effect no less than five (5) Business Days before the applicable Showing Deadline, then Buyer will not include the Facility (or, if applicable, the portion of the Facility) in its Supply Plan for the Facility and Seller's sole liability will be payment of the RA Deficiency Amount for such RA Shortfall pursuant to Section 3.6.

(f) If Seller anticipates it will have an RA Shortfall in any month of the Delivery Term, Seller may provide Replacement RA up to the anticipated RA Shortfall, provided Seller provides Buyer with Replacement RA product information in a Notice substantially in the form of Exhibit K at least seventy-five (75) days before the applicable Showing Month.

3.6 **Resource Adequacy Failure**.

(a) RA Deficiency Determination. Notwithstanding Seller's obligations set forth in Section 4.3 or anything to the contrary herein, the Parties acknowledge and agree that if Seller has failed to obtain Full Capacity Deliverability Status for the Facility by the RA Guarantee Date, or if Seller otherwise fails to provide Resource Adequacy Benefits (or Replacement RA in lieu thereof) on or after the RA Guarantee Date and such failure results in an RA Shortfall hereunder, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month

as liquidated damages due to Buyer for the Capacity Attributes that Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the sum of:

(i) For any portion of the RA Shortfall for which Buyer incurs a CPUC System RA Penalty ("**CPUC-Penalized Shortfall**"), Seller's pro rata share of the amount of such CPUC System RA Penalty for such month actually incurred by Buyer (which shall be zero (0) if Buyer does not incur any CPUC System RA Penalty), plus,

(ii) For any portion of the RA Shortfall for which Buyer incurs CAISO costs, charges or penalties associated with such shortfall ("**CAISO-Penalized Shortfall**") Seller's pro rata share of the amount of such CAISO costs, charges or penalties associated with the RA Shortfall for such month actually incurred by Buyer (which shall be zero (0) if Buyer does not incur any CAISO costs, charges or penalties associated with the RA Shortfall), plus

(iii) For any portion of the RA Shortfall which is not a CPUC-Penalized Shortfall and/or a CAISO-Penalized Shortfall, and for which Buyer purchased replacement Resource Adequacy Benefits, the amount of Buyer's reasonably incurred cost of such replacement Resource Adequacy Benefits, plus

(iv) For any portion of the RA Shortfall which is not a CPUC-Penalized Shortfall and/or CAISO-Penalized Shortfall, and for which Buyer did not purchase replacement Resource Adequacy Benefits, the prevailing market value of such RA Shortfall, as reasonably determined by Buyer and substantiated based on two (2) price quotes from brokers or marketers not affiliated with either Party if readily available;

[redacted]

(c) Notwithstanding the foregoing, if any given month, following the Effective Date, an RA Change in Law creates an RA Shortfall, no RA Deficiency Amount shall be owed to Buyer except to the extent that such RA Shortfall pursuant to Section (b)(i) of the definition of "RA Change in Law" was more than [redacted] for such month.

3.7 **Buyer's Re-Sale of Product**. Subject to Section 5.2, Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. Subject to Section 3.8, if the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but

without increasing Seller's obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.7, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

3.8 **Compliance Expenditure Cap**. If a change in Law, other than an RA Change in Law, occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Capacity Attributes, 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 Forty-Two Thousand Five Hundred Dollars ($42,500) per MW of Installed Storage Capacity ("**Compliance Expenditure Cap**").Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**"; *provided*, Compliance Actions shall not include increasing the Storage Capacity beyond the Guaranteed Storage Capacity.

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.8(c) 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.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall make available and Buyer shall accept at the Delivery Point all Product. Seller retains all rights to the Facility and to use and dispose of Product after the end of the Delivery Term. Each Party shall perform all obligations under this Agreement, including all generation,

scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

4.2 **Title and Risk of Loss**. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Title to and risk of loss related to the Charging Energy, if any, shall pass and transfer from Buyer to Seller at the Delivery Point.

4.3 **Scheduling Coordinator Responsibilities**.

(a) 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 the Product at the Delivery Point. At least thirty (30) days prior to the planned 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 as the Facility's Scheduling Coordinator 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 Schedules 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 or real time basis, as determined by Buyer.

(b) 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 Facility Outages, Forced Facility 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 (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below and in Section 3.3, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, fees, costs, and other charges, except as otherwise provided in this Agreement) and shall be entitled to all CAISO revenues (including credits 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 or fees resulting from any failure by Seller to abide by any Charging Notices, Discharging Notices, the CAISO Tariff or 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 are for the benefit of

the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). 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 the actions or inactions of Seller that are not in compliance with this Agreement, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) 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 charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement, including Section 3.3(b). 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 Section 4.3(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 these 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.

(e) 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.

(f) 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.

(g) Master Data File and Resource Data Template. Seller (and Buyer, if necessary due to Buyer's role as the Scheduling Coordinator) 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 this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent, not to be unreasonably withheld.

(h) 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.

4.4 **Forecasting**.

Seller shall provide the forecasts described below. Seller's (i) Available Storage Capacity and (ii) Available Storage Capability forecasts (items (i) and (ii) collectively referred to as the "**Forecasted Product**") shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Forecasted Product accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Monthly Forecast of Available Storage Capacity and Capability. 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 designee (if applicable) a non-binding forecast of the hourly Forecasted Product for each day of the following month in the form attached hereto as Exhibit L-1 and L-2, or as reasonably requested by Buyer.

(b) Daily Forecast of Available Storage Capacity. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Forecasted Product 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 Available Storage Capacity and Available Storage Capability.

(c) Real-Time Forecast. During the Delivery Term, Seller shall notify Buyer of any changes in Forecasted Product of one (1) MW or more, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Storage Capacity or Available Storage Capability, as applicable, the expected end date and time of such event, the expected Available Storage Capacity in MW or the expected Available Storage Capability in MWh, 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; *provided*, Seller shall only be required to notify Buyer of a Forced Facility Outage due to an outage on the Transmission System to the extent Seller has knowledge of such 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. These Notices and changes to Available Storage Capacity and Available Storage Capability shall be communicated in a method reasonably specified by 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 4.4(c), then Seller shall send such communications by telephone and e-mail to Buyer.

4.5 **Curtailment**.

(a) General. Subject to any limitations required by the Operation Restrictions, Seller agrees to reduce its consumption of Charging Energy and its delivery of Discharging Energy by the amount and for the period set forth in any Curtailment Order.

(b) Failure to Comply. If Seller fails to comply with a Curtailment Order as provided above, then (i) for each MWh of Charging Energy that is consumed by Seller in contradiction to the Curtailment Order, Seller shall pay Buyer for each MWh an amount equal to the sum of (A) + (B), where: (A) is an amount equal to the absolute value of LMPs, if any, for the Settlement Intervals during the Curtailment Period, times the applicable amount of MWh of Energy consumed by Seller in contradiction to the Curtailment Order, and (B) is any penalties or other charges resulting from Seller's failure to comply with the Curtailment Order; and (ii) for each MWh of Discharging Energy that is delivered to the Delivery Point in contradiction to the Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B), where: (A) is an amount equal to the absolute value of any negative LMPs, if any, for the Settlement Intervals during the Curtailment Period, times the applicable amount of MWh of Energy delivered to the Delivery Point during such Settlement Intervals with negative LMPs in contradiction to the Curtailment Order, and (B) is any penalties or other charges resulting from Seller's failure to comply with the Curtailment Order. Seller shall not be deemed to have failed to comply with a Curtailment Order to the extent the sole reason for such failure is due to the Curtailment Order being inconsistent with the limitations of the Facility set forth in the Master File.

(c) Seller Equipment Required for Operating 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 operating instructions from the CAISO and Buyer's SC, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility and required by CAISO or which Buyer reasonably determines are necessary to comply with this Agreement (provided, that in the event of any conflicts between the CAISO's requirements and the Buyer's requirements, Seller shall comply with the CAISO's requirements), Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall promptly repair and replace as necessary such facilities, communication links or other equipment, and shall notify Buyer as soon as Seller discovers any defect. If Seller is required to replace or upgrade equipment to comply with methodologies applicable to the Facility determined by Buyer to be reasonably necessary to comply with this Agreement after the Effective Date (except to the extent required by Law), then the cost of such equipment and the installation thereof shall be considered a Compliance Action under Section 3.8 and Seller's obligation to pay for such meters and power electronics shall be subject to the Compliance Expenditure Cap. If Buyer notifies Seller of the need for maintenance, repair, or replacement of any such facilities, communication links or other equipment, Seller shall repair or replace such equipment as necessary within five (5) days of receipt of such Notice;

provided that if Seller is unable to do so, then Seller shall make such repair or replacement as soon as reasonably practical. Seller shall be liable pursuant to Section 4.5(b) for failure to comply with a 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 Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.6 **Charging and Discharging Energy**.

(a) Buyer will be the Scheduling Coordinator for the Facility and will have sole and exclusive rights to direct Seller to charge and discharge the Facility and to bid and schedule the Facility in CAISO markets, subject to the terms of this Agreement, including compliance with the Operating Restrictions.

(b) Seller shall comply with Charging Notices and Discharging Notices that comply with the terms of this Agreement. Upon receipt of a valid Charging Notice, Seller shall accept the Charging Energy at the Facility in accordance with the terms of this Agreement (including the Operating Restrictions), at the times and in the quantities specified in such Charging Notice. Upon receipt of a valid Discharging Notice, Seller shall deliver the Discharging Energy to the Delivery Point in accordance with the terms of this Agreement (including the Operating Restrictions), at the times and in the quantities specified in such Discharging Notice.

(c) Buyer will have the right to direct Seller to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided that Buyer's right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including compliance with the Operating Restrictions and the CAISO Tariff. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.

(d) Seller shall not charge the Facility during the Contract Term other than pursuant to a valid Charging Notice or in connection with a Storage Capacity Test (for which Seller may request a Charging Notice from Buyer), pursuant to a notice from CAISO, the PTO, or any other Governmental Authority, or as may be required to comply with the Operating Restrictions. If, during the Contract Term, Seller (i) charges the Facility other than as provided for in a Charging Notice (except as permitted in the first sentence of this Section 4.6(d)), or (ii) charges the Facility in violation of the first or second sentence of Section 4.6(b), then, in addition to any other costs and charges for which Seller is responsible, including other amounts specified in Section 3.3(a), and without limiting any of Buyer's other rights under this Agreement, Buyer shall be entitled to retain all revenues associate therewith and any subsequent discharging of such Energy. During any period in which the Facility is subject to a Charing Notice or Discharging Notice, this Section 4.6(d) shall only apply to the extent [redacted] and that are not caused by unavailability of the Facility.

(e) Subject to compliance with the CAISO Tariff, other applicable Laws and the Operating Restrictions, Buyer will have the right to direct Seller to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing

Discharging Notices to Seller electronically and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(f) Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice or in connection with a Storage Capacity Test (for which Seller may request a Discharging Notice from Buyer), pursuant to a notice from CAISO, the PTO, or any other Governmental Authority, or as may be required to comply with the Operating Restrictions. Discharging for Station Use may occur only as specified in Section 6.4. In the case of a Storage Capacity Test, Buyer shall pay for costs associated with the Charging Energy and may retain any revenue from the discharge of such Energy (adjusted for efficiency losses) pursuant to a valid Discharging Notice; *provided*, (i) Seller shall pay the costs associated with the Charging Energy and may retain any revenue from the discharge of such Energy (adjusted for efficiency losses), and (ii) the Facility shall be deemed unavailable for purposes of calculating the Monthly Storage Availability pursuant to Exhibit M, if (A) Seller initiates the tests in accordance with Exhibit N or (B) a Buyer-initiated test indicates that the Storage Capacity is two percent (2%) or more lower than the then-current Storage Capacity. If, during the Contract Term, Seller (1) discharges the Facility other than as provided for in a Discharging Notice (except as permitted in the first sentence of this Section 4.6(f)), or (2) discharges the Facility in violation of the third sentence of Section 4.6(b), then, in addition to any other costs and charges for which Seller is responsible, including other amounts specified in Section 4.3(c), and without limiting any of Buyer's other rights under this Agreement:

(i) Buyer shall retain any positive revenues received from CAISO or otherwise associated with such discharge; and

(ii) Seller shall be responsible for and reimburse Buyer for all Energy costs associated with charging the Facility back to the Stored Energy Level specified by Buyer before the non-permitted discharge.

[redacted].

(g) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Charging Notices or Discharging Notices applicable to such Settlement Interval (but not over Charging Notices or Discharging Notices which are consistent with such Curtailment Orders), and Seller shall have no liability for violation of this Section 4.6 or any Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the PTO unless caused by Seller's fault or negligence. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Curtailment Order consistent with the Operating Restrictions and the Curtailment Order.

(h) Prior to the Commercial Operation Date, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to charge and discharge the Storage Facility (provided, Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility), (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy), and (iv) Buyer shall net all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO each month, and (x) if such net amount is a negative number, Seller shall reimburse Buyer such amount, and (y) if such net amount is a positive number, Buyer shall be entitled to retain such amount.

4.7 **Financial Statements**. Seller shall provide to Buyer, within 60 days of the end of Seller's first, second, and third fiscal quarters, and within 120 days of the end of the Seller's fiscal year, as applicable, unaudited quarterly and annual audited financial statements of the Seller (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

4.8 **Access to Data and Installation and Maintenance of Weather Station**.

(a) Commencing on the Commercial Operation Date, and continuing throughout the Delivery Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer and consistent with Prudent Operating Practice, the data set forth below on a real-time basis; provided that Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested by Buyer, throughout the Delivery Term, which changes Buyer reasonably determines are necessary in order for Buyer to forecast output from the Facility, and comply with Law:

(i) real time, read-only access to transformer availability, any other Facility availability information;

(ii) real time, read-only access to Charging Energy, Discharging Energy, Facility state-of-charge, and battery rack and inverter status (online or offline) information collected by the supervisory control and data acquisition (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 such information to Buyer in 1 minute 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;

(iii) read-only access to the Storage Facility Meter and all Facility meter data at the Site; and

(iv) full, real-time access to the Facility's Scheduling and Logging for the CAISO client application, or its successor system.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Facility's monthly actual Available Storage Capacity in a form reasonably acceptable to Buyer.

(b) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 4.8, which shall be available on a minimum time interval of one hour basis or an hourly average basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(c) Installation, Maintenance and Repair.

(i) Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 4.8(a) of this Agreement.

(ii) Seller shall maintain the telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Buyer's designee to enable Buyer to meet current CAISO scheduling requirements. Seller shall promptly repair and replace as necessary such telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(iii) If Buyer notifies Seller of the need for maintenance, repair or replacement of the telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice; provided that if Seller is unable to repair or replace such equipment within five (5) days, then Seller shall make such repair or replacement as soon as reasonably practical; provided further that Seller shall not be relieved from liability for any IIE or UIE costs incurred under Section 3.3(a) during this additional period for repair or replacement.

(iv) For any occurrence in which Seller's telecommunications system is not available or does not provide the quality of data required hereunder and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of verbal or written communication, including cellular communications from onsite personnel, facsimile, or equivalent mobile e-mail, or other method mutually agreed upon by the Parties, until the telecommunications link is re-established.

(d) Seller agrees and acknowledges that Buyer may seek and obtain from third parties any information relevant to its duties as Scheduling Coordinator for the Facility, including from the Participating Transmission Operator. Seller shall execute within a commercially reasonable timeframe upon request such instruments as are reasonable and necessary to enable Buyer to obtain from the Participating Transmission Operator information concerning Seller and the Facility that may be necessary or useful to Buyer in furtherance of Buyer's duties as Scheduling Coordinator for the Facility.

4.9 **Storage Availability and Efficiency**. The provisions of this Section 4.9 apply during the Delivery Term.

(a) Storage Availability. During the Delivery Term, the Facility shall maintain a Monthly Storage Availability (calculated in accordance with Exhibit M) during each Month of no less than [redacted] (the **"Guaranteed Storage Availability"**). If, in any Month after the Commercial Operation Date, the Monthly Storage

Availability is less than the Guaranteed Storage Availability, then, except as provided in Section 11.1(b)(iii), Buyer's sole and exclusive remedy for such shortfall shall be the application of the Storage Availability Adjustment to reduce the Storage Capacity Payment due for the Product as provided in Section 3.2.

(b) Round-Trip Efficiency. During the Delivery Term, the Facility shall maintain a Round-Trip Efficiency during each month of no less than the Guaranteed Round-Trip Efficiency. If, in any month during the Delivery Term, the Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency, then, except as provided in Section 11.1(b)(iv), Buyer's sole and exclusive remedy (and Seller's sole and exclusive liability) for such shortfall shall be the RTE Shortfall Payment calculated in accordance with Exhibit Q.

4.10 **Storage Capacity Tests**.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit N. Thereafter, Seller and Buyer shall have the right to conduct additional Storage Capacity Tests in accordance with Exhibit N.

(b) Buyer shall have the right to send one or more representatives to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representatives witnessing any Storage Capacity Test. Buyer shall (i) comply with all reasonable and notified Seller health and safety policies and procedures and instructions while present at the Site, and (ii) shall conduct itself in a manner that will not unreasonably interfere with the operation of the Facility or other activities of Seller and its subcontractors on the Site. Buyer acknowledges that it will be escorted at all times while on the Site.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit N. If the actual capacity or round-trip efficiency determined pursuant to a Storage Capacity Test deviates from the then current Storage Capacity or Round-Trip Efficiency, then the actual capacity or round-trip efficiency determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Capacity) shall become the new Storage Capacity or Round-Trip Efficiency, effective as of the first day of the month following the completion of the Storage Capacity Test, for all purposes under this Agreement, including compensation under Section 3.2 until the next such Storage Capacity Test.

(d) It is acknowledged that Seller shall have the right and option in its sole discretion to install Facility capacity in excess of the Storage Contract Capacity; *provided*, for all purposes of this Agreement the amount of Installed Battery Capacity and Storage Capacity shall never be deemed to exceed the Storage Contract Capacity, and (A) Buyer shall have no rights to instruct Seller to (i) charge or discharge the Facility at an instantaneous rate (in MW) in excess of the lesser of the Storage Contract Capacity, the Installed Battery Capacity or the Storage Capacity or (ii) charge the Facility to a level (in MWh) in excess of the lesser of the Storage Contract Capacity, the Installed Battery Capacity or Storage Capacity times eight (8) hours, (B) Buyer shall have no obligation to dispatch such excess capacity on behalf of Seller, or to make payment to Seller for such excess capacity, and (C) for purposes of calculating the Monthly Storage Availability of the Facility, the unavailability of such excess capacity will not be considered in such calculations.

4.11 **Facility Modifications**. Seller shall not modify or supplement all or any part of the Facility without Buyer's prior written consent, which consent shall be not be unreasonably withheld, conditioned or delayed; *provided*, Seller may, without Buyer's consent, perform routine maintenance and undertake augmentation, improvement or modification of the Facility, including repairs and replacements of all or portions thereof with newer technology, if such work is done in accordance with Prudent Operating Practice and does not change the Facility's ability to meet the availability and performance specifications of this Agreement or the Operating Requirements and does not have any material adverse impact on Buyer's ability to receive Product from the Facility or charge or discharge the Facility in the manner provided for in this Agreement; provided, further that (i) Seller shall provide Buyer with prior written notice before undertaking any of the foregoing that would result in any reduction in the availability of the Facility, and (ii) all outages and derates associated with the foregoing shall count toward the maximum Scheduled Maintenance hours specified in Section 6.1(a).

4.12 **Ancillary Services**. Buyer shall have the exclusive rights to all Ancillary Services that the Facility is capable of providing consistent with the Operating Restrictions, with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Contract Term so as to be able to provide such Ancillary Services in accordance with the specifications set forth in the Facility's initial CAISO Certification associated with the Installed Storage Capacity (subject to any changes required by Law or CAISO requirements). Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the 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 without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any costs Seller incurs in connection with conducting such additional CAISO Certification.

4.13 **Workforce Agreement**. The Parties acknowledge that in connection with Buyer's energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall cause that work performed in connection with construction of the Facility to be conducted using a project labor agreement, or similar agreement, providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof. Seller shall provide documentation reasonably satisfactory to Buyer demonstrating Seller's compliance with the requirements of this Section 4.13.

4.14 **Diverse Business Enterprises**. During the Delivery Term, no later than twenty (20) days after each semi-annual period ending on June 30th or December 31st, Seller shall provide to Buyer a report listing all Diverse Business Enterprises that supplied goods or services to Seller during such period, including any certifications or other documentation of such Diverse Business Enterprises status as such and the aggregate amount paid to Diverse Business Enterprises during such period.

(a) Buyer has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 4.14.

(b) Seller shall make reasonable efforts to accommodate requests by the CPUC (or by Buyer in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 4.14.

4.15 **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities may be subject to shared facilities and/or co-tenancy agreements entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties. If applicable, Seller agrees that any agreements regarding Shared Facilities (i) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, (ii) shall provide for separate metering of the Facility; (iii) shall not limit Buyer's ability to provide Charging Notices or Discharging Notices for the Facility; (iv) shall 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 ID; and (iv) shall provide that any curtailment or restriction of Shared Facility capacity not attributable to a specific project or projects shall be allocated to all generating or storage facilities utilizing the Shared Facilities based on their pro rata allocation of the Shared Facility capacity prior to such curtailment or reduction. Seller shall not, and shall not permit any Affiliate of Seller to, allocate to other Persons a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements, minus the Guaranteed Interconnection Capacity.

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 delivery or making available to Buyer, including on Discharging Energy prior to the Delivery Point. 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 from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees) and on Charging Energy prior to delivery by Buyer to the Delivery Point. Seller shall be solely responsible for all taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Contract Term, but expressly excluding any taxes, charges or fees related to Greenhouse Gases imposed on Charging Energy or Discharging Energy. 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 Buyer is subject to an exemption for any sale of Energy or other Product hereunder that would otherwise be subject to a Tax under Applicable Law, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. 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 Energy and Ancillary Services delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy and Ancillary Services.

5.3 **Ownership**. Seller shall be the owner of the Facility for federal income tax purposes and, as such, Seller (or its Affiliates or Lenders) shall be entitled to all depreciation deductions associated with the Facility and to any and all tax benefits associated with the Facility, including any such tax credits or tax benefits under the Internal Revenue Code of 1986, as amended. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended. The Parties will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of the Product from the Seller or that this agreement is anything other than a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended.

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.

(a) Seller shall provide to Buyer no later than ninety (90) days prior to the Commercial Operation Date for the period from the Commercial Operation Date through the end of the then-current calendar year, and no later than September 1 of each calendar year thereafter for the following calendar year, a schedule of all planned outages or derates of the Facility for maintenance purposes ("**Scheduled Maintenance**"). Scheduled Maintenance conducted in accordance with all the requirements and limits in this Agreement is "**Permitted Scheduled Maintenance**". Seller shall not conduct any Scheduled Maintenance between June 1 and October 31 of each year. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to adjusting the timing of Scheduled Maintenance. Seller may modify its schedule of Permitted Scheduled Maintenance upon reasonable advance notice to Buyer, subject to reasonable requests of Buyer and consistent with Section 4.4 and this Section 6.1.

(b) Seller shall use commercially reasonable efforts to perform during periods of Permitted Scheduled Maintenance all maintenance that will reduce the Facility's output or availability. Seller shall arrange for any necessary non-emergency maintenance that is not Permitted Scheduled Maintenance and that reduces the Available Storage Capacity of the Facility by more than ten percent (10%) to occur only between November 1 and May 31 of each year, unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through October, or (iii) the Parties agree otherwise in writing.

(c) Seller shall use commercially reasonable efforts to schedule all maintenance outages, including those associated with Permitted Scheduled Maintenance (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require

resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer, provided that Seller shall not be required to consolidate preventative maintenance activities into a single month where such consolidation is inconsistent with vendor-recommended maintenance schedules.

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 on Exhibit R Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 **Permits and Approvals**. As between Buyer and Seller, Seller shall obtain any required permits and approvals in connection with the development, construction, and operation of the Facility (except for any approvals required of Buyer as SC for the Facility), including without limitation, environmental clearance under the California Environmental Quality Act or other environmental law, from the local jurisdiction where the Facility will be constructed.

