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, August 25, 2022
6:30 p.m.

Zoom Link: https://pencleanenergy.zoom.us/j/82688645399
Meeting ID: 826-8864-5399 **Passcode:** 2075 **Phone:** +1(346)248-7799

NOTE: Please see attached document for additional detailed teleconference instructions.

In accordance with AB 361, the Board will adopt findings that meeting in person would present imminent risks to the health or safety of attendees of in-person meetings. Consistent with those findings, this Board Meeting will be held remotely. PCEA shall make every effort to ensure that its video conferenced meetings are accessible to people with disabilities as required by Governor Newsom's March 17, 2020 Executive Order N-29-20. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials should contact Nelly Wogberg, Board Clerk, at least 2 working days before the meeting at nwogberg@peninsulacleanenergy.com. Notification in advance of the meeting will enable PCEA to make best efforts to reasonably accommodate accessibility to this meeting and the materials related to it.

*If you wish to speak to the Board of Directors, please use the "Raise Your Hand" function in the Zoom platform or press *6 if you phoned into the meeting. If you have anything that you wish to be distributed to the Board of Directors and included in the official record, please send to nwogberg@peninsulacleanenergy.com.*

CALL TO ORDER / ROLL CALL

PUBLIC COMMENT

This item is reserved for persons wishing to address the Committee 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 Board 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. Adopt Findings Pursuant to AB 361 to Continue Fully Teleconferenced Committee Meetings Due to Health Risks Posed by In-Person Meetings

2. Approval of the Minutes for the July 28, 2022 Board of Directors Meeting

3. Approval of Contract with Optony for the Local Government Fleets Program for a Total of $390,000 Over 3 Years

4. Appointment of Kristina Cordero as Peninsula Clean Energy Treasurer

5. Approval of 2021 Power Content Label

6. Approval of Contract Amendment with NewGen Strategies in the Amount of $75,000 for the Peninsula Clean Energy Data Warehouse Ongoing Support & Maintenance for the Period of November 1, 2022 Through December 31, 2023 in an Amount Not-to-Exceed $220,000

7. Approval of Peninsula Clean Energy Social Media Policy

8. Approval of 2022 Amended Conflict of Interest Code for Peninsula Clean Energy

REGULAR AGENDA

9. Chair Report (Discussion)

10. CEO Report (Discussion)

11. Citizens Advisory Committee Report (Discussion)

12. Report from the Audit and Finance Committee on Investment Management Strategies (Discussion)

13. Approval of a Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase and Sale Agreement for Renewable Supply with Renewable America, LLC and any Necessary Ancillary Documents with a Power Delivery Term of 20 Years Starting at the Commercial Operation Date on or about December 1, 2023, in an Amount Not to Exceed $12,