6.4 **Energy to Serve Station Use**. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (a) Seller is responsible for providing all energy to serve Station Use (including paying the cost of any Energy used to serve Station Use and the cost of energy provided by third parties used to serve Station Use); and (b) Seller may utilize Energy to serve Station Use to the extent permissible in accordance with the CAISO Tariff and subject to the following requirements and restrictions:

(i) Seller shall not bill Buyer and Buyer will not pay Seller for any Energy that serves Station Use;

(ii) Seller shall separately meter all Station Use to ensure that records and invoices to Buyer are accurate and do not improperly bill Buyer for Energy that serves Station Use and to enable Buyer to invoice Seller for Reimbursable Station Use Payments;

(iii) Seller shall ensure that any use of Energy to serve Station Use complies with and does not interfere with or impair Buyer's or the CAISO's dispatch of or schedule for the Facility, and if Seller fails to comply with such requirements, then, without prejudice to Buyer's other rights and remedies hereunder, Seller shall reimburse Buyer for (A) any charges, costs, and penalties imposed by the CAISO for the Facility's failure to comply with dispatch instructions, the CAISO schedule, or any CAISO requirements; and (B) any loss of revenue if the CAISO adjusts dispatch instructions due to the use of Energy discharged from the Facility to serve Station Use, in each case only to the extent imposed or incurred as a direct result of Seller's use of Energy discharged from the Facility to serve Station Use;

(iv) Seller shall not use Stored Energy to serve Station Use; *provided*, Seller may use Energy stored in storage capacity installed in excess of the Installed Storage Capacity to serve Station Use during periods when the Facility is not charging or discharging pursuant to a Charging Notice or a Discharging Notice; *provided*, any use of such excess Energy

discharged from the Facility for Station Use shall not (A) reduce Seller's obligations to achieve the Guaranteed Storage Availability and Guaranteed Round-Trip Efficiency, or (B) count toward limits (including daily and/or annual discharging energy limits) specified in the Operating Restrictions; and

(v) Seller shall provide to Buyer upon Buyer's request all records and data, including detailed meter, charging, discharging, and state of charge data, that may be necessary or useful for Buyer to verify that service of Station Use occurred in compliance with this Section 6.4, and to calculate and verify the accuracy of invoices and amounts required to be reimbursed hereunder.

ARTICLE 7
METERING

7.1 **Metering**. Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), the Facility shall have its own CAISO Resource ID and shall be a CAISO Metered Entity (as defined in the CAISO Tariff). Seller shall measure the Charging Energy and Discharging Energy using the Storage Facility Meter and CAISO approved methodologies. Seller shall measure Station Use using a separate revenue-grade meter ("**Station Use Meter**"). The Storage Facility Meter and Station Use Meter shall be installed and maintained at Seller's cost. Metering will be consistent with the Metering Diagram set forth in Exhibit P. The meter(s) 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 that 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 applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter at the Facility.

7.2 **Meter Verification**. If Buyer or Seller has reason to believe there may be a meter malfunction, Seller shall test the meter. Annually, upon Buyer's reasonable request, Seller shall test the meters. 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; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall deliver an invoice to Buyer for Product no later than ten (10) days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data to the extent available and other

data sufficient to document and verify the amount of Charging Energy, Discharging Energy and Station Use and Reimbursable Station Use for any Settlement Period during the preceding month, (b) the amount of Product and Replacement RA, if any, delivered to Buyer during the preceding month, and the Storage Rate applicable to such Product and Replacement RA, and (c) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount. Invoices shall be in a format 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.

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within [redacted] days after receipt of the invoice. 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. Either Party, upon fifteen (15) days written Notice to the other Party but not more often than twice per Contract Year, 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, 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. Except for adjustments required due to a correction of data by the CAISO, any adjustment described in this Section 8.4 is waived if Notice of the adjustment is not provided within twelve (12) months after the invoice is rendered or subsequently adjusted.

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 upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. 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 party other than the Party seeking the adjustment and such 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 under this Agreement 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, 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 Development Security**. To secure Seller's obligations under this Agreement, including the obligations of Seller to pay liquidated damages to Buyer as provided in this Agreement, Seller shall deliver Development Security to Buyer within [redacted] Business Days after the Effective Date. Buyer will have the right to draw upon the Development Security if Seller fails to pay liquidated damages owed to Buyer pursuant to Exhibit B to this Agreement, or if Seller fails to pay a Damage Payment or Termination Payment owed to Buyer pursuant to Section 11.2. Seller shall maintain the Development Security in full force and effect and Seller shall 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 other than to satisfy a Damage Payment or a Termination Payment. Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly 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. Seller shall maintain the Performance Security in full force and effect and Seller shall 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 within five (5) Business Days after such draw, other than to satisfy a Termination Payment. Seller shall maintain the Performance

Security in full force and effect until the date on which the following have occurred ("**Performance Security End Date**"): (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, and indemnification payments or other damages, in each case of a determined amount, are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of the Performance Security End Date, Buyer shall promptly return to Seller the unused portion of the Performance Security. Provided that no Event of Default has occurred [redacted] with respect to Seller, Seller may replace or change the form of Performance Security to another form of Performance Security from time to time upon reasonable prior written notice to Buyer.

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 [redacted] 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 to the extent of damages or other amounts owed by Seller to Buyer hereunder.

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.

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 R 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, facsimile, or other electronic means) and either (i) the receiving Party sends a written acknowledgment of receipt, or (ii) concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of commercially 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 that render a Party's performance of this Agreement at the Storage Rate 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 Product at a higher price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility unless the cause of such inability is an event that would otherwise constitute 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 that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, 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 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; (viii) variations in weather, including wind, rain and insolation, within one in fifty (1 in 50) year occurrence as of the Effective Date; or (ix) failure to complete the Interconnection Facilities or network upgrades required to connect the Facility and to deliver Product to the Delivery Point by the Guaranteed Commercial Operation Date except to the extent such inability is caused by a Force Majeure Event; or (x) Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date, it being understood and agreed that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **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. Buyer shall not be obligated to pay for any Product that Seller was not able to deliver as a result of 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*, *however*, that a Party's failure to give timely Notice shall not affect

such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event**.

(a) If a Force Majeure Event has occurred prior to the Commercial Operation Date that has caused the cumulative extensions granted under the Development Cure Period to equal or exceed [redacted] days, 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 and either Party elects, in its sole discretion, to terminate this Agreement pursuant to Section 10.4(a), then upon such termination and notwithstanding the provisions of Exhibit B, neither Party shall have any liability to the other Party, save and except for those obligations specified in Sections 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer.

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 five (5) 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 [redacted]

(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 or for which an exclusive remedy is explicitly provided for in this Agreement) and such failure is not remedied within thirty (30) days after Notice thereof [redacted]

[redacted];

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Sections 14.1, 14.2 or 14.3, as 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 to the Delivery Point for sale under this Agreement Product that was not produced by the Facility, except with respect to Replacement RA except as expressly permitted hereunder;

(ii) the failure by Seller to achieve the Construction Start Date within [redacted] days after the Guaranteed Construction Start Date, or the failure by Seller to achieve Commercial Operation within [redacted] days after the Guaranteed Commercial Operation Date;

(iii) if, in the first Contract Year during the Delivery Term, the average Monthly Storage Availability multiplied by the Storage Capacity is not at least fifty percent (50%) multiplied by the Installed Storage Capacity, or for any Contract Year thereafter, the average Monthly Storage Availability multiplied by the Storage Capacity is not at least seventy percent (70%) multiplied by the Installed Storage Capacity; *provided*, it will not be an Event of Default under this Section 11.1(b)(iii) if (a) the failure to meet the respective standard results from Transformer Failure, (b) during the three hundred sixty five (365) day period following the date of such Transformer Failure Seller diligently pursues a cure to such Transformer Failure and delivers to Buyer a certificate from a Licensed Professional Engineer within thirty (30) days following the date of the Transformer Failure that cure can be made within such three hundred sixty five (365) day period, and (c) Seller completes the cure of such Transformer Failure within such three hundred sixty five (365) day period; *provided further*, such opportunity to cure a default under this Section 11.1(b)(iii) (and under Section 11.1(b)(v)) shall only be allowed for one Transformer Failure during the Contract Term;

(iv) if, for any two (2) consecutive Contract Years, the annual weighted-average [redacted] Round-Trip Efficiency is not at least [redacted]

(v) if Seller fails to maintain a Storage Capacity determined pursuant to a Storage Capacity Test equal to at least seventy-five percent (75%) of the Guaranteed Storage Capacity for longer than three hundred sixty (360) days; *provided*, it will not be an Event of Default under this Section 11.1(b)(v) if (a) the failure to meet such standard results from a Transformer

Failure, (b) during the three hundred sixty five (365) day period following the date of such Transformer Failure Seller diligently pursues a cure to such Transformer Failure and delivers to Buyer a certificate from a Licensed Professional Engineer within thirty (30) days following the date of the Transformer Failure that cure can be made within such three hundred sixty five (365) day period, and (c) Seller completes the cure of such Transformer Failure within such three hundred sixty five (365) day period; *provided further*, such opportunity to cure a default under this Section 11.1(b)(v) (and under Section 11.1(b)(iii)) shall only be allowed for one Transformer failure during the Contract Term;

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Development Security or 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, if such failure is not remedied within five (5) Business Days after Notice thereof;

(vii) except for the Other Facility, if at any time Seller owns, operates or manages any equipment, facility, property or other asset, other than the Facility or engages in any business or activity other than the development, financing, ownership or operation of the Facility, entering into this Agreement with Buyer and other ancillary agreements, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing, including with respect to the Shared Facilities;

(viii) 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 five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred [redacted], 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 the Damage Payment or the Termination Payment, as applicable, in accordance with Section 11.3;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and/or

(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**.

(a) For an Early Termination Date designated as a result of a Seller Event of Default prior to the Commercial Operation Date, Buyer shall be entitled to the Damage Payment, pursuant to Section 11.2(b)(i), which shall be equal to the entire Development Security amount and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer shall 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.

(b) For all other Events of Default, the Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from

the termination of this Agreement, the net Settlement Amount shall be zero. 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; [redacted] 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 is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this section 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, 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 Damage Payment or Termination 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 Damage Payment or Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Damage Payment or Termination 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 Damage Payment or Termination Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Damage Payment or Termination Payment, as applicable, shall be determined in accordance with Article 16.

11.6 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date**.

(a) If the Agreement is terminated prior to the Commercial Operation Date for any reason other than (i) a Buyer Event of Default, or (ii) a termination pursuant to Section 2.1(b)(iv), 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, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions

materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

(b) If the Agreement is terminated prior to the Commercial Operation Date pursuant to Section 2.1(b)(iv), 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, 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 other than price, which shall not be offered to any third party lower than that offered to Buyer pursuant to this Section 11.6(b), and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

(c) 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.

(d) 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 are 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 mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

11.9 [redacted]

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY, THIRD-PARTY CLAIM SUBJECT TO INDEMNIFICATION UNDER AN INDEMNITY PROVISION, OR MEASURE OF DAMAGES HEREIN, 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. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

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.

[redacted].

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 BENEFITS, 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) SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING THE DAMAGE PAYMENT UNDER SECTION 11.2 AND THE TERMINATION PAYMENT UNDER SECTION 11.3, AND AS PROVIDED IN SECTION 3.6, SECTION 4.9, EXHIBIT B, EXHIBIT M AND EXHIBIT Q, 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, AND (UNLESS EXPRESSLY STATED TO THE CONTRARY) AN EXCLUSIVE REMEDY. 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.

EXCEPT AS EXPRESSLY PROVIDED ELSEWHERE IN THIS AGREEMENT, INCLUDING PARAGRAPH 19.3, 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 State of Delaware, 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 corporate 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 California.

(f) The Facility has been allocated FCDS for the Guaranteed Capacity, subject to Seller achieving CAISO Commercial Operation.

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 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, (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.

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 any contracts to which it is a party and in material compliance with any Law.

13.4 **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**"). 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. Seller shall certify that it will not utilize such equipment or resources in connection with the construction, operation or maintenance of the Facility.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is not otherwise permitted by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 **Permitted Assignment; Change of Control of Seller**. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; (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 Qualified 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 Qualified Transferee or (c) subject to Section 15.1, a Lender as collateral. Any direct or indirect Change of Control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Article 14 and will require the prior written consent of

Buyer (except as otherwise provided in this Section 14.2), which consent shall not be unreasonably withheld, conditioned or delayed.

14.3 **Permitted Assignment; Change of Control of Buyer**. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided*, that in each of the foregoing situations, the assignee (a) has a Credit Rating equal to or greater than that of Buyer as of the Effective Date, or if Buyer has no Credit Rating, then a Credit Rating of Baa2 or higher by Moody's or BBB or higher by S&P, and (b) is a community choice aggregator or publicly-owned electric utility with retail customers located in the state of California; *provided*, *further*, that in each such case, no fewer than fifteen (15) Business Days before such assignment Buyer (x) notifies Seller of such assignment and (y) provides to Seller a written agreement, reasonably acceptable to Seller, signed by the Person to which Buyer wishes to assign its interests stating that such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b). Any assignment by Buyer, 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 Seller.

ARTICLE 15
LENDER ACCOMMODATIONS

15.1 **Granting of Lender Interest**. Notwithstanding Section 14.2 or Section 14.3, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the other Party in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

15.2 **Rights of Lender**. If a Party grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 11.2 and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such

Lender that provide that the non-granting Party recognizes the Lender's security interest and such other provisions as may be reasonably requested by the granting Party or any such Lender; *provided*, however, that all costs and expenses (including reasonable attorney's fees) incurred by the non-granting Party in connection therewith shall be borne by the granting Party, and that the non-granting Party shall have no obligation to modify this Agreement or to reduce its benefits or increase its risks or burdens under this Agreement.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; *provided* that the non-granting Party shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3 **Cure Rights of Lender**. The non-granting Party shall provide Notice of the occurrence of any Event of Default to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder as documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party pursuant to Section 15.2(b). The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder. The cure rights of Lender may be documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party pursuant to Section 15.2(b).

ARTICLE 16
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.

16.2 **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.

16.3 **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.

16.4 **Venue**. The Parties agree that any litigation arising with respect to this Agreement is to be venued in the Superior Court for the county of San Mateo, California.

ARTICLE 17
INDEMNIFICATION

17.1 **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 third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' 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 violation of Law or the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 17.1 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.

17.2 **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 17 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 such Party and satisfactory to the Indemnified Party, *provided*, *however*, that 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 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, 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 18
INSURANCE

18.1 **Insurance**.

(a) General. Seller shall comply at all times during the Contract Term with the requirements of Exhibit J.

(b) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance in amounts equal to those set forth for Seller in Exhibit J; (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, in each case, in amounts equal to those set forth for Seller in Exhibit J. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(b).

(c) Evidence of Insurance. Within ten (10) Business Days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These 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. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(d) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 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 19
CONFIDENTIAL INFORMATION

19.1 **Definition of Confidential Information**. The following constitutes "**Confidential Information**," whether oral or written, and whether delivered by Seller to Buyer or by Buyer to Seller: (a) proposals and negotiations of the Parties in the negotiation of this Agreement; (b) the

terms and conditions of this Agreement; and (c) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" or words of similar import 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; (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.

19.2 **Duty to Maintain Confidentiality**. The Party receiving Confidential Information shall treat it as confidential, and shall adopt reasonable information security measures to maintain its confidentiality, employing the higher of (a) the standard of care that the receiving Party uses to preserve its own confidential information, or (b) a standard of care reasonably tailored to prevent unauthorized use or disclosure of such Confidential Information. Confidential Information may be disclosed by the recipient if and to the extent such disclosure is required (a) by Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The Party that originally discloses Confidential Information may use such information for its own purposes, and may publicly disclose such information at its own discretion. **Notwithstanding the foregoing, Seller acknowledges that Buyer is required to make portions of this Agreement available to the public in connection with the process of seeking approval from its board of directors for execution of this Agreement. Buyer may, in its discretion, redact certain terms of this Agreement as part of any such public disclosure, and will use reasonable efforts to consult with Seller prior to any such public disclosure.** Seller further acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Upon request or demand from any third person not a Party to this Agreement for production, inspection and/or copying of this Agreement or other Confidential Information provided by Seller to Buyer, Buyer shall, to the extent permissible, notify Seller in writing in advance of any disclosure that the request or demand has been made; provided that, upon the advice of its counsel that disclosure is required, Buyer may disclose this Agreement or any other requested Confidential Information, whether or not advance written notice to Seller has been provided. Seller shall be solely responsible for taking whatever steps it deems necessary to protect Confidential Information that is the subject of any Public Records Act request submitted by a third person to Buyer.

19.3 **Irreparable Injury; Remedies**. Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at Law or in equity, including injunctive relief and/or notwithstanding Section 12.2, consequential damages.

19.4 **Disclosure to Lender**. Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender or any of their respective agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions at least as restrictive as this Article 19 to the same extent as if it were a Party or are otherwise bound by a duty of confidentiality with respect to such Confidential Information.

19.5 **Disclosure to Credit Rating Agency.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by either Party to any nationally recognized credit rating agency (e.g., Moody's Investors Service, Standard & Poor's, or Fitch Ratings) in connection with the issuance of a credit rating for that Party or its Affiliates, provided that any such credit rating agency agrees in writing to maintain the confidentiality of such Confidential Information.

19.6 **Public Statements**. 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 press release.

ARTICLE 20
MISCELLANEOUS

20.1 **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.

20.2 **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.

20.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

20.4 **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).

20.5 **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.**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, a non-Party or the FERC acting *sua sponte* 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).

20.7 **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.

20.8 **Facsimile or Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and facsimile or 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 facsimile or other 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.

20.9 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

20.10 **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.

20.11 **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 16. 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, or constitute, or form the

basis of, a Force Majeure Event, and (ii) this Agreement shall remain in full force and effect, subject to any necessary changes, if any, agreed to by the Parties or determined through dispute resolution.

EXHIBIT A

DESCRIPTION OF THE FACILITY

Facility Name: Gabriel Storage II

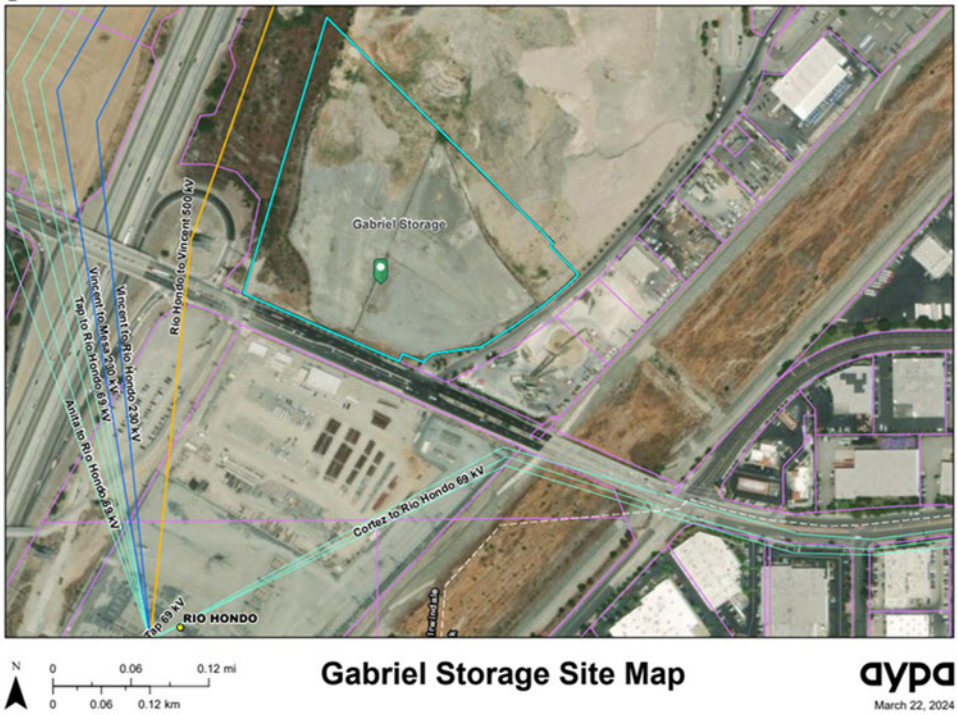
Site Name: Gabriel Storage

Site Description: The site (APN: 8532-002-046) is in the western area of the City of Irwindale, immediately east of I-605, and north of Live Oak Avenue and south of Arrow Highway. The City of Baldwin Park is located to the southeast. The I-605 Freeway forms the western boundary of the project area with the I-605/Live Oak Avenue interchange located immediately southwest of the project area and the I-605/Arrow Highway interchange located immediately northwest of the project area. The Project Area is the site of a former construction debris landfill. An inert debris remedial grading operation is bringing the site back to productive use with geotechnically certified fill.

Site Address: N/A

GPS Coordinates: 34.108839, -117.978002

Site Map:



APNs: 8532-002-046

County: Los Angeles County

CEQA Lead Agency: City of Irwindale

Storage Technology: Lithium-ion

P-node/Delivery Point: The PNode designated by CAISO for the Facility at the Rio Hondo 220kV Substation

Point of Interconnection: Rio Hondo Substation 220kV Bus

Description of Interconnection Facilities and Metering: The site is located directly north of SCE's Rio Hondo substation. A gen-tie will cross Live Oak Ave and enter SCE's Rio Hondo substation. Connecting the project to the SCE transmission system will require work at SCE's Rio Hondo substation. Equipment to be added is expected to include a 220kV circuit breaker, three disconnect switches, an H-frame dead end structure, 220kV buswork, support structures, a conduit trench and conduit, and breaker/line protection. The preliminary metering configuration is shown in the one-line diagram below.

CAISO Queue Number: **2113**

One-Line Diagram:

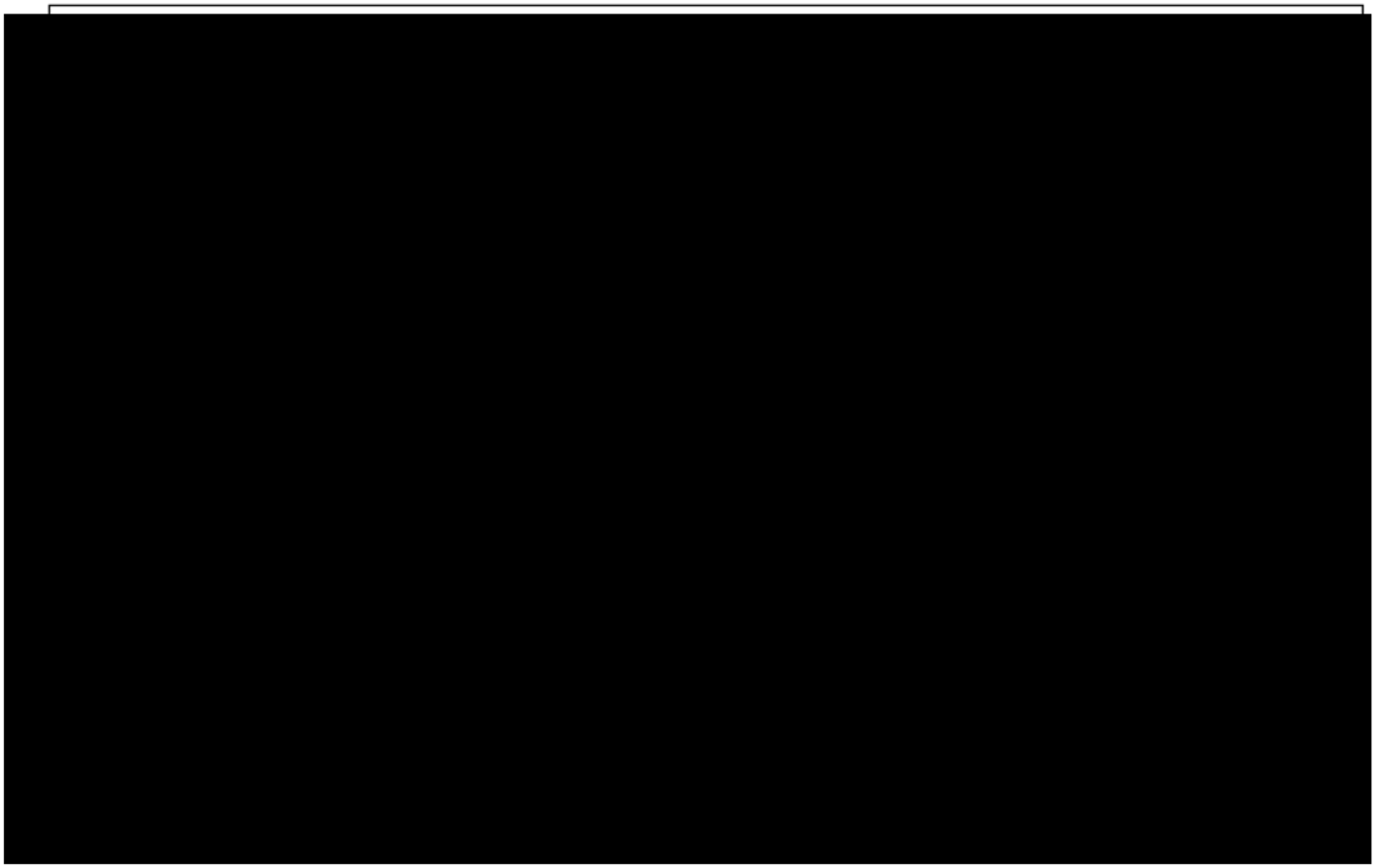


EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

a. Seller shall cause construction to begin on the Facility by October 1, 2026, (as such date may be extended by the Development Cure Period, the "**Guaranteed Construction Start Date**"). Seller shall demonstrate the beginning of construction through execution of Seller's engineering, procurement and construction contract, Seller's issuance of a notice to proceed under such contract, mobilization to site by Seller and/or its designees, and includes the physical movement of soil at the Site ("**Construction Start**"). On the date of the beginning of construction (the "**Construction Start Date**"), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit H hereto.

b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date until the earlier of [redacted] days after the Guaranteed Construction Start Date, or the date on which Seller reaches Construction Start of the Facility. If Seller anticipates it will not achieve Construction Start by the Guaranteed Construction Start Date, on or before the date that is ten (10) days prior to the Guaranteed Construction Start Date or the date the Daily Delay Damages will no longer cover additional days of delay to achieve Construction Start, as applicable, Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days (or additional days, if Seller has previously paid Daily Delay Damages) by which Seller anticipates the Construction Start Date will be later than the Guaranteed Construction Start Date. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Daily Delay Damages shall be Buyer's sole and exclusive remedy for the first [redacted] days of the delay in achieving the Construction Start Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to 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.

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. The "**Commercial Operation Date**" shall be the later of (x) six (6) months prior to the Guaranteed 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 June 1, 2027 (as such date may be extended by the Development Cure Period (defined below), 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. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the

request for refund of the Daily Delay Damages with the first invoice to Buyer after the Commercial Operation Date.

c. If Commercial Operation is not achieved by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer on account of such delay. Commercial Operation Delay Damages shall be payable for each day for which Commercial Operation has not been achieved by the Guaranteed Commercial Operation Date until the earlier of [redacted] days after the Guaranteed Commercial Operation Date, or the date on which Seller reaches Commercial Operation. If Seller anticipates it will not achieve Commercial Operation by the Guaranteed Commercial Operation Date, on or before the date that is ten (10) days prior to the Guaranteed Commercial Operation Date or the date the Commercial Operation Delay Damages will no longer cover additional days of delay to achieve Commercial Operation, as applicable, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days (or additional days, if Seller has previously paid Daily Delay Damages) by which Seller anticipates the Commercial Operation Date will be later than the Guaranteed Commercial Operation Date. The Parties agree that Buyer's retention of Daily Delay Damages and receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for the first [redacted] days of delay beyond the Guaranteed Commercial Operation Date in achieving the Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default under Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

3. **Termination for Failure to Timely Achieve Construction Start or Commercial Operation**. If the Facility has not achieved Construction Start within [redacted] days after the Guaranteed Construction Start Date, or Commercial Operation within [redacted] days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement pursuant to Sections 11.1(b)(ii) and 11.2(a), which termination shall become effective as provided in Section 11.2(a).

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of each of the following delays:

a. a Force Majeure Event occurs; or

b. [redacted]

c. Buyer has not made all necessary arrangements to receive the Discharging 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(c) above) shall not exceed one hundred eighty (180) days, for any reason, and, without limiting the provisions of Section 10.3, no extension shall be given to the extent that (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines; (ii) Seller failed to provide prompt written notice to Buyer of a delay due to a Force Majeure Event, but in no case more than thirty (30) days after Seller became aware of an actual delay (not including Seller's receipt of generic notices of potential delays due to a Force Majeure Event) affecting the Facility, except that in the case of a delay occurring within ninety (90) days of the Guaranteed Commercial Operation Date, or after such date, Seller must provide written notice within seven (7) Business Days of Seller becoming aware of such delay; or (iii) Seller failed, upon written request from Buyer, to provide documentation demonstrating to Buyer's reasonable satisfaction that the delay was a result of a Force Majeure Event and did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Storage Capacity**. If, at Commercial Operation, the Installed Storage Capacity is at least ninety-five percent (95%) of the Guaranteed Storage Capacity but less than the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional storage capacity such that the Installed Storage Capacity is increased, but not to exceed the Guaranteed Storage Capacity. If Seller installs additional storage capacity pursuant to the immediately preceding sentence, Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit G-2 hereto specifying the new Installed Storage Capacity. In the event that the Installed Storage Capacity is still less than the Guaranteed Storage Capacity as of such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to Four Hundred Twenty-Five Thousand Dollars ($425,000) for each MW that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity, and the Guaranteed Storage Capacity and other applicable portions of the Agreement shall be reduced based on the ratio of the Installed Storage Capacity as of such date to the original Guaranteed Storage Capacity.

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, and Seller shall replenish the Development Security to its full amount within five (5) Business Days after such draw.

EXHIBIT C

[Intentionally Omitted]

EXHIBIT D

[Intentionally Omitted]

EXHIBIT E

PROGRESS REPORTING FORM

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 written Progress Report in the form specified below.

Each Progress Report must include the following items:

1. Executive summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any 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 could 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. Progress and schedule of all 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

[RESERVED]

EXHIBIT G-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____[*Licensed Professional Engineer*] ("**Engineer**") to Peninsula Clean Energy Authority **(**"**Buyer**") in accordance with the terms of that certain Energy Storage and Services 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.

Engineer hereby certifies and represents to Buyer the following:

(1) Seller has installed and commissioned storage equipment with a capacity of at least ninety-five percent (95%) of the Guaranteed Storage Capacity in accordance with Exhibit N of the Agreement.

(2) The Facility is capable of receiving Charging Energy and delivering Discharging Energy to the Delivery Point and commissioning of equipment at the Facility has been completed in accordance with the manufacturer's specifications.

(3) Authorization to parallel the Facility was obtained by the Participating Transmission Owner, [Name of Participating Transmission Owner as appropriate] on___[DATE]____

(4) The Participating Transmission Owner or Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _____[DATE]_____.

(5) The CAISO has provided notification supporting the Facility's Commercial Operation, inclusion in the Full Network Model and authorization to provide Ancillary Services, all in accordance with the CAISO tariff on _____[DATE]_____.

(6) Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by **[**licensed professional engineer**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:_____

Its:_____

Date:_____

EXHIBIT G-2

FORM OF INSTALLED STORAGE CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Storage Capacity is delivered by [Licensed Professional Engineer] ("**Engineer**") to PENINSULA CLEAN ENERGY AUTHORITY ("**Buyer**") in accordance with the terms of that certain Energy Storage and Services 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.

The initial Facility performance test under Seller's engineering, procurement and construction contract or primary energy storage system supply agreement for the Facility demonstrated peak Facility electrical output of __MW AC at the Delivery Point ("**Installed Storage Capacity**").

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:_____

Its:_____

Date:_____

EXHIBIT H

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification ("**Certification**") of the Construction Start Date is delivered by [SELLER ENTITY] ("**Seller**") to PENINSULA CLEAN ENERGY AUTHORITY ("**Buyer**") in accordance with the terms of that certain Energy Storage and Services 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. the engineering, procurement and construction contract related to the Facility was executed on _____;

2. the limited notice to proceed with the construction of the Facility was issued on _____ (attached);

3. the Construction Start Date has occurred;

4. 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).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of _____.

[SELLER ENTITY]

By:

Its:

Date:_____

EXHIBIT I

FORM OF LETTER OF CREDIT

BANCO SANTANDER, S.A., NEW YORK BRANCH

437 MADISON AVENUE, 6TH FLOOR,
NEW YORK, NY 10022

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$**[XXXXXXX]**
Expiry Date:

Applicant:

[INSERT APPLICANT DETAILS]

Beneficiary:
Peninsula Clean Energy Authority
[Address]

Ladies and Gentlemen:

On behalf of **[XXXXXXX]** ("Applicant"), we, BANCO SANTANDER, S.A., NEW YORK BRANCH, ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. **[XXXXXXX]** (the "Letter of Credit") in favor of Peninsula Clean Energy Authority, Address_____, for an amount not to exceed the aggregate sum of U.S. $**[XXXXXXX]** (United States Dollars **[XXXXXXX]** and 00/100), pursuant to that certain **[Agreement]** dated as of _____ (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall have an initial expiry date of _____ __, 201_ subject to the automatic extension provisions herein.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, mentioning thereon our Letter of Credit No. **[XXXXXXX]** accompanied by your 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.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer (a) in person, by courier or (b) as a PDF attachment to an e-mail to [redacted] If in person or by courier, at 437 MADISON AVENUE, 6TH FLOOR, NEW YORK, NY 10022. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds.

THIS LETTER OF CREDIT MAY BE DELIVERED TO THE BENEFICIARY IN ELECTRONIC FORM, AND SUCH ELECTRONIC COPY SHALL BE DEEMED TO BE THE ORIGINAL AND VALID FOR PURPOSES OF PRESENTATION HEREUNDER.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for additional one year periods beginning on the present expiry date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to permit this Letter of Credit to be so extended, in which case it will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry 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 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 expiry 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 437 MADISON AVENUE, 6TH FLOOR, NEW YORK, NY 10022, referring specifically to Issuer's Letter of Credit No. **[XXXXXXX]**. For telephone assistance, please contact Issuer's TRADE SERVICES Department at [redacted] and have this Letter of Credit available.

THIS LETTER OF CREDIT SETS FORTH IN FULL OUR UNDERTAKING, AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED OR LIMITED BY REFERENCE TO ANY DOCUMENT, INSTRUMENT OR AGREEMENT REFERRED TO HEREIN.

ALL COMMISSIONS, EXPENSES, AND CHARGES INCURRED WITH THIS LETTER OF CREDIT ARE FOR THE ACCOUNT OF THE APPLICANT.

VERY TRULY YOURS,

BANCO SANTANDER, S.A., NEW YORK BRANCH

_____	_____
AUTHORIZED SIGNATURE	AUTHORIZED SIGNATURE

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 Peninsula Clean Energy 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 **[XXXXXXX]** (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of **[XXXXXXX]** (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____.

   or

3. 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 the Bank has provided notice of its intent to not extend the expiry date of the Letter of Credit and Applicant failed to provide acceptable replacement security to Beneficiary at least thirty (30) days prior to the expiry date of the Letter of Credit.

4. The undersigned is a duly authorized representative of Peninsula Clean Energy 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 Peninsula Clean Energy Authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Peninsula Clean Energy Authority

_____
Name and Title of Authorized Representative

Date_____

EXHIBIT J

INSURANCE

Liability Insurance

To the fullest extent allowable by law, Seller shall purchase and maintain such insurance as will protect it from the claims set forth below which may arise out of or result from Seller's operations under this Agreement whether such operations be by itself or by anyone directly or indirectly employed by them, or by anyone for whose acts any of them may be liable. Limits shall be all the Insurance Coverage and/or limits carried by or available to the Seller, the minimum limits as required herein.

General Conditions

Seller shall maintain completed operations liability insurance for the entire Contract Term plus the period of time Seller may be held legally liable for.

Seller shall maintain policies of insurance in full force and effect, at all times during the performance of the Agreement, plus any statute of repose or statute of limitations applicable to the jurisdiction where any work is performed.

All insurance companies shall have a Best's rating of A-VII or better.

In addition, Seller shall provide Buyer with 45 days' notice in case of cancellation or non- renewal, except 10 days for non-payment of premium.

Certificates of Insurance Acord Form 25 and all required Endorsements shall be filed with Buyer within ten (10) Business Days of execution of the contract and/or prior to commencement of any work performed.

If requested by the Buyer, Seller shall provide a certified and true copy of any or all policies.

Acceptance of the certificates or endorsements by the Buyer shall not constitute a waiver of Seller's obligations hereunder.

If Seller fails to secure and/or pay the premiums for any of the policies of insurance required herein, or fails to maintain such insurance, Buyer may, in addition to any other rights it may have under this Agreement or at law or in equity, terminate this Agreement or secure such policies or policies of insurance for the account of Seller and charge Seller for the premiums paid therefore, or withhold the amount thereof from sums otherwise due from Buyer to Seller. Neither the Buyer's rights to secure such policy or policies nor the securing thereof by Buyer shall constitute an undertaking by Buyer on behalf of or for the benefit of Seller or others to determine or warrant that such policies are in effect.

Seller shall be fully and financially responsible for all deductibles or self-insured retentions.

Coverage Forms & Limits

Seller's Commercial General Liability insurance shall be written on an industry standard Commercial General Liability Occurrence from (CG 00 01, 12/07) or its equivalent and shall include but not be limited to products/completed operations; premises and operations; blanket contractual; advertising/personal injury; independent Buyers.

Coverage shall be on an occurrence form with policy limits of not less than:

- $1,000,000 Each Occurrence Bodily Injury & Property Damage
- $1,000,000 Personal & Advertising Injury
- $2,000,000 General Aggregate to apply on a Per Project basis
- $2,000,000 Products/Completed Operations Aggregate

Business Auto Liability – Coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) form CA 00 01, written on an occurrence basis to apply to "any auto" or at a minimum "all owned, hired and non-owned autos", with policy limits of not less than $1,000,000 per accident for bodily injury and property damage.

If applicable, Broadened Pollution for Covered Autos shall apply. This requirement may also be satisfied by providing proof of separate Pollution Liability that includes coverage for transportation exposures.

Workers' Compensation and (b) employers' liability – to the extent applicable, Sellers shall provide coverage for industrial injury to their employees (or leased employees as applicable) in strict accordance with the provisions of the State or States in which project work is performed or where jurisdiction is deemed to be applicable. Workers' Compensation shall be provided in a statutory form on either a state or, where applicable, federal (U.S. Longshore & Harbor Workers Act, Maritime- Jones Act, etc.) basis as required in the applicable jurisdiction.

Such insurance shall be in an amount of not less than:

- Workers Compensation: Statutory
- Employers Liability
    - $1,000,000 Bodily Injury by Accident – Each Accident
    - $1,000,000 Bodily Injury by Disease – Total Limit
    - $1,000,000 Bodily Injury by Disease – Each Employee

Commercial Umbrella or Excess Liability Insurance over Seller's primary Commercial General Liability, Business Auto Liability and Employers Liability. All coverage terms required under the Commercial General Liability, Business Auto Liability and Employers Liability above must be included on the Umbrella or Excess Liability Insurance.

Coverage shall be written on an occurrence form with policy limits not less than:

- $5,000,000 Each Occurrence
- $5,000,000 Personal & Advertising Injury
- $5,000,000 Aggregate (where applicable, following the terms of the underlying)

Pollution liability – Seller shall provide evidence prior to the Construction Start Date of Pollution Liability; covering all operations necessary or incidental to the fulfillment of all contract obligations hereunder. Such insurance shall provide coverage for bodily injury, property damage (including loss of use of damaged property or of property that has not been physically injured), clean- up costs and remediation expenses (including costs for investigation, sampling, characterization, and monitoring), legal costs, defense costs, natural resource damage, transportation of pollutants on and off the project site, and non-owned disposal site liability if Seller's scope of work (or Seller's consultants) includes the responsibility of manifesting and disposing of contaminated material or waste from its activities. Coverage shall also extend to pollution conditions arising out of the Seller's operations including coverage for sudden as well as gradual release arising from Seller's operations including operations of any of its Seller's or consultants. Such insurance shall provide coverage for wrongful acts, which may arise from all activities from the first point of Seller engagement and shall continue on a practice basis for not less than 36 months after completion, or the period of time Seller may be held legally liable for its work, whichever is longer. The retro date if any such coverage shall be prior to the commencement of Seller's work.

Such insurance shall be in an amount of not less than $5,000,000 per claim or occurrence and $5,000,000 annual aggregate.

If Seller maintains Pollution Liability limits greater than what is required herein, such limits carried become what we require under this contract.

Professional Liability and/or Errors & Omissions – During construction, Seller shall cause to be maintained by Seller's balance of plant contractors for the Facility evidence of Professional Liability insurance covering claims that arise from the errors, omissions or acts of the contractors, for the provision of all professional services necessary or incidental to the fulfillment of the contract obligations contractor. Such insurance shall be in an amount of not less than $5,000,000 each claim / $5,000,000 aggregate

The policy shall be effective from the date of commencement of construction in connection with the fulfillment of all contract obligations of contractor. The retroactive date in the current and future policies shall be prior to the commencement of the services. Coverage shall be maintained for a period not less than 48 months following the substantial completion; or an extended reporting period of 48 months following completion of the work shall be purchased.

Additional Insured / Primary-Noncontributory / Waiver of Subrogation Requirements To the fullest extent of coverage allowed under applicable law, Buyer shall be named as additional insured on a primary and non-contributory basis for all required lines of coverage except Statutory Workers Compensation and Professional Liability, arising out of all operations performed by or for the Seller under this Agreement. Buyer shall accept General Liability Additional Insured forms CG 20 10 11/85, CG 20 10 10/01 & CG 20 37 10/01 or their equivalent.

Additional Insured status shall be for all limits carried, not limited to the minimum acceptable as required herein. Seller's insurance shall be Primary as respects to Buyer and Owner, and any other insurance maintained by Buyer and Owner shall be excess and not contributing insurance with

Seller's insurance until such time as all limits available under the Seller's insurance policies have been exhausted.

Additional Insured endorsements that contain comparative fault, vicarious liability or sole negligence limitations of the Buyer / Owner or any other party required by the contract, will not be accepted.

In the event that any policy provided in compliance with this Agreement states that the coverage provided to an additional insured shall be no broader than that required by contract, or words of similar meaning, the Parties agree that nothing in this Agreement is intended to restrict or limit the breadth of coverage or limits available.

The additional insured status shall remain in full force and effect for the Contract Term plus the applicable statute of repose, or the amount of time you are legally liable, whichever is longer.

It is further agreed that the additional insured coverage required under this Agreement shall not be subject to any Defense Costs Endorsements such as Form IL 01 23 11 13, allowing for the recovery of defense costs by the insurer if the insurer initially pays defense costs but later determines the claims are not covered.

Buyer reserves the right, in its sole and subjective discretion, to reject any Additional Insured forms that are deemed not equivalent to what is required herein.

Waiver of Subrogation – Seller shall provide a Waiver of Subrogation Endorsement naming Buyer for all lines of coverage.

Additional Requirements

Property Insurance

Seller shall procure and maintain or ensure that its suppliers procure and maintain, at the Seller's own expense, Builder's Risk, property and equipment insurance, including for any property stored off the Site, in transit or any of the Buyer's property in the care, custody or control of Seller. Seller and Seller's insurance carrier(s) hereby waive all rights of subrogation against Buyer for damage including loss of use.

Buyer neither represents nor assumes responsibility for the adequacy of the Builders Risk Insurance to protect the interests of the Seller. It shall be the obligation of the Seller to purchase and maintain any supplementary property insurance that it deems necessary to protect its interest in the Work, including without limitation off site stored materials and materials in transit.

Seller is solely responsible for loss or damage to its personal property.

EXHIBIT K

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [ ], a [ ] ("**Seller**") to Peninsula Clean Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage and Services 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 3.6(b) of the Agreement, Seller hereby provides the below Replacement RA product information (to be repeated for each unit if more than one):

Name	
Location	
CAISO Resource ID	
Unit SCID	
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	
Deliverability Period	
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Resource Category (MCC Bucket e.g., 1, 2, 3, or 4)	
Flexible Capacity Category (e.g., 1, 2, 3, or N/A)	

Month	**Unit CAISO NQC (MW)**	**Unit CAISO EFC (MW)**	**Unit Contract Quantity (MW)**	**Unit EFC Contract Quantity (MW)**
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

[SELLER]

By:_____

Its:_____

Date:_____

Whereas, the following definitions apply to the terms in the above Replacement RA product information:

"**CPUC RA Filing Guide**" means the Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings published annually by the CPUC.

"**Deliverability Period**" means the period in which the unit has rights to deliver energy to the CAISO Grid.

"**Flexible Capacity Category**" means the category of Effective Flexible Capacity, as described in the CPUC RA Filing Guide, applicable to the unit.

"**LCR Area (if any)**" means the Local Capacity Requirement area, as used in the CPUC RA Filing Guide, applicable to the unit, if any.

"**Prorated Percentage of Unit Factor**" means the percentage of the Unit CAISO NQC that is designated as Unit Contract Quantity.

"**Prorated Percentage of Unit Flexible Factor**" means the percentage of Unit CAISO EFC that is designated as Unit EFC Contract Quantity.

"**Resource Category**" means the Maximum Cumulative Capacity category, as described in the CPUC RA Filing Guide, applicable to the unit.

"**Resource Type**" means the type of storage resource.

"**Run Hour Restrictions**" means any restrictions on the ability of the unit to run during any hours of the day.

"**Unit CAISO EFC**" means the unit's Effective Flexible Capacity, as described in the CPUC RA Filing Guide, as determined by CPUC and CAISO.

"**Unit CAISO NQC**" means the NQC (as defined in the CAISO Tariff) for the unit, as determined by CPUC and CAISO.

"**Unit Contract Quantity**" means the amount of Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Installed Storage Capacity.

"**Unit EFC Contract Quantity**" means the amount of Flexible Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Installed Storage Capacity.

"**Unit SCID**" means the unit's "Scheduling Coordinator ID Code", as defined in the CAISO Tariff.

EXHIBIT L1

Monthly Expected Available Storage Capacity

The following table is provided for informational purposes only.

Please adjust the table for the appropriate number of days in the month for each month of the year.

Monthly Expected Available 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
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day of the month]																								
Day 26																								
Day 27																								
Day 28																								
Day 29**																								
Day 30**																								
Day 31**																								

*All times are designated as "Hour-Ending [__]".

**Include these rows if needed for each month.

EXHIBIT L2

Monthly Expected Available Storage Capability

The following table is provided for informational purposes only.

Please adjust the table for the appropriate number of days in the month for each month of the year.

Monthly Expected 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																								
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Day 5																								
[insert additional rows for each day of the month]																								
Day 26																								
Day 27																								
Day 28																								
Day 29**																								
Day 30**																								
Day 31**																								

*All times are designated as "Hour-Ending [__]".

**Include these rows if needed for each month.

EXHIBIT M

MONTHLY STORAGE AVAILABILITY

1. Monthly Storage Availability.

(a) For each monthly period after the Commercial Operation Date, Seller shall calculate the "**Monthly Storage Availability**" using the formula set forth below:

$$\textbf{Monthly Storage Availability}\ (\%) =$$

$$1 - \frac{\textbf{Monthly Unavailable Calculation Intervals}}{\textbf{Total Calculation Intervals}}$$

where:

CALCULATION INTERVAL or "C.I." = each successive five-minute interval.

SCHEDULED MAINTENANCE INTERVAL = any Calculation Interval that is Scheduled Maintenance in full or in part provided that the sum of all Scheduled Maintenance Percentage divided by twelve (12) in a Contract Year may not exceed fifty (50) hours.

SCHEDULED MAINTENANCE PERCENTAGE = the greater of (a) the Storage Capacity unavailable due to Scheduled Maintenance divided by the Storage Capacity or (b) the quotient of (A) Storage Capability unavailable due to Scheduled Maintenance divided by (B) the product of (i) Storage Capacity and (ii) 8hrs.

MONTHLY UNAVAILABLE CALCULATION INTERVALS = the sum of all Unavailable Calculation Intervals for the applicable Month.

UNAVAILABLE CALCULATION INTERVAL = For each Calculation Interval, the Unavailable Calculation Interval is defined using the formula set forth below. Except as otherwise expressly provided in this Agreement, the calculations of Available Storage Capacity and Available Storage Capability in the foregoing sentence shall be based solely on the availability of the Storage Facility to receive Charging Energy from or deliver Discharging Energy to the Delivery Point, as applicable. Any Calculation Interval in which the Storage Facility fails to maintain connectivity to the CAISO such that it cannot receive ADS or AGC signals shall result in an Unavailable Calculation Interval of one (1) for that Calculation Interval.

$$\textbf{Unavailable Calculation Interval} = 1 - \begin{bmatrix} \textit{the lesser of}: \left(\frac{A}{\textit{Storage Capacity}}\right) \textit{or} \\ \left(\frac{\textit{Available Storage Capability}}{\textit{Storage Capacity X 8 hrs}}\right) \textit{or} \\ \left(1 - \frac{\textit{Failure to Comply Capacity}}{\textit{Storage Capacity}} - \frac{\textit{AS Failure to Comply Capacity}}{\textit{Storage Capacity}}\right) \end{bmatrix} \text{- Scheduled}$$

Maintenance Percentage

where:

"A" is the "**AVAILABLE STORAGE CAPACITY**", which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC, from all system inverters expected to receive Charging Energy from or deliver Discharging Energy to the Delivery Point, in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer's guidelines), provided that the Available Storage Capacity shall be the lower of (i) such amounts reported by Seller's real-time EMS data feed to Buyer for the Facility for such Calculation Interval, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.4), and further provided that "A" shall never exceed the Storage Capacity.

"**AVAILABLE STORAGE CAPABILITY**" = the sum of the following (taking into account the SOC at the time of calculation):

i. The battery capability (in MWh) available to receive Charging Energy from the Delivery Point in the applicable Calculation Interval

ii. The battery capability (in MWh) available to deliver Discharging Energy to the Delivery Point in the applicable Calculation Interval

In calculating Available Storage Capability, the "battery capability available to receive Charging Energy" and "battery capability available to receive Discharging Energy" are calculated as the product of (1) the count of available system cells in such Calculation Interval, multiplied by (2) the capability, in Wh, expected from each such system cell (based on normal operating conditions pursuant to the manufacturer's guidelines), that are able (considering the conditions of the Facility in total) to receive Charging Energy from or deliver Discharging Energy to the Delivery Point, provided that the Available Storage Capability 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 4.4), and further provided that Storage Capability shall never exceed the Storage Capacity x eight (8) hours. To the extent cell level data is not reasonably available, the Parties shall negotiate in good faith to determine another data point to be provided by Facility's EMS that reflects the real-time Available Storage Capability.

"**FAILURE TO COMPLY CAPACITY**" = Any portion of the facility, in MW, which failed to comply with a valid Charging Notice or Discharging Notice that complies with this Agreement except to the extent such Failure to Comply is attributable to any actions or inactions of Buyer, the SC or the CAISO or resulting from Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the PTO unless caused by Seller's fault or negligence, including (i) any such failure to charge or discharge at the times, in the quantities, and at the levels specified in such Charging Notice or Discharging

Notice (*provided*, with respect to any such failure not caused by a change in the availability of the Facility, the Facility shall not be deemed to be unavailable for the portion of such failure within the Deviation Tolerance Band); and (ii) any charge or discharge of the Facility other than pursuant to a valid Charging Notice or Discharging Notice that complies with this Agreement, or pursuant to a notice from the CAISO, any PTO, or any other Governmental Authority during which period the Facility shall be deemed to be one hundred percent (100%) unavailable. Failure To Comply Capacity will be measured as [redacted] the difference, in MW, between (i) the average DOT communicated to the Facility by the CAISO for the Calculation Interval and (ii) the average metered energy flow for the Calculation Interval; [redacted] (0); *provided*, for clarity, such calculation will not include any energy related to Ancillary Services as it is already captured in the AS Failure to Comply Capacity below.

"**AS FAILURE TO COMPLY CAPACITY**" = If any Calculation Interval results in a CAISO No Pay associated with failure to provide Ancillary Services sold to the CAISO, then the AS Failure to Comply Capacity shall equal the Ancillary Service Capacity sold in MW. AS Failure to Comply Capacity will be zero to the extent such Failure to Comply is attributable to any actions or inactions of Buyer, the SC or the CAISO or resulting from Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the PTO unless caused by Seller's fault or negligence.

"**TOTAL CALCULATION INTERVALS**" = the total number of Calculation Intervals in the applicable Month.

(b) If the total rated power of the Storage Facility inverters associated with the Installed Storage Capacity as measured to the Delivery Point is less than the Guaranteed Storage Capacity when charging and the Guaranteed Storage Capacity when discharging, in each case at or above 45°C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient temperature derate to the applicable Calculation Interval.

2. Storage Availability Adjustment. The "**Storage Availability Adjustment**" shall be calculated as follows and applied to the Storage Capacity Payment due for the next month after the end of the monthly period for which the Monthly Storage Availability is calculated provided the Storage Availability Adjustment may never be less than zero (0).

(a) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

Storage Availability Adjustment = 100% (expressed as a decimal)

(b) If the Monthly Storage Availability is less than the Guaranteed Storage Availability but greater than or equal to seventy percent (70%), then:

Storage Availability Adjustment = 100% - [(Guaranteed Storage Availability - Monthly Storage Availability) [redacted]] + ([redacted] x Secondary Unavailability) (expressed as a decimal)

(c) If (i) the Monthly Storage Availability is less than seventy percent (70%), then:

[redacted]

where:

Secondary Unavailability = the sum of all Unavailable Calculation Intervals in the applicable Month that resulted from either (i) a Force Majeure Event for which Seller is the claiming party, or (ii) a Curtailment Order, divided by the Total Calculation Intervals for the Month.

EXHIBIT N

STORAGE CAPACITY TESTS AND ROUND-TRIP EFFICIENCY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days' Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit N and shall establish the initial Storage Capacity and Round-Trip Efficiency hereunder based on the actual capacity and round-trip efficiency of the Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, but not more than once per Contract Year, upon no less than ten (10) Business Days' Notice to Seller, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test and to update the Facility's PMax and other relevant information and values in the CAISO's Master Data File and Resource Data Template (or successor data systems). In addition, Buyer shall have the right to require a retest of the most recent Storage Capacity Test (and to update the Facility's PMax and other relevant information and values as specified above) 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 Storage Capacity has varied materially from the results of the most recent Storage Capacity Test or any other guaranteed operational characteristics are not being met. Seller shall have the right to perform a Storage Capacity Test or run a retest of any Storage Capacity Test at any time during any Contract Year upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Subsequent Round-Trip Efficiency Tests. Following the Commercial Operation Date, upon no less than five (5) Business Days' Notice to Seller, if Buyer provides data with such Notice reasonably indicating that the actual Round-Trip Efficiency is lower than the then-current tested Round-Trip Efficiency, Buyer shall have the right to require Seller to schedule and complete a Round-Trip Efficiency Test (which shall be conducted in the same manner as a Storage Capacity Test) and to update the Facility's Round-Trip Efficiency, if applicable. Seller shall have the right to perform a Round-Trip Efficiency Test or run a retest of any Round-Trip Efficiency Test at any time during any Contract Year upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice); provided, however, that if Seller has already conducted a retest of a Round-Trip Efficiency Test, then Seller shall have the right to conduct a subsequent retest of such Round-Trip Efficiency Test within three (3) months of such prior retest only if Seller provides an explanation with such Notice reasonably indicating that Seller has a reasonable basis for expecting the re-test to yield a Round-Trip Efficiency that is higher than the then-current tested Round-Trip Efficiency.

Test Results and Re-Setting of Storage Capacity. No later than ten (10) Business Days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.10(c) of this

Agreement and Part II(I) below, the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Capacity, as such Guaranteed Storage Capacity may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Capacity, effective as of the first day of the month following completion of the Storage Capacity Test for calculating the payment for the Product and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test, each subsequent Storage Capacity Test, and all re-tests thereof permitted under paragraph B above) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit N. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit N as a "**SCT**". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Test Elements. Each SCT shall include the following test elements:

- Electrical output at Maximum Discharging Capacity at the Storage Facility Meter (MW);
- Electrical input at Maximum Charging Capacity at the Storage Facility Meter (MW);
- Amount of time between the Facility's electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Facility's electrical input going from 0 to Maximum Charging Capacity;
- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

B. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Facility, at ten (10) minute intervals:

(1) Time;

(2) Charging Energy;

(3) Discharging Energy;

(4) Stored Energy Level (MWh);

(5) Station Use.

C. Site Conditions. During each SCT, the following ambient 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 Facility; and

(3) Ambient air temperature (°F).

D. Test Showing. Each SCT must demonstrate that the Facility:

(1) successfully started;

(2) operated for at least eight (8) consecutive hours at Maximum Discharging Capacity;

(3) operated for at least eight (8) consecutive hours at Maximum Charging Capacity;

(4) is able to ramp upward and downward at the contract Ramp Rate; and

(5) is able to deliver Discharging Energy to the Delivery Point as measured by the Storage Facility Meter for eight (8) consecutive hours at a rate equal to the Maximum Discharging Capacity.

E. Test Conditions.

(i) General. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity.

(ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, either Party may postpone or reschedule all or part of such SCT in accordance with Part II.F below.

(iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

(iv) Ambient Temperature. For tests requested by Buyer (and not for any CAISO-initiated test, which shall occur when directed by CAISO), the

average ambient temperature, based on an aggregate of 1-minute resolution data collected throughout the SCT, must be within the range of 8 – 33 degrees Celsius.

F. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within ten (10) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

(1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;

(3) the level of Installed Storage Capacity or Storage Capacity (as applicable), charging capacity, discharging capacity, charging ramp rate, discharging ramp rate, Round-Trip Efficiency, and Stored Energy Level determined by the SCT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor, provided that if Buyer does not provide notice of acceptance or rejection within such ten (10) Business Days the SCT shall be deemed accepted.

If either Party reasonably rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.F.

H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing 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 N with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("**Supplementary Storage 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 Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit N.

I. Adjustment to Storage Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first eight hours of discharge (up to, but not in excess of, the product of (i) the Guaranteed Storage Capacity, as such Guaranteed Storage Capacity may have been adjusted (if at all) under this Agreement, multiplied by (ii) 8 hours) shall be divided by eight hours to determine the Storage Capacity, which shall be expressed in MW AC, and shall be the new Storage Capacity in accordance with Section 4.10(c) of this Agreement.

J. Adjustment to Round-Trip Efficiency. The Round-Trip Efficiency determined pursuant to the Storage Capacity Test will be equal to the quotient of (i) the total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the Storage Capacity Test, *divided by* (ii) the difference of (a) the total amount of Charging Energy delivered to the Delivery Point (expressed in MWh AC) during the Storage Capacity Test (such Charging Energy not to be adjusted for any Electrical Losses incurred during the Storage Capacity Test) *minus* (b) the reimbursable Station Use during the Capacity Test, and shall be the new Round-Trip Efficiency in accordance with Section 4.11(c) of this Agreement.

K. Following the initial Storage Capacity Test conducted prior to the Commercial Operation Date, upon request of Seller, Buyer shall consider in good faith an alternate methodology for conducting a Storage Capacity Test by reference to the operational data reflecting the net output of the Facility from the point of interconnection. Upon Seller's request, Seller and Buyer shall work in good faith to establish a mutually acceptable methodology for demonstrating the Storage Capacity through such operational data. If Buyer and Seller mutually agree in writing on an alternate methodology, such alternate methodology shall become the Storage Capacity Test used to establish the Storage Capacity for all purposes of this Agreement, including compensation under Section 3.2.

EXHIBIT O

OPERATING RESTRICTIONS

All Operating Restrictions shall be generally subject to any CAISO or PTO restrictions applicable to facilities similar to the Facility to the extent such limitations are more limiting to the operations of the Facility than the technical limitations of the Facility.

Maximum Discharging Energy:

Annual: 29,200 MWh

Daily: 160 MWh

Ramp Rates:

Dmin to Dmax: up to 100%/s

Cmin to Cmax: up to 100%/s

Dmax to Dmin: up to 100%/s

Cmax to Cmin: up to 100%/s

Frequency ramp rate: 100% MW/Hz

Regulation ramp rate: 655 MW/min

System Response Time:

Idle to Dmax: <4s

Idle to Cmax: <4s

Dmax to Cmax: <4s

Cmax to Dmax: <4s

Dmin to Cmin: <2s

Cmin to Dmin: <2s

Maximum Stored Energy Level:	80 MWh, number in MWh representing maximum amount of energy that may be charged to the Facility
Minimum Stored Energy Level:	0 MWh, number in MWh representing the lowest level to which the Facility may be discharged
Maximum Charging Capacity:	10 MW, number in MW representing the highest level to which the Facility may be charged

Minimum Charging Capacity:	0.1 MW, number in MW representing the lowest level at which the Facility may be charged
Maximum Discharging Capacity:	10 MW, number in MW representing the highest level at which the Facility may be discharged
Minimum Discharging Capacity:	0.1 MW, number in MW representing the lowest level at which the Facility may be discharged
Maximum State of Charge (SOC) during Charging:	100%
Minimum State of Charge (SOC) during Discharging:	0%
Ramp Rate:	655 MW/minute
[redacted]	[redacted]

EXHIBIT P

METERING DIAGRAM

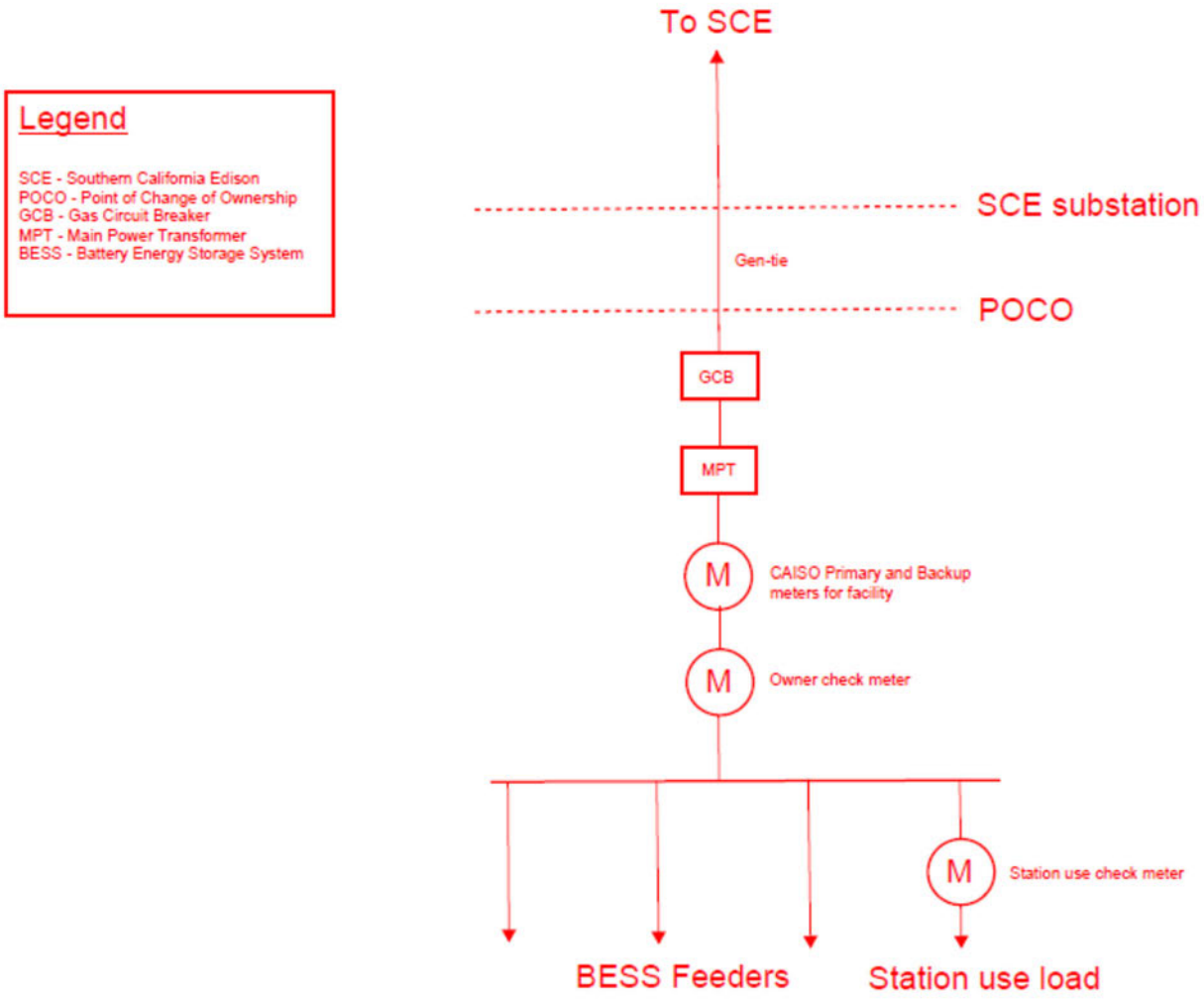


EXHIBIT Q

RTE SHORTFALL PAYMENTS

In the event that the RTE_M is less than the GRTE, the monthly Storage Capacity Payment under Section 3.2 shall be reduced by the "**RTE Shortfall Payment**", calculated as follows:

$$(GRTE - RTE_M) \times \text{Average Monthly T8B9 Price} \times RTEF_M \times TCE_M$$

where:

GRTE = the Guaranteed Round-Trip Efficiency

RTE_M = the Round-Trip Efficiency, [redacted]

The "**Average Monthly T8B9 Price**" means the average of the eight (8) highest hourly average Day-Ahead Market LMPs and the nine (9) lowest hourly average Day-Ahead Market LMPs, in each case in the applicable month.

The "**Round-Trip Efficiency Factor**" or "$RTEF_M$" for each month is determined as follows:

If $RTE_M \geq GRTE$, then $RTEF_M = 0$

If $RTE_M < GRTE$ and $RTE_M \geq 70\%$, then $RTEF_M = 1.2$

If $RTE_M < 70\%$, then $RTEF_M = 1.7$

TCE_M = the total Charging Energy charged to the Facility in the applicable month.

EXHIBIT R

NOTICES

San Gabriel Project II LLC, a Delaware limited liability company ("Seller")	**PENINSULA CLEAN ENERGY, a California joint powers authority** ("Buyer")
All Notices: Street: 11801 Domain Blvd, Suite 450 City: Austin, TX 78758 Attn: Chief Commercial Officer Phone: [redacted] Email: [redacted] **With additional Notices of an Event of Default to:** c/o Aypa Power Development LLC Street: 11801 Domain Blvd, Suite 450 City: Austin, TX 78758 Attn: General Counsel Email: [redacted]	**All Notices:** Street: 2075 Woodside Road City: Redwood City, CA 94061 Attn: Director of Power Resources Phone: [redacted] Email: [redacted] with a copy, which will not constitute notice, to: Peninsula Clean Energy Authority 400 County Center, 6th Floor Attention: David Silberman, General Counsel Email: [redacted]
Emergency Contact: Attn: Dan Santelli Phone: [redacted] E-mail: [redacted]	**Emergency Contact:** Attn: Director of Power Resources Phone: [redacted] E-mail: [redacted]
Reference Numbers: Duns: 119276196 Federal Tax ID Number: 99-2461677	**Reference Numbers:** Duns: 08-026-2114 Federal Tax ID Number: 81-2708786
Invoices: Attn: Accounting Department Phone: E-mail: [redacted]	**Invoices:** Attn: Settlements Phone: [redacted] E-mail: [redacted]
Scheduling: Attn: Director of Operations Phone: Email: [redacted]	**Scheduling:** Attn: Market Operations Phone: [redacted] Email: [redacted]
Payments: Attn: Phone: E-mail: [redacted]	**Payments:** Attn: Settlements Phone: [redacted] E-mail: [redacted]
Wire Transfer: BNK: ABA: ACCT:	**Wire Transfer:** BNK: JP Morgan ABA: [redacted] ACCT: [redacted]

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 4, 2024
MEETING DATE: June 27, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Shawn Marshall, Chief Executive Officer
Nelly Wogberg, Board Clerk

SUBJECT: Preliminary Approval of Proposed Administrative Updates to the Peninsula Clean Energy Authority Joint Powers Authority (JPA) Agreement (Action)

RECOMMENDATION

Approval of proposed administrative updates to the Peninsula Clean Energy Authority Joint Powers Authority (JPA) Agreement.

BACKGROUND

Peninsula Clean Energy Authority (PCE) was formed in February 2016 by the County of San Mateo and all twenty cities within the County. The original Joint Powers Authority (JPA) Agreement was approved at this time. On March 28, 2019 the Board of Directors amended the JPA to include a section for Directors Emeritus and to appoint the Chief Financial Officer as Treasurer. On October 22, 2020 the Board of Directors again amended the JPA Agreement to add a new jurisdiction, the City of Los Banos.

DISCUSSION

Staff has identified and noted some inconsistencies and duplication between the Operating Rules and Regulations of the Board, namely PCE's Board Policies, and the Joint Powers Authority (JPA) Agreement. The following administrative updates are being proposed to remove duplication and to ensure that all documents governing the PCE Board are in alignment. The proposed changes are as follows:

1. Removal of Section 3.1.1, Directors Emeritus, based on the Board decision at the February 23, 2023 Board meeting to transition away from two Director Emeritus Ex-Officio seats to an Emeritus Advisory Group maintained by staff. The Emeritus Advisory Group is proposed to be included as part of the proposed edits to PCE's Policy 16.
2. An inclusion of delegation authority to Section 3.3.7, Powers and Functions of the Board, for filings with the California Public Utilities Commission, the Federal Energy Regulatory Commission, or any other administrative agency.
3. To ensure consistencies between Operating Rules and Regulations (Policy 14, "Delegation of Non-Energy Contracts Commitment and Financial Authority Policy") and

the JPA Agreement, Section 3.4, Chief Executive Officer, has been edited to remove the dollar value of the signing authority limit and house it in Policy 14. Staff found that including the signing authority limit in multiple places causes confusion and operational risk if there is misalignment.

4. To ensure consistencies between Operating Rules and Regulations (Policy 16, "Selection of the Chair and Vice Chair and appointment to the Executive Committee and other standing Board Committees") and the JPA Agreement, Section 3.9.1, Selection of Board Officers, has been updated to include term limits for the Chair and Vice Chair. Staff has suggested term limits of two (2) years to better coincide with election cycles, but suggests that the Committee direct Staff if another option is preferred. It may also make sense to retain the current Chair and Vice Chair terms to end in January 2027 following the election in 2026 to better align with election cycles.
5. An update from six (6) to twelve (12) months in Section 6.1.1, Right to Withdraw, to better align with current rules around Resource Adequacy.
6. An update to Section 5.3.1, Budget, to clarify and update language to be consistent with current practices.

Please see the attached redline as a cross reference and to see other minor administrative corrections as proposed. Once the proposed amendments are approved by the Board, the JPA Agreement will be sent to all member agencies for a 30 day comment period; proposed amendments do not require approval by member agency elected bodies, but comments are welcome. It is expected that the final red line amendments will come back to the Board for approval at its August 2024 Board meeting.

The Executive Committee reviewed and discussed these updates at their June 10, 2024 meeting and voted unanimously to recommend approval by the Board of Directors.

FISCAL IMPACT

None.

ATTACHMENTS:
JPA - Proposed Third Amended - Redline.pdf
JPA - Proposed Third Amended - Clean.pdf

~~SECOND~~ THIRD AMENDED JOINT EXERCISE OF POWERS AGREEMENT RELATING TO AND CREATING THE

PENINSULA CLEAN ENERGY AUTHORITY

This Joint Exercise of Powers Agreement, effective on the date determined by Section 2.1, is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Sections 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the Parties set forth in Exhibit B, and establishes the Peninsula Clean Energy Authority ("Authority"), is by and between the County of San Mateo ("County") and those counties, cities and towns within the State of California who become signatories to this Agreement, and relates to the joint exercise of powers among the signatories hereto.

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. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. The California Air Resources Board is promulgating regulations to implement AB 32 which will require local governments to develop programs to reduce greenhouse gas emissions.

C. The purposes for entering into this Agreement include:

   a. Reducing greenhouse gas emissions related to the use of power in San Mateo County and the State of California;

   b. Providing electric power and other forms of energy to customers at a competitive cost;

   c. Carrying out programs to reduce energy consumption;

   d. Stimulating and sustaining the local economy by developing local jobs in renewable energy; and

   e. Promoting long-term electric rate stability and energy security and reliability for residents through local control of electric generation resources.

D. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar, wind, and biomass energy production. The purchase of renewable power and greenhouse gas-free energy sources will be the desired approach to decrease regional greenhouse gas emissions and accelerate the State's transition to clean power resources to the extent feasible. The Agency will also add increasing levels of locally generated renewable

resources as these projects are developed and customer energy needs expand.

E. The Parties desire to establish a separate public agency, known as the Peninsula Clean Energy Authority, under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act") in order to collectively study, promote, develop, conduct, operate, and manage energy programs.

F. The Parties anticipate adopting an ordinance electing to implement through the Authority a common Community Choice Aggregation (CCA) program, an electric service enterprise available to cities and counties pursuant to California Public Utilities Code Sections 331.1(c) and 366.2. The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program.

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:

ARTICLE 1: DEFINITIONS AND EXHIBITS

1.1 Definitions. Capitalized terms used in the Agreement shall have the meanings specified in Exhibit A, unless the context requires otherwise.

1.2 Documents Included. This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement.

Exhibit A: Definitions
Exhibit B: List of the Parties
Exhibit C: Annual Energy Use
Exhibit D: Voting Shares
Exhibit E: Signatures

ARTICLE 2: FORMATION OF PENINSULA CLEAN ENERGY AUTHORITY

2.1 Effective Date and Term. This Agreement shall become effective and Peninsula Clean Energy Authority shall exist as a separate public agency on February 29, 2016 or when the County of San Mateo and at least two municipalities execute this Agreement, whichever occurs later. The Authority shall provide notice to the Parties of the Effective Date. The Authority shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with Section 6.4, subject to the rights of the Parties to withdraw from the Authority.

2.2 Formation. There is formed as of the Effective Date a public agency named the Peninsula Clean Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. Pursuant to Sections 6508.1 of the Act, the debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties

unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of the Authority. Notwithstanding Section 7.4 of this Agreement, this Section 2.2 may not be amended unless such amendment is approved by the governing board of each Party.

2.3 Purpose. The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party to study, promote, develop, conduct, operate, and manage energy, energy efficiency and conservation, and other energy-related programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. Without limiting the generality of the foregoing, the Parties intend for this Agreement to be used as a contractual mechanism by which the Parties are authorized to participate in the CCA Program, as further described in Section 4.1. The Parties intend that other agreements shall define the terms and conditions associated with the implementation of the CCA Program and any other energy programs approved by the Authority.

2.4 Powers. The Authority shall have all powers common to the Parties and such additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following powers, subject to the voting requirements set forth in Section 3.7 through 3.7.5:

2.4.1 to make and enter into contracts;

2.4.2 to employ agents and employees, including but not limited to a Chief Executive Officer;

2.4.3 to acquire, contract, manage, maintain, and operate any buildings, infrastructure, works, or improvements;

2.4.4 to acquire property by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property; however, the Authority shall not exercise the power of eminent domain within the jurisdiction of a Party over its objection without first meeting and conferring in good faith.

2.4.5 to lease any property;

2.4.6 to sue and be sued in its own name;

2.4.7 to incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Sections 53850 et seq. and authority under the Act;

2.4.8 to form subsidiary or independent corporations or entities if necessary, to carry out energy supply and energy conservation programs at the lowest possible cost or to take advantage of legislative or regulatory changes;

2.4.9 to issue revenue bonds and other forms of indebtedness;

2.4.10 to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;

2.4.11 to submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;

2.4.12 to adopt Operating Rules and Regulations; and

2.4.13 to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services.

2.4.14 to permit additional Parties to enter into this Agreement after the Effective Date and to permit another entity authorized to be a community choice aggregator to designate the Authority to act as the community choice aggregator on its behalf.

2.5 Limitation on Powers. As required by Government Code Section 6509, the power of the Authority is subject to the restrictions upon the manner of exercising power possessed by San Mateo County.

2.6 Compliance with Local Zoning and Building Laws and CEQA. Unless state or federal law provides otherwise, any facilities, buildings or structures located, constructed, or caused to be constructed by the Authority within the territory of the Authority shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed and comply with the California Environmental Quality Act ("CEQA").

ARTICLE 3: GOVERNANCE AND INTERNAL ORGANIZATION

3.1 Board of Directors. The governing body of the Authority shall be a Board of Directors ("Board"). The Board shall consist of 2 (two) directors appointed by the San Mateo County Board of Supervisors and 1 (one) director appointed by each County, City or Town that becomes a signatory to the Agreement ("Directors"). Each Director shall serve at the pleasure of the governing board of the Party who appointed such Director and may be removed as Director by such governing board at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed to fill the position of the previous Director within 90 days of the date that such position becomes vacant. Directors must be members of the Board of Supervisors or members of the governing board of the municipality that is the signatory to this Agreement. Each Party may appoint an alternate(s) to serve in the absence of its Director(s). Alternates may be either (1) members of the Board of Supervisors or members of the governing board of the municipality that is the signatory to this Agreement, or (2) staff members of the County or any such municipality.

3.1.1 ~~Directors Emeritus~~.

~~The Board may select up to two board directors emeritus ("Directors Emeritus"). Directors Emeritus will be selected from former directors who served on the Board with distinction and excellence. The Board may fill any vacant emeritus position(s) by a simple majority vote of Directors. The Chair may delegate the initial review of applicants and/or nominations to a committee. Directors Emeritus will serve at the pleasure of the Board for two-year terms, subject to the discretion of the Board to shorten or end a term. There shall be no limit on the number of terms held. It is the Board's intention that Directors Emeritus receive all written notices and information provided to the Board, be permitted to attend all Board meetings, be permitted to participate in committee meetings without need for an appointment, and be encouraged to attend other PCE events. Directors Emeritus will not be counted in determining if a quorum is present, will not be entitled to hold office, and will not be entitled to vote at any Board or committee meeting. Director Emeritus status does not entitle participation in closed sessions of the Board.~~

3.2 Quorum. A majority of the appointed Directors shall constitute a quorum, except that less than a quorum may adjourn from time to time in accordance with law.

3.3 Powers and Functions of the Board. The Board shall exercise general governance and oversight over the business and activities of the Authority, consistent with this Agreement and applicable law. The Board shall provide general policy guidance to the CCA Program. Board approval shall be required for any of the following actions:

3.3.1 The issuance of bonds or any other financing even if program revenues are expected to pay for such financing.

3.3.2 The hiring or termination of the Chief Executive Officer and General Counsel.

3.3.3 The appointment or removal of officers described in Section 3.9, subject to Section 3.9.3.

3.3.4 The adoption of the Annual Budget.

3.3.5 The adoption of an ordinance.

3.3.6 The approval of agreements, except as provided by Section 3.4.

3.3.7 The initiation or resolution of claims and litigation where the Authority will be the defendant, plaintiff, petitioner, respondent, cross complainant, or cross petitioner, or intervenor; provided, however, that the Chief Executive Officer or General Counsel or by delegation thereof~~,~~ , on behalf of the Authority, may intervene in, become a party to, or file comments with respect to any proceeding pending at the California Public Utilities Commission, the Federal Energy Regulatory Commission, or any other administrative agency, without approval of the Board as long as such action is consistent with any adopted Board policies.

3.3.8 The setting of rates for power sold by the Authority and the setting of charges for any other category of service provided by the Authority.

3.3.9 Termination of the CCA Program.

3.4 Chief Executive Officer. The Board of Directors shall appoint a Chief Executive Officer for the Authority, who shall be responsible for the day-to-day operation and management of the Authority and the CCA Program. The Chief Executive Officer~~,~~ may exercise all powers of the Authority, including the power to hire, discipline, and terminate employees as well as the power to approve any agreement if the total amount payable under the agreement is equal to or less than the amount ~~is less than $100~~specified in the Operating Rules and Regulations (Policy 15, "Delegation of Non-Energy Contract Authority") ~~,000 in any fiscal year,~~ except for the powers specifically set forth in Section 3.3 or those powers which by law must be exercised by the Board of Directors.

3.5 Commissions, Boards, and Committees. The Board may establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement which shall comply with the requirements of the Ralph M. Brown Act. The Board may establish rules, regulations, policies, bylaws or procedures to govern any such commissions, boards, or committees if the Board deems appropriate to appoint such commissions, boards or committees, and shall determine whether members shall be compensated or entitled to reimbursement for expenses.

3.6 Director Compensation. Directors shall serve without compensation from the Authority. However, Directors may be compensated by their respective appointing authorities. The Board, however, may adopt by resolution a policy relating to the reimbursement by the Authority of expenses incurred by Directors.

3.7 Voting In general, as described below in Section 3.7.3, action by the Authority Board will be taken solely by a majority vote of the Directors present. However, as described below in Section 3.7.4, upon request of a Director, a weighted vote by shares will also be conducted. When such a request is made, an action must be approved by both a majority vote of Directors present and a majority of the weighted vote by shares present. No action may be approved solely by a vote by shares. The voting shares of Directors and approval requirements for actions of the Board shall be as follows:

3.7.1. Voting Shares.

Each Director 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 year following the Effective 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 anniversary of the Effective Date, the annual electricity usage, expressed in kWh, of accounts within a Party's respective jurisdiction that are served by the Authority; 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. These adjustments shall be approved by the Board.

(c) The combined voting share of all Directors representing the County of San Mateo shall be based upon the annual electricity usage within the unincorporated area of San Mateo County.

For the purposes of Weighted Voting, if a Party has more than one director, then the voting shares allocated to the entity shall be equally divided amongst its Directors.

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. Exhibit D and adjustments shall be approved by the Board.

3.7.3. Approval Requirements Relating to CCA Program. Except as provided in Sections 3.7.4 and 3.7.5 below, action of the Board shall require the affirmative vote of a majority of Directors present at the meeting.

3.7.4. Option for Approval by Voting Shares. Notwithstanding Section 3.7.3, any Director present at a meeting may demand that approval of any matter related to the CCA Program be determined on the basis of both voting shares and by the affirmative vote of a majority of Directors present at the meeting. If a Director makes such a demand with respect to approval of any such matter, then approval of such matter shall require the affirmative vote of a majority of Directors present at the meeting and the affirmative vote of Directors having a majority of voting shares present, as determined by Section 3.7.1 except as provided in Section 3.7.5.

3.7.5. Special Voting Requirements for Certain Matters.

(a) Two-Thirds and Weighted Voting Approval Requirements Relating to Sections 6.2 and 7.4. Action of the Board on the matters set forth in Section 6.2 (involuntary termination of a Party), or Section 7.4 (amendment of this Agreement) shall require the affirmative vote of at least two-thirds of Directors present; provided, however, that (i) notwithstanding the foregoing, any Director present at the meeting may demand that the vote be determined on the basis of both voting shares and by the affirmative vote of Directors, and if a Director makes such a demand, then approval shall require the affirmative vote of both at least two-thirds of Directors present and the affirmative vote of Directors having at least two-thirds of the voting shares present, as determined by Section 3.7.1; (ii) but, at least two Parties must vote against a matter for the vote to fail; and (iii) for votes to involuntarily terminate a Party under Section 6.2, the Director(s) for the Party subject to involuntary termination may not vote, and the number of Directors constituting two-thirds of all Directors, and the weighted vote of each Party shall be recalculated as if the Party subject to possible termination were not a Party.

(b) Seventy Five Percent Special Voting Requirements for Eminent Domain and Contributions or Pledge of Assets.

(i) A decision to exercise the power of eminent domain on behalf of the Authority to acquire any property interest other than an easement, right-of-way, or temporary construction easement shall require a vote of at least 75% of all Directors.

(ii) The imposition on any Party of any obligation to make contributions or pledge assets as a condition of continued participation in the CCA Program shall require a vote of at least 75% of all Directors and the approval of the governing boards of the Parties who are being asked to make such contribution or pledge.

(iii) Notwithstanding the foregoing, any Director present at the meeting may demand that a vote under subsections (i) or (ii) be determined on the basis of voting shares and by the affirmative vote of Directors, and if a Director makes such a demand, then approval shall require both the affirmative vote of at least 75% of Directors present and the affirmative vote of Directors having at least 75% of the voting shares present, as determined by Section 3.7.1, but at least two Parties must vote against a matter for the vote to fail. For purposes of this section, "imposition on any Party of any obligation to make contributions or pledge assets as a condition of continued participation in the CCA Program" does not include any obligations of a withdrawing or terminated party imposed under Section 6.3.

3.8 Meetings and Special Meetings of the Board. The Board shall hold at least six regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution or ordinance of the Board. Regular meetings may be adjourned to another meeting time. Special and Emergency Meetings of the Board may be called in accordance with the provisions of California Government Code Sections 54956 and 54956.5. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. All meetings shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Sections 54950 et seq.).

3.9 Selection of Board Officers.

3.9.1 Chair and Vice Chair. The Directors shall select, from among themselves, a Chair, who shall be the presiding officer of all Board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The term of office of the Chair and Vice Chair ~~shall continue for one year, but there shall be no limit on the number of terms held by either the Chair or Vice Chair~~shall be specified in the Operating Rules and Regulations (Policy 16, "Policies and Procedures for Board of Directors, Committees, and Advisory Groups"). The office of either the Chair or Vice Chair shall be declared vacant and a new selection shall be made if:

(a) the person serving dies, resigns, or the Party that the person represents removes the person as its representative on the Board or
(b) the Party that he or she represents withdraws from the Authority pursuant to the provisions of this Agreement.

3.9.2 Secretary. The Board shall appoint a Secretary, who need not be a member of the Board, who shall be responsible for keeping the minutes of all meetings of the Board and all

other official records of the Authority.

3.9.3 Treasurer and Auditor. The Chief Financial Officer shall, among other duties, act as the Treasurer for the Authority. Unless otherwise exempted from such requirement, the Authority shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall act as the depository of the Authority and have custody of all the money of the Authority, from whatever source, and as such, shall have all of the duties and responsibilities specified in Section 6505.5 of the Act. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time. The duties and obligations of the Treasurer are further specified in Article 5.

3.10 Administrative Services Provider. The Board may appoint one or more administrative services providers to serve as the Authority's agent for planning, implementing, operating and administering the CCA Program, and any other program approved by the Board, in accordance with the provisions of an Administrative Services Agreement. The appointed administrative services provider may be one of the Parties. An Administrative Services Agreement shall set forth the terms and conditions by which the appointed administrative services provider shall perform or cause to be performed all tasks necessary for planning, implementing, operating and administering the CCA Program and other approved programs. The Administrative Services Agreement shall set forth the term of the Agreement and the circumstances under which the Administrative Services Agreement may be terminated by the Authority. This section shall not in any way be construed to limit the discretion of the Authority to hire its own employees to administer the CCA Program or any other program.

ARTICLE 4: IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

4.1 Preliminary Implementation of the CCA Program.

4.1.1 Enabling Ordinance. To be eligible to participate in the CCA Program, each Party must adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(12) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in the Authority.

4.1.2 Implementation Plan. The Authority shall cause to be prepared an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations as soon after the Effective Date as reasonably practicable. The Implementation Plan shall not be filed with the Public Utilities Commission until it is approved by the Board in the manner provided by Section 3.7.3.

4.1.3 Termination of CCA Program. Nothing contained in this Article or this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.

4.2 Authority Documents. The Parties acknowledge and agree that the affairs of the Authority will be implemented through various documents duly adopted by the Board through Board resolution. The Parties agree to abide by and comply with the terms and conditions of all such documents that may be adopted by the Board, subject to the Parties' right to withdraw from the Authority as described in Article 6.

4.3 Addition of Parties. Other incorporated municipalities and counties may become Parties subject to all applicable terms of this Agreement, including but not limited to those in Article 6, upon (a) the adoption of a resolution by the governing body of such incorporated municipality or such county requesting that the incorporated municipality or county, as the case may be, become a member of the Authority, (b) the adoption, by an affirmative vote of the Board satisfying the requirements described in Section 3.7, of a resolution authorizing membership of the additional incorporated municipality or county, specifying the membership payment, if any, to be made by the additional incorporated municipality or county to reflect its pro rata share of organizational, planning and other pre-existing expenditures, and describing additional conditions, if any, associated with membership, (c) the adoption of an ordinance required by Public Utilities Code Section 366.2(c)(12) and execution of this Agreement and other necessary program agreements by the incorporated municipality or county as required by the Board, (d) payment of the membership payment, if any, and (e) satisfaction of any conditions established by the Board.

4.3.1 Continuing Participation. The Parties acknowledge that membership in the Authority may change by the addition and/or withdrawal or termination of Parties. The Parties agree to participate with such other Parties as may later be added, as described in Section 4.3. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

4.3.2 Termination by Additional Parties. In addition to any financial obligations under Article 6, and in the events that the Board does not require a membership payment to reflect the additional party's pro rata share of organizational planning and other pre-existing expenditures as allowed by Section 4.3(b) and the additional party withdraws its membership in the Authority within the first five years of becoming a party, the party shall be obligated to reimburse the Authority for all the costs related to the cost of launch, including but not limited to the costs of updating the Implementation Plan and mailings to party's accounts.

ARTICLE 5: FINANCIAL PROVISIONS

5.1 Fiscal Year. The Authority's fiscal year shall be 12 months commencing July 1 or the date selected by the Agency and ending June 30. The fiscal year may be changed by Board resolution.

5.2 Depository.

5.2.1 All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Party or any other person or entity.

5.2.2 All funds of the Authority shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of the Authority shall be open to inspection by the Parties at all reasonable times. The Board shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Authority, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

5.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its Operating Rules and Regulations. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the prior approval of the Board.

5.3 Budget and Recovery of Costs.

5.3.1 Budget. The ~~initial~~ annual budget shall be approved by the Board. Staff shall report to the Board quarterly budget results and any significant budget variances. The Board may revise the budget as needed to address any significant changes and/or unexpected expenses incurred. ~~The Board may revise the budget from time to time as may be reasonably necessary to address contingencies and unexpected expenses. All subsequent budgets of the Authority shall be approved by the Board in accordance with the Operating Rules and Regulations.~~

5.3.2 Funding of Initial Costs. The County of San Mateo has funded certain activities necessary to implement the CCA Program. If the CCA Program becomes operational, these Initial Costs paid by the County of San Mateo shall be included in the customer charges for electric services as provided by Section 5.3.3 to the extent permitted by law, and the County of San Mateo shall be reimbursed from the payment of such charges by customers of the Authority. Prior to such reimbursement, the County of San Mateo shall provide such documentation of costs paid as the Board may request. The Authority may establish a reasonable time period over which such costs are recovered. In the event that the CCA Program does not become operational, the County of San Mateo shall not be entitled to any reimbursement of the Initial Costs it has paid from the Authority or any Party.

5.3.3 CCA Program Costs. The Parties desire that all costs incurred by the Authority that are directly or indirectly attributable to the provision of electric, conservation, efficiency, incentives, financing, or other services provided under the CCA Program, including but not limited to the establishment and maintenance of various reserves and performance funds and administrative, accounting, legal, consulting, and other similar costs, shall be recovered through charges to CCA customers receiving such electric services, or from revenues from grants or other third-party sources.

ARTICLE 6: WITHDRAWAL AND TERMINATION

6.1 Withdrawal.

6.1.1 Right to Withdraw. A Party may withdraw its participation in the CCA Program, effective as of the beginning of the Authority's fiscal year, by giving no less than ~~6~~12 months advance written notice of its election to do so, which notice shall be given to the Authority and each Party. Withdrawal of a Party shall require an affirmative vote of the Party's governing board.

6.1.2 Right to Withdraw After Amendment. Notwithstanding Section 6.1.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement adopted by the Board which the Party's Director(s) voted against provided such notice is given in writing within thirty (30) days following the date of the vote. Withdrawal of a Party shall require an affirmative vote of the Party's governing board and shall not be subject to the six month advance notice provided in Section 6.1.1. In the event of such withdrawal, the Party shall be subject to the provisions of Section 6.3.

6.1.3 The Right to Withdraw Prior to Program Launch. After receiving bids from power suppliers, the Authority must provide to the Parties the report from the electrical utility consultant retained by the Authority that compares the total estimated electrical rates that the Authority will be charging to customers as well as the estimated greenhouse gas emissions rate and the amount of estimated renewable energy used with that of the incumbent utility. If the report provides that the Authority is unable to provide total electrical rates, as part of its baseline offering, to the customers that are equal to or lower than the incumbent utility or to provide power in a manner that has a lower greenhouse gas emissions rate or uses more renewable energy than the incumbent utility, a Party may immediately withdraw its membership in the Authority without any financial obligation, as long as the Party provides written notice of its intent to withdraw to the Authority Board no more than fifteen days after receiving the report.

6.1.4 Continuing Financial Obligation; Further Assurances. Except as provided by Section 6.1.3, a Party that withdraws its participation in the CCA Program may be subject to certain continuing financial obligations, as described in Section 6.3. Each withdrawing Party and the Authority shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from participation in the CCA Program.

6.2 Involuntary Termination of a Party. Participation of a Party in the CCA program may be terminated for material non-compliance with provisions of this Agreement or any other agreement relating to the Party's participation in the CCA Program upon a vote of Board members as provided in Section 3.7.5. Prior to any vote to terminate participation with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or other agreement that the Party has allegedly violated. The Party subject to possible termination shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its participation in the CCA Program terminated may be subject to certain continuing liabilities, as described in Section 6.3.

6.3 Continuing Financial Obligations; Refund. Except as provided by Section 6.1.3, upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims, demands, damages, or other financial obligations arising from the Party membership or participation in the CCA Program through the date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any financial obligations arising after the date of the Party's withdrawal or involuntary termination. Claims, demands, damages, or other financial obligations for which a withdrawing or terminated Party may remain liable include, but are not limited to, losses from the resale of power contracted for by the Authority to serve the Party's load. With respect to such financial obligations, upon notice by a Party that it wishes to withdraw from the CCA Program, the Authority shall notify the Party of the minimum waiting period under which the Party would have no costs for withdrawal if the Party agrees to stay in the CCA Program for such period. The waiting period will be set to the minimum duration such that there are no costs transferred to remaining ratepayers. If the Party elects to withdraw before the end of the minimum waiting period, the charge for exiting shall be set at a dollar amount that would offset actual costs to the remaining ratepayers, and may not include punitive charges that exceed actual costs. In addition, such Party shall also be responsible for any costs or obligations associated with the Party's participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or obligations were incurred prior to the withdrawal of the Party. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority and approved by a vote of the Board of Directors, to cover the Party's financial obligations for the costs described above. Any amount of the Party's funds held on deposit with the Authority above that which is required to pay any financial obligations shall be returned to the Party. The liability of any Party under this section 6.3 is subject and subordinate to the provisions of Section 2.2, and nothing in this section 6.3 shall reduce, impair, or eliminate any immunity from liability provided by Section 2.2.

6.4 Mutual Termination. This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its participation in the CCA Program, as described in Section 6.1.

6.5 Disposition of Property upon Termination of Authority. Upon termination of this Agreement, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any program documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

ARTICLE 7: MISCELLANEOUS PROVISIONS

7.1 Dispute Resolution. The Parties and the Authority shall make reasonable efforts to informally settle all disputes arising out of or in connection with this Agreement. Should such informal efforts to settle a dispute, after reasonable efforts, fail, the dispute shall be mediated in accordance with policies and procedures established by the Board.

7.2 Liability of Directors, Officers, and Employees. The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer,

or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Sections 995 et seq. Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, the Authority, or its Directors, officers, or employees.

7.3 Indemnification of Parties. The Authority shall acquire such insurance coverage as is necessary to protect the interests of the Authority, the Parties, and the public. The Authority shall defend, indemnify, and hold harmless the Parties and each of their respective Board or Council members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries, and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.

7.4 Amendment of this Agreement. This Agreement may not be amended except by a written amendment approved by a vote of Board members as provided in Section 3.7.5. The Authority shall provide written notice to all Parties of amendments to this Agreement, including the effective date of such amendments, at least 30 days prior to the date upon which the Board votes on such amendments.

7.5 Assignment. Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this Section 7.5 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties. This Section 7.5 does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to the Authority, or the disposition of proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Parties under this Agreement.

7.6 Severability. If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties, that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provision shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

7.7 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.

7.8 Execution by Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties 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 signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

7.9 Parties to be Served Notice. Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties.

Exhibit A
Definitions

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

"Administrative Services Agreement" means an agreement or agreements entered into after the Effective Date by the Authority with an entity that will perform tasks necessary for planning, implementing, operating and administering the CCA Program or any other energy programs adopted by the Authority.

"Agreement" means this Joint Powers Agreement.

"Annual Energy Use" has the meaning given in Section 3.7.1.

"Authority" means the Peninsula Clean Energy Authority.

"Authority Document(s)" means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions, and activities of the Authority, including but not limited to the Operating Rules and Regulations, the annual budget, and plans and policies.

"Board" means the Board of Directors of the Authority.

"CCA" or "Community Choice Aggregation" means an electric service option available to cities and counties pursuant to Public Utilities Code Section 366.2.

"CCA Program" means the Authority's program relating to CCA that is principally described in Sections 2.3, 2.4, and 4.1.

"Director" means a member of the Board of Directors representing a Party.

"Effective Date" means February 29, 2016 or when the County of San Mateo and at least two municipalities execute this Agreement, whichever occurs later, as further described in Section 2.1.

"Implementation Plan" means the plan generally described in Section 4.1.2 of this Agreement that is required under Public Utilities Code Section 366.2 to be filed with the California Public Utilities Commission for the purpose of describing a proposed CCA Program.

"Initial Costs" means all costs incurred by the County and/or Authority relating to the establishment and initial operation of the Authority, such as the hiring of a Chief Executive Officer and any administrative staff, and any required accounting, administrative, technical, or legal services in support of the Authority's initial activities or in support of the negotiation, preparation, and approval of one or more Administrative Services Agreements.

Exhibit A (cont.)
Definitions

"Operating Rules and Regulations" means the rules, regulations, policies, bylaws and procedures governing the operation of the Authority.

"Parties" means, collectively, any municipality or county that executes this Agreement.

"Party" means a signatory to this Agreement.

"Total Annual Energy" has the meaning given in Section 3.7.1.

Exhibit B
List of Parties

Parties:

Atherton
Belmont
Brisbane
Burlingame
Colma
County of San Mateo
Daly City
East Palo Alto
Foster City
Half Moon Bay
Hillsborough
Los Banos
Menlo Park
Millbrae
Pacifica
Portola Valley
Redwood City
San Bruno
San Carlos
San Mateo
South San Francisco
Woodside

Exhibits C and D
Annual Energy Use and Voting Shares

ANNUAL ENERGY USE WITHIN PCE JURISDICTIONS AND VOTING SHARES		
Twelve Months Ended November [date]		
Party	Total kWh	Voting Share
SAN MATEO COUNTY		
Total		100

THIRD AMENDED JOINT EXERCISE OF POWERS AGREEMENT RELATING TO AND CREATING THE

PENINSULA CLEAN ENERGY AUTHORITY

This Joint Exercise of Powers Agreement, effective on the date determined by Section 2.1, is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Sections 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the Parties set forth in Exhibit B, and establishes the Peninsula Clean Energy Authority ("Authority"), is by and between the County of San Mateo ("County") and those counties, cities and towns within the State of California who become signatories to this Agreement, and relates to the joint exercise of powers among the signatories hereto.

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. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. The California Air Resources Board is promulgating regulations to implement AB 32 which will require local governments to develop programs to reduce greenhouse gas emissions.

C. The purposes for entering into this Agreement include:

   a. Reducing greenhouse gas emissions related to the use of power in San Mateo County and the State of California;

   b. Providing electric power and other forms of energy to customers at a competitive cost;

   c. Carrying out programs to reduce energy consumption;

   d. Stimulating and sustaining the local economy by developing local jobs in renewable energy; and

   e. Promoting long-term electric rate stability and energy security and reliability for residents through local control of electric generation resources.

D. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar, wind, and biomass energy production. The purchase of renewable power and greenhouse gas-free energy sources will be the desired approach to decrease regional greenhouse gas emissions and accelerate the State's transition to clean power resources to the extent feasible. The Agency will also add increasing levels of locally generated renewable

resources as these projects are developed and customer energy needs expand.

E. The Parties desire to establish a separate public agency, known as the Peninsula Clean Energy Authority, under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act") in order to collectively study, promote, develop, conduct, operate, and manage energy programs.

F. The Parties anticipate adopting an ordinance electing to implement through the Authority a common Community Choice Aggregation (CCA) program, an electric service enterprise available to cities and counties pursuant to California Public Utilities Code Sections 331.1(c) and 366.2. The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program.

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:

ARTICLE 1: DEFINITIONS AND EXHIBITS

1.1 Definitions. Capitalized terms used in the Agreement shall have the meanings specified in Exhibit A, unless the context requires otherwise.

1.2 Documents Included. This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement.

Exhibit A: Definitions
Exhibit B: List of the Parties
Exhibit C: Annual Energy Use
Exhibit D: Voting Shares
Exhibit E: Signatures

ARTICLE 2: FORMATION OF PENINSULA CLEAN ENERGY AUTHORITY

2.1 Effective Date and Term. This Agreement shall become effective and Peninsula Clean Energy Authority shall exist as a separate public agency on February 29, 2016 or when the County of San Mateo and at least two municipalities execute this Agreement, whichever occurs later. The Authority shall provide notice to the Parties of the Effective Date. The Authority shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with Section 6.4, subject to the rights of the Parties to withdraw from the Authority.

2.2 Formation. There is formed as of the Effective Date a public agency named the Peninsula Clean Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. Pursuant to Sections 6508.1 of the Act, the debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties

unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of the Authority. Notwithstanding Section 7.4 of this Agreement, this Section 2.2 may not be amended unless such amendment is approved by the governing board of each Party.

2.3 Purpose. The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party to study, promote, develop, conduct, operate, and manage energy, energy efficiency and conservation, and other energy-related programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. Without limiting the generality of the foregoing, the Parties intend for this Agreement to be used as a contractual mechanism by which the Parties are authorized to participate in the CCA Program, as further described in Section 4.1. The Parties intend that other agreements shall define the terms and conditions associated with the implementation of the CCA Program and any other energy programs approved by the Authority.

2.4 Powers. The Authority shall have all powers common to the Parties and such additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following powers, subject to the voting requirements set forth in Section 3.7 through 3.7.5:

2.4.1 to make and enter into contracts;

2.4.2 to employ agents and employees, including but not limited to a Chief Executive Officer;

2.4.3 to acquire, contract, manage, maintain, and operate any buildings, infrastructure, works, or improvements;

2.4.4 to acquire property by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property; however, the Authority shall not exercise the power of eminent domain within the jurisdiction of a Party over its objection without first meeting and conferring in good faith.

2.4.5 to lease any property;

2.4.6 to sue and be sued in its own name;

2.4.7 to incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Sections 53850 et seq. and authority under the Act;

2.4.8 to form subsidiary or independent corporations or entities if necessary, to carry out energy supply and energy conservation programs at the lowest possible cost or to take advantage of legislative or regulatory changes;

2.4.9 to issue revenue bonds and other forms of indebtedness;

2.4.10 to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;

2.4.11 to submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;

2.4.12 to adopt Operating Rules and Regulations; and

2.4.13 to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services.

2.4.14 to permit additional Parties to enter into this Agreement after the Effective Date and to permit another entity authorized to be a community choice aggregator to designate the Authority to act as the community choice aggregator on its behalf.

2.5 Limitation on Powers. As required by Government Code Section 6509, the power of the Authority is subject to the restrictions upon the manner of exercising power possessed by San Mateo County.

2.6 Compliance with Local Zoning and Building Laws and CEQA. Unless state or federal law provides otherwise, any facilities, buildings or structures located, constructed, or caused to be constructed by the Authority within the territory of the Authority shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed and comply with the California Environmental Quality Act ("CEQA").

ARTICLE 3: GOVERNANCE AND INTERNAL ORGANIZATION

3.1 Board of Directors. The governing body of the Authority shall be a Board of Directors ("Board"). The Board shall consist of 2 (two) directors appointed by the San Mateo County Board of Supervisors and 1 (one) director appointed by each County, City or Town that becomes a signatory to the Agreement ("Directors"). Each Director shall serve at the pleasure of the governing board of the Party who appointed such Director and may be removed as Director by such governing board at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed to fill the position of the previous Director within 90 days of the date that such position becomes vacant. Directors must be members of the Board of Supervisors or members of the governing board of the municipality that is the signatory to this Agreement. Each Party may appoint an alternate(s) to serve in the absence of its Director(s). Alternates may be either (1) members of the Board of Supervisors or members of the governing board of the municipality that is the signatory to this Agreement, or (2) staff members of the County or any such municipality.

3.1.1 .

3.2 Quorum. A majority of the appointed Directors shall constitute a quorum, except that less than a quorum may adjourn from time to time in accordance with law.

3.3 Powers and Functions of the Board. The Board shall exercise general governance and oversight over the business and activities of the Authority, consistent with this Agreement and applicable law. The Board shall provide general policy guidance to the CCA Program. Board approval shall be required for any of the following actions:

3.3.1 The issuance of bonds or any other financing even if program revenues are expected to pay for such financing.

3.3.2 The hiring or termination of the Chief Executive Officer and General Counsel.

3.3.3 The appointment or removal of officers described in Section 3.9, subject to Section 3.9.3.

3.3.4 The adoption of the Annual Budget.

3.3.5 The adoption of an ordinance.

3.3.6 The approval of agreements, except as provided by Section 3.4.

3.3.7 The initiation or resolution of claims and litigation where the Authority will be the defendant, plaintiff, petitioner, respondent, cross complainant, or cross petitioner, or intervenor; provided, however, that the Chief Executive Officer or General Counsel or by delegation thereof, on behalf of the Authority, may intervene in, become a party to, or file comments with respect to any proceeding pending at the California Public Utilities Commission, the Federal Energy Regulatory Commission, or any other administrative agency, without approval of the Board as long as such action is consistent with any adopted Board policies.

3.3.8 The setting of rates for power sold by the Authority and the setting of charges for any other category of service provided by the Authority.

3.3.9 Termination of the CCA Program.

3.4 Chief Executive Officer. The Board of Directors shall appoint a Chief Executive Officer for the Authority, who shall be responsible for the day-to-day operation and management of the Authority and the CCA Program. The Chief Executive Officer may exercise all powers of the Authority, including the power to hire, discipline, and terminate employees as well as the power to approve any agreement if the total amount payable under the agreement is equal to or less than the amount specified in the Operating Rules and Regulations (Policy 15, "Delegation of Non-Energy Contract Authority") except for the powers specifically set forth in Section 3.3 or those powers which by law must be exercised by the Board of Directors.

3.5 Commissions, Boards, and Committees. The Board may establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board in carrying

out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement which shall comply with the requirements of the Ralph M. Brown Act. The Board may establish rules, regulations, policies, bylaws or procedures to govern any such commissions, boards, or committees if the Board deems appropriate to appoint such commissions, boards or committees, and shall determine whether members shall be compensated or entitled to reimbursement for expenses.

3.6 Director Compensation. Directors shall serve without compensation from the Authority. However, Directors may be compensated by their respective appointing authorities. The Board, however, may adopt by resolution a policy relating to the reimbursement by the Authority of expenses incurred by Directors.

3.7 Voting In general, as described below in Section 3.7.3, action by the Authority Board will be taken solely by a majority vote of the Directors present. However, as described below in Section 3.7.4, upon request of a Director, a weighted vote by shares will also be conducted. When such a request is made, an action must be approved by both a majority vote of Directors present and a majority of the weighted vote by shares present. No action may be approved solely by a vote by shares. The voting shares of Directors and approval requirements for actions of the Board shall be as follows:

3.7.1. Voting Shares.

Each Director 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 year following the Effective 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 anniversary of the Effective Date, the annual electricity usage, expressed in kWh, of accounts within a Party's respective jurisdiction that are served by the Authority; 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. These adjustments shall be approved by the Board.

(c) The combined voting share of all Directors representing the County of San Mateo shall be based upon the annual electricity usage within the unincorporated area of San Mateo County.

For the purposes of Weighted Voting, if a Party has more than one director, then the voting shares allocated to the entity shall be equally divided amongst its Directors.

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. Exhibit D and adjustments shall be approved by the Board.

3.7.3. Approval Requirements Relating to CCA Program. Except as provided in Sections 3.7.4 and 3.7.5 below, action of the Board shall require the affirmative vote of a majority of Directors present at the meeting.

3.7.4. Option for Approval by Voting Shares. Notwithstanding Section 3.7.3, any Director present at a meeting may demand that approval of any matter related to the CCA Program be determined on the basis of both voting shares and by the affirmative vote of a majority of Directors present at the meeting. If a Director makes such a demand with respect to approval of any such matter, then approval of such matter shall require the affirmative vote of a majority of Directors present at the meeting and the affirmative vote of Directors having a majority of voting shares present, as determined by Section 3.7.1 except as provided in Section 3.7.5.

3.7.5. Special Voting Requirements for Certain Matters.

(a) Two-Thirds and Weighted Voting Approval Requirements Relating to Sections 6.2 and 7.4. Action of the Board on the matters set forth in Section 6.2 (involuntary termination of a Party), or Section 7.4 (amendment of this Agreement) shall require the affirmative vote of at least two-thirds of Directors present; provided, however, that (i) notwithstanding the foregoing, any Director present at the meeting may demand that the vote be determined on the basis of both voting shares and by the affirmative vote of Directors, and if a Director makes such a demand, then approval shall require the affirmative vote of both at least two-thirds of Directors present and the affirmative vote of Directors having at least two-thirds of the voting shares present, as determined by Section 3.7.1; (ii) but, at least two Parties must vote against a matter for the vote to fail; and (iii) for votes to involuntarily terminate a Party under Section 6.2, the Director(s) for the Party subject to involuntary termination may not vote, and the number of Directors constituting two-thirds of all Directors, and the weighted vote of each Party shall be recalculated as if the Party subject to possible termination were not a Party.

(b) Seventy Five Percent Special Voting Requirements for Eminent Domain and Contributions or Pledge of Assets.

(i) A decision to exercise the power of eminent domain on behalf of the Authority to acquire any property interest other than an easement, right-of-way, or temporary construction easement shall require a vote of at least 75% of all Directors.

(ii) The imposition on any Party of any obligation to make contributions or pledge assets as a condition of continued participation in the CCA Program shall require a vote of at least 75% of all Directors and the approval of the governing boards of the Parties who are being asked to make such contribution or pledge.

(iii) Notwithstanding the foregoing, any Director present at the meeting may demand that a vote under subsections (i) or (ii) be determined on the basis of voting shares and by the affirmative vote of Directors, and if a Director makes such a demand, then approval shall require both the affirmative vote of at least 75% of

Directors present and the affirmative vote of Directors having at least 75% of the voting shares present, as determined by Section 3.7.1, but at least two Parties must vote against a matter for the vote to fail. For purposes of this section, "imposition on any Party of any obligation to make contributions or pledge assets as a condition of continued participation in the CCA Program" does not include any obligations of a withdrawing or terminated party imposed under Section 6.3.

3.8 Meetings and Special Meetings of the Board. The Board shall hold at least six regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution or ordinance of the Board. Regular meetings may be adjourned to another meeting time. Special and Emergency Meetings of the Board may be called in accordance with the provisions of California Government Code Sections 54956 and 54956.5. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. All meetings shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Sections 54950 et seq.).

3.9 Selection of Board Officers.

3.9.1 Chair and Vice Chair. The Directors shall select, from among themselves, a Chair, who shall be the presiding officer of all Board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The term of office of the Chair and Vice Chair shall be specified in the Operating Rules and Regulations (Policy 16, "Policies and Procedures for Board of Directors, Committees, and Advisory Groups"). The office of either the Chair or Vice Chair shall be declared vacant and a new selection shall be made if:

(a) the person serving dies, resigns, or the Party that the person represents removes the person as its representative on the Board or
(b) the Party that he or she represents withdraws from the Authority pursuant to the provisions of this Agreement.

3.9.2 Secretary. The Board shall appoint a Secretary, who need not be a member of the Board, who shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority.

3.9.3 Treasurer and Auditor. The Chief Financial Officer shall, among other duties, act as the Treasurer for the Authority. Unless otherwise exempted from such requirement, the Authority shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall act as the depository of the Authority and have custody of all the money of the Authority, from whatever source, and as such, shall have all of the duties and responsibilities specified in Section 6505.5 of the Act. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time. The duties and obligations of the Treasurer are further specified in Article 5.

3.10 Administrative Services Provider. The Board may appoint one or more administrative

services providers to serve as the Authority's agent for planning, implementing, operating and administering the CCA Program, and any other program approved by the Board, in accordance with the provisions of an Administrative Services Agreement. The appointed administrative services provider may be one of the Parties. An Administrative Services Agreement shall set forth the terms and conditions by which the appointed administrative services provider shall perform or cause to be performed all tasks necessary for planning, implementing, operating and administering the CCA Program and other approved programs. The Administrative Services Agreement shall set forth the term of the Agreement and the circumstances under which the Administrative Services Agreement may be terminated by the Authority. This section shall not in any way be construed to limit the discretion of the Authority to hire its own employees to administer the CCA Program or any other program.

ARTICLE 4: IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

4.1 Preliminary Implementation of the CCA Program.

4.1.1 Enabling Ordinance. To be eligible to participate in the CCA Program, each Party must adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(12) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in the Authority.

4.1.2 Implementation Plan. The Authority shall cause to be prepared an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations as soon after the Effective Date as reasonably practicable. The Implementation Plan shall not be filed with the Public Utilities Commission until it is approved by the Board in the manner provided by Section 3.7.3.

4.1.3 Termination of CCA Program. Nothing contained in this Article or this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.

4.2 Authority Documents. The Parties acknowledge and agree that the affairs of the Authority will be implemented through various documents duly adopted by the Board through Board resolution. The Parties agree to abide by and comply with the terms and conditions of all such documents that may be adopted by the Board, subject to the Parties' right to withdraw from the Authority as described in Article 6.

4.3 Addition of Parties. Other incorporated municipalities and counties may become Parties subject to all applicable terms of this Agreement, including but not limited to those in Article 6, upon (a) the adoption of a resolution by the governing body of such incorporated municipality or such county requesting that the incorporated municipality or county, as the case may be, become a member of the Authority, (b) the adoption, by an affirmative vote of the Board satisfying the requirements described in Section 3.7, of a resolution authorizing membership of the additional incorporated municipality or county, specifying the membership payment, if any, to be made by the additional incorporated municipality or county to reflect its pro rata share of organizational, planning and other

pre-existing expenditures, and describing additional conditions, if any, associated with membership, (c) the adoption of an ordinance required by Public Utilities Code Section 366.2(c)(12) and execution of this Agreement and other necessary program agreements by the incorporated municipality or county as required by the Board, (d) payment of the membership payment, if any, and (e) satisfaction of any conditions established by the Board.

4.3.1 Continuing Participation. The Parties acknowledge that membership in the Authority may change by the addition and/or withdrawal or termination of Parties. The Parties agree to participate with such other Parties as may later be added, as described in Section 4.3. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

4.3.2 Termination by Additional Parties. In addition to any financial obligations under Article 6, and in the events that the Board does not require a membership payment to reflect the additional party's pro rata share of organizational planning and other pre-existing expenditures as allowed by Section 4.3(b) and the additional party withdraws its membership in the Authority within the first five years of becoming a party, the party shall be obligated to reimburse the Authority for all the costs related to the cost of launch, including but not limited to the costs of updating the Implementation Plan and mailings to party's accounts.

ARTICLE 5: FINANCIAL PROVISIONS

5.1 Fiscal Year. The Authority's fiscal year shall be 12 months commencing July 1 or the date selected by the Agency and ending June 30. The fiscal year may be changed by Board resolution.

5.2 Depository.

5.2.1 All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Party or any other person or entity.

5.2.2 All funds of the Authority shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of the Authority shall be open to inspection by the Parties at all reasonable times. The Board shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Authority, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

5.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its Operating Rules and Regulations. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the prior approval of the Board.

5.3 Budget and Recovery of Costs.

5.3.1 Budget. The annual budget shall be approved by the Board. Staff shall report to the Board quarterly budget results and any significant budget variances. The Board may revise the budget as needed to address any significant changes and/or unexpected expenses incurred.

5.3.2 Funding of Initial Costs. The County of San Mateo has funded certain activities necessary to implement the CCA Program. If the CCA Program becomes operational, these Initial Costs paid by the County of San Mateo shall be included in the customer charges for electric services as provided by Section 5.3.3 to the extent permitted by law, and the County of San Mateo shall be reimbursed from the payment of such charges by customers of the Authority. Prior to such reimbursement, the County of San Mateo shall provide such documentation of costs paid as the Board may request. The Authority may establish a reasonable time period over which such costs are recovered. In the event that the CCA Program does not become operational, the County of San Mateo shall not be entitled to any reimbursement of the Initial Costs it has paid from the Authority or any Party.

5.3.3 CCA Program Costs. The Parties desire that all costs incurred by the Authority that are directly or indirectly attributable to the provision of electric, conservation, efficiency, incentives, financing, or other services provided under the CCA Program, including but not limited to the establishment and maintenance of various reserves and performance funds and administrative, accounting, legal, consulting, and other similar costs, shall be recovered through charges to CCA customers receiving such electric services, or from revenues from grants or other third-party sources.

ARTICLE 6: WITHDRAWAL AND TERMINATION

6.1 Withdrawal.

6.1.1 Right to Withdraw. A Party may withdraw its participation in the CCA Program, effective as of the beginning of the Authority's fiscal year, by giving no less than 12 months advance written notice of its election to do so, which notice shall be given to the Authority and each Party. Withdrawal of a Party shall require an affirmative vote of the Party's governing board.

6.1.2 Right to Withdraw After Amendment. Notwithstanding Section 6.1.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement adopted by the Board which the Party's Director(s) voted against provided such notice is given in writing within thirty (30) days following the date of the vote. Withdrawal of a Party shall require an affirmative vote of the Party's governing board and shall not be subject to the six month advance notice provided in Section 6.1.1. In the event of such withdrawal, the Party shall be subject to the provisions of Section 6.3.

6.1.3 The Right to Withdraw Prior to Program Launch. After receiving bids from power suppliers, the Authority must provide to the Parties the report from the electrical utility consultant retained by the Authority that compares the total estimated electrical rates that

the Authority will be charging to customers as well as the estimated greenhouse gas emissions rate and the amount of estimated renewable energy used with that of the incumbent utility. If the report provides that the Authority is unable to provide total electrical rates, as part of its baseline offering, to the customers that are equal to or lower than the incumbent utility or to provide power in a manner that has a lower greenhouse gas emissions rate or uses more renewable energy than the incumbent utility, a Party may immediately withdraw its membership in the Authority without any financial obligation, as long as the Party provides written notice of its intent to withdraw to the Authority Board no more than fifteen days after receiving the report.

6.1.4 Continuing Financial Obligation; Further Assurances. Except as provided by Section 6.1.3, a Party that withdraws its participation in the CCA Program may be subject to certain continuing financial obligations, as described in Section 6.3. Each withdrawing Party and the Authority shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from participation in the CCA Program.

6.2 Involuntary Termination of a Party. Participation of a Party in the CCA program may be terminated for material non-compliance with provisions of this Agreement or any other agreement relating to the Party's participation in the CCA Program upon a vote of Board members as provided in Section 3.7.5. Prior to any vote to terminate participation with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or other agreement that the Party has allegedly violated. The Party subject to possible termination shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its participation in the CCA Program terminated may be subject to certain continuing liabilities, as described in Section 6.3.

6.3 Continuing Financial Obligations; Refund. Except as provided by Section 6.1.3, upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims, demands, damages, or other financial obligations arising from the Party membership or participation in the CCA Program through the date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any financial obligations arising after the date of the Party's withdrawal or involuntary termination. Claims, demands, damages, or other financial obligations for which a withdrawing or terminated Party may remain liable include, but are not limited to, losses from the resale of power contracted for by the Authority to serve the Party's load. With respect to such financial obligations, upon notice by a Party that it wishes to withdraw from the CCA Program, the Authority shall notify the Party of the minimum waiting period under which the Party would have no costs for withdrawal if the Party agrees to stay in the CCA Program for such period. The waiting period will be set to the minimum duration such that there are no costs transferred to remaining ratepayers. If the Party elects to withdraw before the end of the minimum waiting period, the charge for exiting shall be set at a dollar amount that would offset actual costs to the remaining ratepayers, and may not include punitive charges that exceed actual costs. In addition, such Party shall also be responsible for any costs or obligations associated with the Party's participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or

obligations were incurred prior to the withdrawal of the Party. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority and approved by a vote of the Board of Directors, to cover the Party's financial obligations for the costs described above. Any amount of the Party's funds held on deposit with the Authority above that which is required to pay any financial obligations shall be returned to the Party. The liability of any Party under this section 6.3 is subject and subordinate to the provisions of Section 2.2, and nothing in this section 6.3 shall reduce, impair, or eliminate any immunity from liability provided by Section 2.2.

6.4 Mutual Termination. This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its participation in the CCA Program, as described in Section 6.1.

6.5 Disposition of Property upon Termination of Authority. Upon termination of this Agreement, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any program documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

ARTICLE 7: MISCELLANEOUS PROVISIONS

7.1 Dispute Resolution. The Parties and the Authority shall make reasonable efforts to informally settle all disputes arising out of or in connection with this Agreement. Should such informal efforts to settle a dispute, after reasonable efforts, fail, the dispute shall be mediated in accordance with policies and procedures established by the Board.

7.2 Liability of Directors, Officers, and Employees. The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Sections 995 et seq. Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, the Authority, or its Directors, officers, or employees.

7.3 Indemnification of Parties. The Authority shall acquire such insurance coverage as is necessary to protect the interests of the Authority, the Parties, and the public. The Authority shall defend, indemnify, and hold harmless the Parties and each of their respective Board or Council members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries, and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.

7.4 Amendment of this Agreement. This Agreement may not be amended except by a written amendment approved by a vote of Board members as provided in Section 3.7.5. The Authority shall provide written notice to all Parties of amendments to this Agreement, including the effective date

of such amendments, at least 30 days prior to the date upon which the Board votes on such amendments.

7.5 Assignment. Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this Section 7.5 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties. This Section 7.5 does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to the Authority, or the disposition of proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Parties under this Agreement.

7.6 Severability. If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties, that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provision shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

7.7 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.

7.8 Execution by Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties 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 signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

7.9 Parties to be Served Notice. Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties.

Exhibit A
Definitions

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

"Administrative Services Agreement" means an agreement or agreements entered into after the Effective Date by the Authority with an entity that will perform tasks necessary for planning, implementing, operating and administering the CCA Program or any other energy programs adopted by the Authority.

"Agreement" means this Joint Powers Agreement.

"Annual Energy Use" has the meaning given in Section 3.7.1.

"Authority" means the Peninsula Clean Energy Authority.

"Authority Document(s)" means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions, and activities of the Authority, including but not limited to the Operating Rules and Regulations, the annual budget, and plans and policies.

"Board" means the Board of Directors of the Authority.

"CCA" or "Community Choice Aggregation" means an electric service option available to cities and counties pursuant to Public Utilities Code Section 366.2.

"CCA Program" means the Authority's program relating to CCA that is principally described in Sections 2.3, 2.4, and 4.1.

"Director" means a member of the Board of Directors representing a Party.

"Effective Date" means February 29, 2016 or when the County of San Mateo and at least two municipalities execute this Agreement, whichever occurs later, as further described in Section 2.1.

"Implementation Plan" means the plan generally described in Section 4.1.2 of this Agreement that is required under Public Utilities Code Section 366.2 to be filed with the California Public Utilities Commission for the purpose of describing a proposed CCA Program.

"Initial Costs" means all costs incurred by the County and/or Authority relating to the establishment and initial operation of the Authority, such as the hiring of a Chief Executive Officer and any administrative staff, and any required accounting, administrative, technical, or legal services in support of the Authority's initial activities or in support of the negotiation, preparation, and approval of one or more Administrative Services Agreements.

Exhibit A (cont.)
Definitions

"Operating Rules and Regulations" means the rules, regulations, policies, bylaws and procedures governing the operation of the Authority.

"Parties" means, collectively, any municipality or county that executes this Agreement.

"Party" means a signatory to this Agreement.

"Total Annual Energy" has the meaning given in Section 3.7.1.

Exhibit B
List of Parties

Parties:

Atherton
Belmont
Brisbane
Burlingame
Colma
County of San Mateo
Daly City
East Palo Alto
Foster City
Half Moon Bay
Hillsborough
Los Banos
Menlo Park
Millbrae
Pacifica
Portola Valley
Redwood City
San Bruno
San Carlos
San Mateo
South San Francisco
Woodside

Exhibits C and D
Annual Energy Use and Voting Shares

ANNUAL ENERGY USE WITHIN PCE JURISDICTIONS AND VOTING SHARES		
Twelve Months Ended November [date]		
Party	Total kWh	Voting Share
SAN MATEO COUNTY		
Total		100

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 14, 2024
MEETING DATE: June 27, 2024
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Kim Le, Director of Data and Technology

SUBJECT: Data and Technology Department Quarterly Report

BACKGROUND

Data and Technology at Peninsula Clean Energy is responsible for storing and processing large amounts of data from various sources, such as customer load usage and energy market data, and ensuring accuracy and accessibility for analysis and decision-making. The other side of this department is in IT, which plays a key role in maintaining the software systems, and keeping the technology gremlins at bay.

Data and Technology continues to move forward on progress and developments within our department to support the overall business operations. Over the past quarter, significant strides have been made in enhancing our technological infrastructure, optimizing data management processes, and driving efficiency with automations and standardizing operating procedures.

DISCUSSION

Current high-level priorities and initiatives for this department:

1. Continuous refinement of analytical approaches to drive informed decision-making
2. Building out and enriching our in-house data warehouse and capabilities
3. Enhancing our tech infrastructure and building internal standard operating procedures
4. Fortifying PCE's digital infrastructure against cyber threats, ensuring the integrity of data and systems

The Data Updates

In July, the Data team will be welcoming a new Data Engineer, Andy Wang. The new Data Engineer will be working to support our data warehouse and dashboards. His focus will be expanding and enhancing our data and data pipeline architecture, improving data flow and collection for cross functional teams, as well as building dashboards and reporting tools.

This past quarter, the department built out more internal dashboards and took a deep dive into PCE's Top 200 strategic accounts with the Account Services team. The department wrapped up the EV Analysis project with results of the study anonymized and shared with UC Davis for further research on EV charging behavior. As Programs is ramping up on the GovPV project, we have completed our proof-

of-concept billing dashboard for the site usage and cost tracking. The EV Detection 2.0 model continues to be a focus on the department's work as new data is added to the machine learning algorithm and further refine the detection process.

The IT Updates

PCE has fully launched with our new internal IT ticketing system built on HappyFox and it has been a huge success. Cassius Gray deserves recognition for leading this project. The HappyFox ticketing system creates a more streamlined and systematic approach to tracking staff IT issues across the board. The IT department is also using HappyFox to build out PCE's Knowledge Base for each team to share knowledge articles cross-functionally in a more organized way. Chris Duarte effectively completed the Hybrid Conference Rom 2.0 project with hybrid meeting quality showing a significant improvement since he took on the project at beginning of the year. The IT department has also been working on Zoom SMS Campaign compliance as well as better monitoring under PCE's managed device system.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 17, 2024
MEETING DATE: June 27, 2024
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Marc Hershman, Director of Government Affairs

SUBJECT: Update on Legislative Activities

DISCUSSION

SACRAMENTO SUMMARY

There has been significant recent focus in Sacramento on the state budget.

The state Legislature passed its version of a budget on June 13, meeting the Constitutional deadline of June 15. However, the Legislature's budget differs significantly from the proposed budget authored by the Governor. Negotiations are ongoing as of the preparation of this report.

As of this writing, Peninsula Clean Energy (PCE) has taken an official position on nine bills. Please see the attached Matrix for details of those bills and other bills where we are monitoring and engaging. Also attached are letters of support for AB 817 (Pacheco), AB 2513 (Pellerin), AB 2815 (Petrie-Norris), and AB 2083 (Berman) submitted by Peninsula Clean Energy since the last Legislative Update.

State Budget

In May, Governor Newsom provided an overview of his revised budget. The budget suggests that he is looking to not only solve the deficit for the year ahead but also address the 2025-26 projected deficit of $28.4 billion. The Governor has proposed drawing down $13.1 billion in reserves over the next two years and $26 billion in cuts. Additionally, there are increased deferrals of funding to future years and shifting fund sources from the General Fund to other special funds.

To begin to address the growing deficit, the Governor met with legislative leaders. An agreement between the Governor and Legislators was reached and a bill, AB 206 (Gabriel), was passed and signed. AB 206 reduced expenditures by $17 billion. In addition, roughly $13 billion was withdrawn from various state savings accounts. Most of the savings from AB 206 were from canceling or delaying previously authorized expenditures and other accounting measures, such as delaying state worker paychecks slightly to place them in a different fiscal

year.
On June 13, the Legislature passed a budget, meeting the June 15 state Constitutional deadline. The Governor must sign or veto that budget no later than June 27. As we have seen in recent years, there may be budget "trailer bills" introduced through the end of the legislative session which amend statutes to reflect the budget plan.

One area that has drawn attention is the omission from the Legislature's budget of funding for the extension of Diablo Canyon. The Legislature instead reverted to the general fund $400 million intended to be paid to PG&E as part of a $1.4 billion loan extended to the company two years ago to keep the nuclear plant online through 2030.

Additionally, the Governor has not provided direct comment on whether he would like to move forward with the placement of a climate bond on the November 2024 ballot. Intense negotiations between the Governor and the Legislature as to whether there will be a climate bond and what that might look like are ongoing.

California Department of Housing and Community Development

The California Department of Housing and Community Development (HCD) has released its Initial Statement of Reasons for Proposed Building Standards. HCD has proposed adopting their Code Advisory Committee's recommendation with respect to installation of Level 1 chargers in multi-family buildings.

Peninsula Clean Energy had provided the language adopted by the CAC and which is now part of the HCD draft building standards.

Under this new provision, if adopted after the closing of the 45-day comment period in July, the placement of new Level 1 chargers will now be allowed in these buildings without triggering the requirement that Level 2 chargers instead be installed. The importance of this change for reaching the state's climate goals and the expansion of EV use was cited.

This huge win for the advancement of EV chargers in multi-family buildings was made possible by Peninsula Clean Energy's leadership with the strong and effective support of Senator Becker and Assemblymember Berman. PCE deeply appreciates their support and also appreciates the letters supporting PCE's position from CalCCA, other CCAs, and CalETC.

PCE will continue to monitor the progress of the proposal and will report back to the Board with any further developments.

Federal Engagement

Both of California's U.S. Senators, Alex Padilla and Laphonza Butler, have submitted the Peninsula Clean Energy request for funding to support the low-income home upgrade program to the Senate Appropriations Committee for inclusion in the Transportation, Housing and Urban Development Appropriations.

Both U.S. Senators had a lengthy list of projects that they believe merit funding; inclusion on the list does not guarantee funding. The lists will most certainly be pared down significantly when heard in committee. It is likely that the final bills will not be considered until Congress returns after the November election.

PCE will continue to work with both of our Senator's offices to answer any questions they may have and to support the advancement of our funding request.

(Public Policy Objective B, Key Tactic 1)

FISCAL IMPACT

Not applicable.

ATTACHMENTS:
5.28.24.AB 817 (Pacheco) Support.PDF
AB 2513 Support 5.30.24.pdf
6.3.24.AB 2815 SB 1130.pdf
6.6.24.AB 2083 (Berman) Support.pdf
June Bill Matrix_MF.docx.pdf

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May 28, 2024

The Honorable Maria Elena Durazo
Chair, Senate Local Government Committee
1021 O St., Ste. 7530
Sacramento, CA 95814

Re: AB 817 (Pacheco) – SUPPORT

Dear Senator Durazo,

On behalf of Peninsula Clean Energy Authority (PCE), a community choice aggregator (CCA) serving roughly 800,000 Californians in San Mateo County and Los Banos in Merced County, I write in support of AB 817 (Pacheco), which would allow subsidiary bodies to local governments to meet remotely without meeting all of the teleconferencing requirements of the The Ralph M. Brown Act (Brown Act).

The Brown Act, passed in 1953, established the baseline rules for meetings of local legislative bodies, including subsidiary bodies whose key function is to advise local legislative bodies. We have such a subsidiary body in the form of our Community Advisory Committee (CAC), which consists of 12 volunteer members from across our service territory. The CAC advises the PCE Board and staff on public-facing programs, engages in outreach to the community, advises on high-level legislative and regulatory direction, provides a forum for community discussions on a wide variety of strategies, and assists Peninsula Clean Energy's staff and Board with projects of importance to the organization.

The CAC meets monthly in-person at the PCE office in Redwood City with the representative from Los Banos joining via teleconference in compliance with Brown Act requirements. These requirements mean that the representative from Los Banos must join remotely from a public facility, such as city hall or the police station and the individual must be available to the public and their exact location included in the meeting notice. Putting such accommodations in place every month is time consuming and costly to PCE. Furthermore, our CAC meetings occur late in the evening, and there is a safety factor to consider in positioning our lone Los Banos representative in a publicly noticed and available location at night, month after month.

AB 817 is a commonsense measure in that it recognizes subsidiary bodies that have no decision-making power and perform a purely advisory role for local jurisdictions. Many subsidiary bodies, such as our CAC, are made up of volunteers who have the time and means to attend in-person meetings. AB 817 will enable more community members to consider volunteering for the CAC knowing that they have the flexibility to attend meetings remotely as they did during the COVID-19 pandemic.

We are pleased to support AB 817 and we thank Assemblymember Pacheco for authoring this important piece of legislation. We respectfully request your aye vote on AB 817.

Sincerely,

Marc Hershman
Director of Government Affairs

cc: The Honorable Members of the Senate Local Government Committee
The Honorable Blanca Pacheco

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May 30, 2024

The Honorable Ben Allen
Chair, Senate Environmental Quality Committee
1021 O St., Ste. 6610
Sacramento, CA 95814

Re: AB 2513 (Pellerin) – SUPPORT

Dear Senator Allen,

On behalf of Peninsula Clean Energy Authority (PCE), a community choice aggregator (CCA) serving roughly 800,000 Californians in San Mateo County and Los Banos in Merced County, I write in support of AB 2513 (Pellerin), which will ensure that Californians are aware of the health harming impacts of fossil gas combustion in stoves and ranges.

Peninsula Clean Energy is proud to offer several programs to its customers to facilitate the transition to zero-emission appliances including heat-pumps, heat-pump water heaters, and induction stoves. We also bring our residents to experience all-electric homes and see demonstrations of induction cooktops. We are engaged in this transition as we understand the planet harming greenhouse gas emissions associated with fossil gas combustion as well as the associated human-health impacts. A 2023 study from Stanford's Doerr School of Sustainability and PSE Healthy Energy, a nonprofit research institute, found that gas stoves can also emit amounts of benzene that can lead to indoor concentrations that exceed health benchmarks. Long-term exposure to Benzene can lead to leukemia and other blood-related cancers, while high levels of short-term exposure can affect the nervous system.

AB 2513 will help ensure that the findings of this research reaches more Californians as it would require all gas stoves manufactured after January 1, 2025 for sale in California have a conspicuous label warning prospective buyers that gas stoves or ranges can release nitrogen dioxide, carbon monoxide, and benzene that creates concentrations exceeding the standards of the Office of Environmental Health Hazard Assessment and the United States Environmental Protection Agency's standards for outdoor air quality.

We are pleased to support AB 2513 and we thank Assemblymember Pellerin for authoring this important piece of legislation. We respectfully request your aye vote on AB 2513.

Sincerely,

Marc Hershman
Director of Government Affairs

2075 Woodside Road | Redwood City, CA | 94061
(650) 260-0005 | peninsulacleanenergy.com

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June 3, 2024

The Honorable Dave Cortese
Chair, Senate Transportation Committee
1021 O St., Ste. 6630
Sacramento, CA 95814

Re: AB 2815 (Petrie-Norris) – SUPPORT

Dear Senator Cortese,

On behalf of Peninsula Clean Energy Authority (PCE), a community choice aggregator (CCA) serving roughly 800,000 Californians in San Mateo County and Los Banos in Merced County, I write in support of AB 2815 (Petrie-Norris), which would require the California Energy Commission (CEC) to provide funding for repair or replacement of a non-operational electric vehicle (EV) charging station through a new or existing program under the Clean Transportation Program (CTP).

Peninsula Clean Energy is proud to offer several programs to its customers to facilitate the transition to electric vehicles (EVs), including rebates to reduce the cost of used EVs and rebates and technical assistance for the installation of EV charging. The state is woefully behind on its goal to install one million EV chargers by 2030, and many chargers that have been installed have not functioned properly. A lack of EV charging is a significant deterrent to prospective buyers of EVs and the state must increase its efforts to have working chargers available to many more Californians. AB 2815 addresses the issue of malfunctioning EV chargers by making repairs and replacement of such chargers eligible for grant funding under the CTP.

While the state is facing a budget deficit of monumental proportion, this bill is supported by the CTP, which is supported by special fees on vehicle registration and smog abatements. The CTP is structurally sound and should support the funding of EV charging repairs or replacement to ensure there is a robust and operational network of EV chargers throughout California.

We are pleased to support AB 2815 and we thank Assemblymember Petrie-Norris for authoring this important piece of legislation. We respectfully request your aye vote on AB 2815.

Sincerely,

Marc Hershman
Director of Government Affairs

cc: The Honorable Senate Transportation Committee
The Honorable Cottie Petrie-Norris

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June 3, 2024

The Honorable Cottie Petrie-Norris
Chair, Assembly Utilities & Energy Committee
1021 O St., Ste. 4230
Sacramento, CA 95814

Re: SB 1130 (Bradford) – SUPPORT

Dear Assemblymember Petrie-Norris,

On behalf of Peninsula Clean Energy Authority (PCE), a community choice aggregator (CCA) serving roughly 800,000 Californians in San Mateo County and Los Banos in Merced County, I write in support of SB 1130 (Bradford), which expands eligibility for the Family Electric Rate Assistance (FERA) program to households with fewer than three members and requires the investor-owned utilities (IOUs) and the California Public Utilities Commission (CPUC) to work together to ensure all eligible households .

Electric utility rates have seen considerable increases over the past few years and Californians are now facing the highest rates in the country. Low-income Californians are struggling to afford the rising cost of electricity despite the assistance provided by the California Alternate Rates for Energy (CARE) program and FERA. Recent analyses show that FERA is largely undersubscribed, and SB 1130 will help enrolling more eligible customers into the FERA program, which will alleviate the cost burden for low-income customers of the IOUs. The bill would require the IOUs to report on their efforts to enroll customers in the FERA program, have the CPUC asses the IOUs' efforts, and if the CPUC determines the IOUs' efforts have been insufficient then the IOUs would be ordered to develop a strategy to increase enrollment.

The bill would also remove FERA's current eligibility limitation to those households of three or more persons and open the program up to those households with annual gross income levels between 200 percent and 250 percent of the federal poverty guideline level. This will enable more households with less financial means to enroll in the FERA program and receive rate relief.

We are pleased to support SB 1130 and we thank Senator Bradford for authoring this important piece of legislation. We respectfully request your aye vote on SB 11130.

Sincerely,

Marc Hershman
Director of Government Affairs

cc: The Honorable Members of the Assembly Utilities & Energy Committee
The Honorable Steven Bradford

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June 6, 2024

The Honorable Steven Bradford
Chair, Senate Energy, Utilities, & Communications Committee
1021 O St., Ste. 7210
Sacramento, CA 95814

Re: AB 2083 (Berman) – SUPPORT

Dear Senator Bradford,

On behalf of Peninsula Clean Energy Authority (PCE), a community choice aggregator (CCA) serving roughly 800,000 Californians in San Mateo County and Los Banos in Merced County, I write in support of AB 2083 (Berman), which would direct the California Energy Commission (CEC) to assess the potential for the state to reduce the greenhouse gas (GHG) emissions of the industrial sector by at least 85 percent below 1990 levels by 2045 to modernize California's industrial manufacturing processes.

Peninsula Clean Energy is proud to offer several programs to its customers to facilitate the transition to zero-emission appliances including heat-pumps, heat-pump water heaters, and induction stoves. We offer these programs because our mission is to reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions. We understand that technological advancements of electric industrial equipment, such as industrial heat-pumps and electric boilers, have become more available. We also understand that industrial emissions make up 23 percent of GHG emissions in California, which is the second largest source behind transportation.

To meet our 2045 carbon neutrality and GHG emission reduction goals, we will need to start planning now for how we are going to decarbonize the industrial sector and identify specific strategies to reduce GHG emissions from industrial heating.

An assessment of the industrial sector will help guide federal and state investments towards facilities that are easiest to achieve short-term emission reductions needed for California to meet its GHG targets and improve air quality for communities that need it the most. Furthermore, the assessment will help shed light on the job creation potential and business opportunities linked to emerging zero-emission industrial technologies.

AB 2083 is a key first step for California to push the transition of our industrial sector to zero-emission. It is time for California to begin assessing how to decarbonize the state's industrial sector – a critical economic contributor to our state. If we do not start planning now,

we risk a disorderly, expensive, and last-minute effort to reduce industrial emissions to meet our climate and air quality goals and will ultimately cause potential harm to our businesses. We have an opportunity to plan now to bring sustained economic growth to our industries and reduce air pollution for our most vulnerable communities.

We are pleased to support AB 2083 and we thank Assemblymember Berman for authoring this important piece of legislation. We respectfully request your aye vote on AB 2083.

Sincerely,



Marc Hershman
Director of Government Affairs

cc: The Honorable Members of the Senate Energy, Utilities, & Communications Committee
The Honorable Marc Berman

Status of 2024 Legislative Session Bills
As of June 17, 2024
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
AB 817 (Pacheco) Brown Act Exemption: Advisory Committees	This bill, until January 1, 2026, would authorize a subsidiary body, defined as one that serves exclusively in an advisory capacity and has no final decision-making authority, to use similar alternative teleconferencing provisions and would impose requirements for notice, agenda, and public participation, as prescribed. To use teleconferencing pursuant to this act, the bill would require the legislative body that established the subsidiary body by charter, ordinance, resolution, or other formal action to make specified findings by majority vote before the subsidiary body uses teleconferencing for the first time and every 12 months thereafter.	Failed to pass Senate Local Government Committee, but granted reconsideration Awaiting referral to a Senate Policy Committee	Support	Support	This bill started last year and moved through the Assembly in January as a two-year bill. This bill's impact on Peninsula Clean Energy will be limited to the Community Advisory Committee
AB 1359 (Papan) CEQA: Geothermal Exploratory Projects	This bill would repeal the requirement that the Geologic Energy Management Division in the Department of Conservation be the lead agency for all geothermal exploratory projects for purposes of CEQA. This bill would declare that it is to take effect immediately as an urgency statute.	Scheduled for June 18, 2024, hearing in Senate Committee on Environmental Quality Passed the Senate Committee on Natural Resources & Water	Considering Support	None	This bill was brought to Asm. Papan at the request of Sonoma Clean Power to facilitate additional geothermal projects
AB 1550 (Bennett)	Would define green hydrogen as hydrogen produced utilizing non biogas/biomass	Dead	None	None	

Status of 2024 Legislative Session Bills
As of June 17, 2024
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
Green Hydrogen Standard	renewable electricity to electrolyze water into hydrogen. Also defines renewable hydrogen as hydrogen produced utilizing renewable electricity, except for dairy biogas, to electrolyze water into hydrogen The bill would require all hydrogen used in transportation and energy sectors to be green or renewable by 2045.	2-year bill that failed to pass the Assembly by 1/31 deadline			
AB 1567 (Garcia) Climate Bond	Proposes a $15.9 billion climate resilience bond to fund programs responding to drought/flood, wildfire, sea-level rise, etc. The bond proposes $2 billion for energy resilience programs such as zero-emission vehicle infrastructure and clean energy transmission projects.	2-year bill currently pending in Senate Committee on Natural Resources & Water	None	None	Bond measures must be signed by the Governor by June 27 for placement on the November 5 ballot.
AB 1852 (Pacheco) Clean Power Alliance	Current law makes certain information presented to the joint powers agency in closed session confidential, and authorizes a member of the legislative body of a local agency member to disclose certain information obtained in a closed session to legal counsel of that member local agency or to other members of the legislative body of that local agency in a closed session. Current law further authorizes the Clean Power Alliance of Southern California to	Passed Legislature. Awaiting Governor Newsom's signature or veto	None	None	This bill is sponsored by the Clean Power Alliance

Status of 2024 Legislative Session Bills
As of June 17, 2024
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	authorize a designated alternate member of its legislative body who is not a member of the legislative body of a local agency member to attend its closed sessions and to make similar disclosures described above. Current law repeals these provisions relating to the Clean Power Alliance of Southern California on January 1, 2025. This bill would extend that repeal date to January 1, 2030.				
AB 1912 (Pacheco)	Would require, before holding a committee hearing on a bill that proposes a new or modifies an existing requirement imposed on an IOU or proposes a new or modifies an existing program that would be paid for by IOU ratepayers, that a request be made to the University of California, Berkeley, to prepare a written analysis of the bill assessing impacts to rates, other potential funding sources, etc.	Referred to Senate Committee Energy, Utilities, & Communications	None	None	
AB 1921 (Papan) Linear Generators	This bill would expand the definition of "renewable electrical generation facility", for purposes of compliance with the Renewable Portfolio Standard (RPS), to include a facility that uses linear generators using RPS eligible fuels.	Scheduled for June 18, 2024, hearing in Senate Committee on Energy, Utilities, & Communications	None	None	This bill is sponsored by Mainspring, a company located in Menlo Park

Status of 2024 Legislative Session Bills
As of June 17, 2024
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
AB 1999 (Irwin) Fixed Charges	The bill would permit the PUC to authorize fixed charges that, as of January 1, 2015, do not exceed $5 per residential customer account per month for low-income customers enrolled in the California Alternate Rates for Energy (CARE) program and that do not exceed $10 per residential customer account per month for customers not enrolled in the CARE program. The bill would authorize these maximum allowable fixed charges to be adjusted by no more than the annual percentage increase in the Consumer Price Index for the prior calendar year, beginning January 1, 2016.	Held on Assembly Appropriations Suspense File and is now dead	None	None	This bill is in response to the Income Graduated Fixed Charge proceeding at the CPUC as authorized by AB 205 (2022). The CPUC voted 4-0 to institute a fixed charge of $24.15 per month with reduced fixed charges for FERA and CARE customers
AB 2037 (Papan) County Sealers: EV Chargers	This bill would grant county sealers jurisdiction over publicly operated electric vehicle (EV) chargers. Existing law requires county sealers to test all weighing and measuring devices used for commercial purposes in the counties in which they have jurisdiction. This includes privately-operated EV chargers. However, a 1977 Attorney General (AG) opinion limited the	Scheduled for June 18, 2024, hearing in the Senate Committee on Judiciary. Passed the Senate Committee on	None	None	

Status of 2024 Legislative Session Bills
As of June 17, 2024
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	jurisdiction of county sealers by excluding publicly owned weighing and measuring devices. This did not present an issue until recently, when cities and counties began owning and operating many commercial EV chargers.	Business & Professions			
AB 2054 (Bauer-Kahan) PUC Commissioners	This bill would prohibit a member of the Energy Commission or the CPUC from being employed by an entity subject to regulation by the Energy Commission or CPUC for a period of 1 year after ceasing to be a member of the commission.	Referred to Assembly Committee on Appropriations Passed Assembly Committee on Utilities & Energy	Removing Support	None	The amendments have weakened the bill to the point we are no longer supporting the bill
AB 2083 (Berman) Industrial Decarbonization	This bill would require the commission, on or before July 1, 2026, to assess the potential for the state to reduce the emissions of greenhouse gasses from the state's industrial facilities' heat application equipment and processes Manufacturing Sector, as classified by the North American Industry Classification System, by at least 85% below 1990 levels by January 1, 2045, as specified.	Scheduled for June 18, 2024, hearing in Senate Committee Energy, Utilities, & Communications	Support	None	We decided to support this bill as electrification will be a main strategy to decarbonizing the industrial sector
AB 2513 (Pellerin) Gas Stoves and Ranges: Warning Label	This bill would prohibit a person from selling, attempting to sell, or offering to sell to a consumer in this state a gas stove, as defined, that is manufactured on or after January 1, 2025, unless the gas stove bears a label that sets	Awaiting vote on the Senate Floor Passed Senate Committee on	Support	None	

Status of 2024 Legislative Session Bills
As of June 17, 2024
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	forth a specified statement relating to air pollutants that can be released by gas stoves and that is attached to the gas stove in a conspicuous location.	Environmental Quality			
AB 2619 (Connolly) Net Energy Metering	This bill would require the CPUC to develop a new standard contract or tariff providing NEM for eligible customer-generators of IOUs.	Dead. Never heard in Assembly Committee on Utilities & Energy	None	None	
AB 2666 (Boerner) Public Utilities: Rate of Return	This bill would require the commission, if it determines that an electrical corporation or a gas corporation has received revenues from its ratepayers that are in excess of its approved rate of return for a prior year, to require the rate of return be adjusted in a subsequent general rate case.	Referred to Senate Committee on Energy, Utilities & Communications	Support Pending	None	This bill is opposed by the California State Association of Electrical Workers, California State Pipe Trades Council, and Coalition of California Utility Employees
AB 2779 (Petrie-Norris) CAISO Transmission Planning	Existing law establishes the Independent System operator as a nonprofit, public benefit corporation to manage the transmission grid and related energy markets, as provided. This bill would require the Independent System	Pending in Senate Appropriations Committee	None	Support	

Status of 2024 Legislative Session Bills
As of June 17, 2024
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	Operator, upon approval of each transmission plan, to report to the Public Utilities Commission and to the relevant policy committees of each house of the Legislature any new use of any grid enhancing technology that is deemed reasonable by the Independent System Operator in that plan and the cost or efficiency savings of the deployment of that grid enhancing technology.	Passed Senate Committee on Energy, Utilities & Communications			
AB 2815 (Petrie-Norris) EV Charging Repair Grants	Would require the Energy Commission to establish a program to provide grants for repairs to EV charging infrastructure that has been in operation for at least 5 years and that is in a publicly available parking space. The bill would authorize grant funding to be used for the cost to repair or replace an EV charging station. The bill would require the commission to allocate at least 50% of grant funding to low-income communities and disadvantaged communities.	Scheduled for June 24, 2024, hearing in Senate Committee Energy, Utilities, & Communications Passed Senate Committee on Transportation	Support	None	The funding for this bill would come from the Clean Transportation Program which is funded by registration fees and smog checks.
AB 2847 (Addis) IOU Revenue Requirements for Proposed Capital Expenditures	This bill would require an IOU's application requesting authorization for or recovery of capital expenditures to include the IOU's best estimate of the application's impact on annual revenue requirement for each year that the capital expenditures are expected to remain in the application's rate base and the net present value of those impacts.	Referred to Senate Committee on Energy, Utilities & Communications	Support	None	The bill language specifically references undergrounding

Status of 2024 Legislative Session Bills
As of June 17, 2024
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
AB 2891 (Friedman) Electrical Demand Forecasts	This bill would require the Energy Commission, on or before July 1, 2026, and in consultation with the PUC, CAISO, load-serving entities, and resource aggregators, to adopt a set of upfront technical requirements and load automation standards to provide the option for a load-serving entity to reduce or modify its electrical demand forecast upon aggregated system operation.	Held on Assembly Appropriations Suspense File and is now dead	None	None	
AB 3256 (Irwin) Memorandum and Balancing Accounts: Reports to the Legislature	This bill would require the commission to include, as part of its annual update to the Legislature on the status of its review of balancing accounts, the amount of funds in, and the expenditures from, the memorandum accounts and balancing accounts of each public utility as they relate to wildfire management and emergencies. The bill would require the commission to annually determine if each memorandum account and each balancing account has achieved its intended purpose in the previous year.	Referred to Senate Committee on Energy, Utilities & Communications	Support Pending	None	
SB 382 (Becker) Property Disclosures: Electrical Systems	This bill would, on or after January 1, 2026, require a seller of a single-family residential property to deliver a specified disclosure statement to the prospective buyer regarding the electrical systems of the property.	Pending on the Assembly Floor. This bill is on the Consent File	None	None	

Status of 2024 Legislative Session Bills
As of June 17, 2024
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
SB 867 (Allen) Climate Bond	Proposes a $15.5 billion climate resilience bond to fund programs responding to drought/flood, wildfire, sea-level rise, etc. The bond proposes $2 billion for energy resilience programs such as zero-emission vehicle infrastructure and clean energy transmission projects.	2-year bill currently pending in Assembly Committee on Natural Resources	None	None	Bond measures must be signed by the Governor by June 27 for placement on the November 5 ballot.
SB 938 (Min) Utility Accountability Act	Would prohibit, except as provided, an electrical or gas corporation from recording various expenses associated with political influence activities or with advertising to accounts that contain expenses that the electrical or gas corporation recovers from ratepayers. The bill would require an electrical or gas corporation to provide the Public Utilities Commission with all information deemed necessary to monitor compliance with that prohibition. The bill also would require an electrical or gas corporation, for each business unit of the corporation that performs work associated with political influence activities or advertising, to annually file with the commission a report containing specified information. The bill would require the commission to make the report publicly available.	Dead. Failed to pass the Senate Committee on Energy, Utilities and Communications	None	None	This bill is co-sponsored by TURN and Earthjustice.

Status of 2024 Legislative Session Bills
As of June 17, 2024
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
SB 993 (Becker) Clean energy development incentive rate tariff	This bill requires the PUC to develop a special tariff (set of electricity rates) to support the development of green hydrogen and the electrification of industrial heat by providing attractive rates at times when we have abundant clean energy (and high rates at other times). This tariff will offer these new customers a great deal: pricing to help them be cost-competitive, but only if they operate in a way that relies on clean energy, avoids new grid infrastructure costs, and helps us maintain a reliable grid.	Held on Senate Appropriations Suspense File and is now dead	None	None	
SB 1018 (Becker)	The cheapest and cleanest way to provide renewable energy to power hydrogen electrolyzers or to displace fossil fuels in industry would be directly connecting those renewables to those new clean energy loads. Unfortunately, this is prevented today by the ""over-the-fence rule,"" which allows ""behind the meter"" usage of electricity only in very limited cases (such as when generated on the same property as rooftop solar). That doesn't work when you need acres of solar panels to provide enough power for a big factory. This bill will create a targeted new exception to the over-the-fence rule to enable off-grid use of	Scheduled for July 1, 2024, hearing in Assembly Committee on Utilities & Energy	None	None	

Status of 2024 Legislative Session Bills
As of June 17, 2024
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	renewables for these new, climate-beneficial purposes.				
SB 1095 (Becker) Cozy Homes Cleanup Act	This bill updates code ambiguities to ensure individuals can switch from gas to electric appliances, allowing Californians to opt for cozier and healthier zero-emission homes. To do so, the bill: (1) Prevent HOAs from implementing provisions which prevent the switch from gas to electric appliances, (2) Clarifies the authority of individuals to replace gas with electric appliances in mobile and manufactured homes, and (3) Provides the Department of Housing and Community Development authority to update its regulations should further legal uncertainty inhibit appliance replacement.	Held on Senate Appropriations Suspense File and is now dead	Support	Support	
SB 1130 (Bradford) IOU Reports on Family Electric Rate Assistance	Would require the PUC to review each IOU's report to ensure it has sufficiently enrolled eligible households in the FERA program commensurate with the proportion of households the commission determines to be eligible within the electrical corporation's service territory. If the commission, in its review of a report, determines an IOU has not sufficiently enrolled eligible households in the FERA program, the bill would require the commission to require the IOU to develop a strategy and plan to sufficiently enroll eligible	Scheduled for June 19, 2024, hearing in Assembly Committee on Utilities & Energy	Support	Support	

Status of 2024 Legislative Session Bills
As of June 17, 2024
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	households within 3 years of the adoption of the strategy and plan.				
SB 1165 (Padilla)	Existing law authorizes a person proposing an eligible facility, including an electrical transmission line carrying electricity from certain other facilities that are located in the state to a point of junction with any interconnected electrical transmission system, to file an application, on or before June 30, 2029, with the State Energy Resources Conservation and Development Commission (Energy Commission) to certify a site and related facility for purposes of specified environmental review procedures. This bill would expand the facilities eligible to be certified pursuant to the provisions described above by the Energy Commission and deemed environmental leadership development projects to include electrical transmission projects. The bill would require an applicant applying for certification of an electrical transmission project to take certain actions, including, among other actions, to avoid or minimize significant environmental impacts in any disadvantaged community. This bill contains other related provisions and other existing laws.	Held on Senate Appropriations Suspense File and is now dead	None	Support	
SB 1305 (Stern)	This bill would require each Investor-Owned Utility (IOU) to procure from virtual power	Dead.	None	None	

Status of 2024 Legislative Session Bills
As of June 17, 2024
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
Virtual Power Plant Procurement Mandate	plants, defined as actively coordinated aggregations of behind-the-meter distributed energy resources that can perform certain functions, sufficient capacity to meet specified minimum capacity requirements by certain dates. The bill would require capacity procured from a virtual power plant by an IOU pursuant to these provisions to be used to meet the resource adequacy requirements established for the load-serving entity.	Senator Stern never presented the bill in Senate Committee on Energy, Utilities and Communications			
SB 1374 (Becker) Restoring Self-consumption Benefits for On-Site Generation	When the PUC changed net energy metering for behind-the-meter solar, it retained the ability for solar customers to avoid purchasing energy from the utility for solar power that was self-consumed (during the same time in which it was generated) while drastically lowering the value of excess solar power that is exported to the utility. For virtual net energy metering (VNEM) and net energy metering aggregation (NEMA) customers (where energy from a carport solar system over a school parking lot could be virtually netted against power usage by separately metered school buildings), the PUC eliminated any credit for self-consumption, making it an even worse deal for these customers. This bill would re-establish credit for self-consumption for VNEM and NEMA,	Scheduled for June 19, 2024, hearing in Assembly Committee on Utilities & Energy	None	None	

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	equivalent to what is provided for single family homes.				

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: June 17, 2024
MEETING DATE: June 27, 2024
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Leslie Brown Director of Account Services

SUBJECT: Account Services Quarterly Update

BACKGROUND

The purpose of the Account Services team is to provide customer billing support through direct customer interaction, as well as oversee the various processes related to the management of PCE's customer data. This includes relationships with our back-office data manager, Calpine Energy Solutions, and PG&E.

DISCUSSION

The following is a quarterly update of Account Services team activities taking place during the third quarter of FY24, please see topics below for additional detail.

Proposed PCE Rate Change to be Effective August 1, 2024 (Pending Board Approval)

As a result of the 'rate freeze' approved by the Board earlier this year, most PCE customers have been receiving a 10-15% discount in their generation costs vs what PG&E would be charging since January 1, 2024. PG&E will be implementing an adjustment to their generation rates on July 1, 2024 as a previously approved surcharge for 2023 under-collection expires. Staff is bringing forth a proposal this month recommending that PCE adjust rates to recalibrate to the new July 1 PG&E rates as well as move all PCE customers onto a single rate schedule. More details about this proposal can be found in the full staff report for this item.

Net Energy Metering (NEM) & Solar Billing Plan Updates

PG&E began its transition to Solar Billing Plan on April 15th, 2024 and so far a handful of PCE customers have been moved over to the new program from their legacy NEM 1.0 billing plans. Data transmission is so far occurring successfully between PG&E and Calpine for these customers, but staff will continue to monitor this process as it unfolds and more customers become eligible for the new program.

NEM Cash-outs for 2024 were executed successfully with the new updates approved by the Board in March. A majority of our cash-out customers are now receiving their annual payouts via an on-bill credit instead of a separate check mailed to their homes. PCE heard from only a few customers who were not happy with this new process and we are implementing a way for

customers who would still like to receive a separate check to be able to do so in future years. See attached breakdown of NEM cash-outs for this year

Contact Center for In-House Services

After receiving approval from the Board of Directors at the April 25th meeting to move forward with the plan to transition to an in-house contact center this fall, Stephanie Elmore (PCE Contact Center Consultant) has been busy preparing training documentation as well as engaging with Calpine staff on further training for the InContact IVR platform. Stephanie is in the process of being converted to permanent PCE employee status to be effective beginning the July 16th, 2024 pay period.

Key Accounts Engagement

Strategic Accounts Manager, Justin Pine, has been working diligently to support Caltrain's energy consultants to understand PCE's rates and projected power mix in 2024 and beyond as we prepare for the South San Francisco depot to come online in September 2024. PCE staff are also working with Caltrain consultant team to help Caltrain maximize revenue opportunities from the California Air Resource Board administered Low Carbon Fuel Standard. At the April 25th Board of Directors meeting a Low Carbon Fuel Standard (LCFS) Tariff for public transit was adopted and will be applied to Caltrain's accounts when service commences this Fall.

Justin has also to continued to engage with Direct Access customers who are interested in exploring service with PCE. At a recent Board of Trustees meeting for the San Mateo County Community College District (SMCCCD) Trustees voted to transition service to PCE when their current contract with energy provider, Constellation Energy, expires in July 2024. PCE is excited to welcome SMCCCD into service and our programs team has already begun to engage with District staff on various upcoming projects. Special acknowledgement to Marc Hershman, PCE Director of Government Affairs, for his engagement with District stakeholders to support this transition.

RFP for Data Manager Services

Account Service staff will soon be publishing an RFP for Data Manager services. These services are currently being provided by Calpine Energy Solutions, which has been PCE's Data Manager and Billing Operations partner since PCE launched service in 2016. The RFP release is to ensure PCE is evaluating all options for service providers and pricing for this important partnership and is not necessarily indicative of staff's intent to change providers.

ATTACHMENTS:

2024 NEM Cash Out.pptx

NEM Cash-out 2024

Row Labels	Sum of Cash Out
ATHERTON INC	$ 29,468.50
BELMONT INC	$ 137,888.96
BRISBANE INC	$ 21,078.94
BURLINGAME INC	$ 66,609.80
COLMA INC	$ 2,245.67
DALY CITY INC	$ 97,843.25
EAST PALO ALTO INC	$ 38,813.48
FOSTER CITY INC	$ 99,715.82
HALF MOON BAY INC	$ 62,034.98
HILLSBOROUGH INC	$ 59,453.38
LOS BANOS INC	$ 610,014.29
MENLO PARK INC	$ 99,927.33
MILLBRAE INC	$ 82,188.47
PACIFICA INC	$ 106,615.89
PORTOLA VALLEY INC	$ 44,579.00
REDWOOD CITY INC	$ 245,126.98
SAN BRUNO INC	$ 128,063.40
SAN CARLOS INC	$ 186,925.89
SAN MATEO INC	$ 263,670.82
SO SAN FRANCISCO INC	$ 115,552.67
UNINC SAN MATEO CO	$ 229,377.40
WOODSIDE INC	$ 49,633.13
Grand Total	**$ 2,776,828.05**

Row Labels	Sum of Cash Out	Count of Cash Out	Average Cash Out
COM	$ 138,906.05	108	$ 1,286.17
RES	$ 2,637,922.00	12656	$ 208.43
Grand Total	**$ 2,776,828.05**	**12764**	**$ 217.55**

California Community Power

901 H St, Ste 120 PMB 157, Sacramento, CA 95814 | cacommunitypower.org

TO: CC Power Board of Directors and Alternates **DATE:** 5/20/24
FROM: Alex Morris – General Manager
SUBJECT: **Report on CC Power Regular Board of Directors Meeting – May 20, 2024**

The CC Power Board of Directors held its regularly scheduled meeting on May 20, 2024, via Zoom. Details on the Board packet, presentation materials, and public comment letters can be found under the Meetings tab at the CC Power website: Meetings and Agendas – ca community power

Highlights of the meeting included the following:

- **Matters subsequent to posting the Agenda.** None.
- **Public Comment.** None.
- **Consent Agenda** - The Board approved the following items:
    - Minutes of the Regular Board Meeting held on April 24, 2024.

- **Regular Agenda Items**:
    - **General Manager Report –** the Board heard updates on implementation of file-sharing improvements for CC Power member-access, a planned invoice for the Build-Transfer (BTA) Project Phase 2a project, a planned blog to further explain CC Power's considerations of offshore wind, and CC Power policy operating policy progress and implementations.
    - **2024-2025 Recommended Budget Discussion –** The Board reviewed and discussed how the CC Power Strategic Plan (2022) as well as member interviews and surveys have informed a 2024-2025 work-plan and related Recommended Budget. Based on Board Discussion, additional changes to the proposed budget will be considered prior to a planned Board vote at the June 2024 Board Mtg. The Recommended Budget reflects anticipated growth in CC Power value-add for members and in core capabilities, as well as resourcing for the four contracts (Long-Duration Storage and Firm Clean Resources) and the BTA Phase 2a project (ongoing). Lastly, the recommended budget includes estimated or expected Phase 2 and Phase 3 work, a.k.a. project work, to better inform members of likely full-year costs. This estimation approach differs from past approaches where estimated *new* project work was not reflected in the budget, and mid-year 'cash-calls' were used outside of budget approval processes to fund new projects.

- **Closed Session Items:**

    - The Board heard updates on CC Power's contracts, with specific updates and status considerations on one firm-clean resources contract and one long-duration storage contract. No Board action occurred.

PENINSULA CLEAN ENERGY

COMMONLY USED ACRONYMS AND KEY TERMS

AB xx – Assembly Bill xx
ALJ – Administrative Law Judge
AMP - Arrears Management Plans
Apple Valley Choice Energy
AQM – Air Quality Management
Ava – Formally East Bay Community Energy
BAAQMD – Bay Area Air Quality Management District
BLPTA – Buyer Liability Pass Through Agreement
CAC – Citizens Advisory Committee
CAISO – California Independent System Operator
CalCCA – California Community Choice Association
CAM – Cost Allocation Mechanism
CAP – Climate Action Plan
CAPP – California Arrearage Payment Program
CARB – California Air Resources Board, or California ARB
CARE - California Alternative Rates for Energy Program
CBA – California Balancing Authority
3CE- Central Coast Community Energy (Formerly Monterey Bay Community Power-MBCP)
CCA – Community Choice Aggregation (aka Community Choice Programs (CCP) or
CCE – Community Choice Energy (CCE)
CCCFA – California Community Choice Financing Authority
CC Power – California Community Power
CEC – California Energy Commission
Clean Energy Alliance – CCA in
CPA – Clean Power Alliance
Clean Power SF
CPP - Critical Peak Pricing
CPSF – Clean Power San Francisco
CPUC – California Public Utility Commission (Regulator for state utilities) (Also PUC)
CSD – California Department of Community Services and Development
CSGT - Community Solar Green Tariff
Customer Centricity - culture, framework and business strategy based on providing a positive customer experience and building long-term relationships
DA – Direct Access
DAC-GT - Disadvantaged Communities Green Tariff
DER – Distributed Energy Resources
Desert Community Energy
DG – Distributed Generation
DOE – Department of Energy
DR – Demand Response
DRP – Demand Response Provider
DRP/IDER – Distribution Resources Planning / Integrated Distributed Energy Resources
EBCE – East Bay Community Energy now known as Ava Community Energy
ECOplus – PCE's default electricity product, 50% renewable and 50% carbon-free (in 2021)
ECO100 – PCE's 100% renewable energy product

EDR – Economic Development Rate
EE – Energy Efficiency
EEI – Edison Electric Institute; Standard contract to procure energy & RA
EIR – Environmental Impact Report
ELCC – Effective Load Carrying Capability
EPIC – Energy for Palmdale's independent Choice
ESP – Electric Service Provider
ESS – Energy Storage Systems
ESSA – Energy Storage Services Agreement
ERRA – Energy Resource Recovery Account
EV – Electric Vehicle
EVSE – Electric Vehicle Supply Equipment (Charging Station)
FERA- Family Electric Rate Assistance Program
FERC – Federal Energy Regulatory Commission
FFS – Franchise Fee Surcharge
GHG – Greenhouse gas
GHG-Free – Greenhouse gas free
GTSR – Green Tariff Shared Renewables
GWh – Gigawatt Hours (Energy) = 1000 MWh
Heavy Duty Vehicle – large vehicles such as busses and long-haul trucks
HPWH – Heat Pump Water Heater
HP HVAC – Heat Pump Heating, Ventilation, and Air Conditioning
HR xx – House of Representatives Bill xx
IDER – Integrated Distributed Energy Resources
IGFC – Income Graduated Fixed Charge
IOU – Investor-Owned Utility (e.g. PG&E, SCE, SDG&E)
IIJA – Infrastructure Investment and Jobs Act
IRA – Inflation Reduction Act
IRP – Integrated Resource Plan
IVR – Interactive Voice Response
ITC – Investment Tax Credit (it's a solar tax credit)
JCC – Joint Cost Comparison
JPA – Joint Powers Authority
JRC – Joint Rate Comparison
JRM – Joint Rate Mailer
kW – kilowatt (Power)
kWh – Kilowatt-hour (Energy)
Lancaster Energy
Light Duty Vehicle - passenger vehicles such as cars and small pickup trucks
LDS – Long Duration Storage
LDES – Long Duration Energy Storage
LIHEAP- Low Income Home Energy Assistance Program
Load Shaping – changing when grid energy is used
LSE – Load Serving Entity
MCE – Marin Clean Energy
Methane Gas - formerly known as 'natural gas'
Microgrid – building or community energy system
Mid Duty Vehicle – vehicles such as passenger vans
MW – Megawatt (Power) = 1000 kW
MWh – Megawatt-hour (Energy) = 1000 kWh

MTR – Mid-Term Reliability
MUD – Multi-unit Dwelling
NBCs – non-bypassable charges
NBT – Net Billing Tariff
NEM – Net Energy Metering
NERC – North American Electric Reliability Corporation
NDA – Non-Disclosure Agreement
NG – Natural Gas
OBF – On-bill Financing
OBR – On-bill Repayment
OCPA – Orange County Power Authority
OES – Office of Emergency Services
OIR – Order Instituting Rulemaking
PACE – Property Assessed Clean Energy
PCC – Portfolio Content Category (aka "buckets") – categories for RPS compliance
PCC1 – Portfolio Content Category 1 REC (also called bucket 1 REC)
PCC2 – Portfolio Content Category 2 REC (also called bucket 2 REC)
PCC3 – Portfolio Content Category 3 REC (also called bucket 3 REC or unbundled REC)
PCEA – Peninsula Clean Energy Authority
PCIA – Power Charge Indifference Adjustment
PCL – Power Content Label
Pioneer Community Energy
PLA – Project Labor Agreement
POU – Publicly Owned Utility
Pomona Choice Energy
PPA – Power Purchase Agreement
PPSA – Project Participation Share Agreement (CC Power)
PRIME – Pico Rivera innovative Municipal Energy
PSPS – Public Safety Power Shutoff
PV – Photovoltaics (solar panels)
Rancho Mirage Energy Authority
RA – Resource Adequacy
RE – Renewable Energy
REC – Renewable Energy Credit/Certificate
Redwood Coast Energy Authority
RICAPS - Regionally Integrated Climate Action Planning Suite
RPS – California Renewable Portfolio Standard
S xx – US Senate Bill xx
SB xx – CA Senate Bill xx
Santa Barbara Clean Energy
SBP – Solar Billing Plan
SCP – Sonoma Clean Power
SDCP – San Diego Community Power
SJCE – San Jose Clean Energy
San Jacinto Power
SJVAPCD - San Joaquin Valley Air Pollution Control District
SMD – Share My Data, interval meter data
SQMD – Settlement Quality Meter Data
SVCE – Silicon Valley Clean Energy
TOB – Tariff on Bill

TOU Rates – Time of Use Rates
Valley Clean Energy
VGI – Vehicle-Grid Integration
V2G – Vehicle-to-Grid
VPP – Virtual Power Plant
WECC – Western Energy Coordinating Council
WREGIS – Western Renewable Energy Generation Information System
WSPP – Western Systems Power Pool; standard contract to procure energy and RA
WWGPI - West-Wide Governance Pathways Initiative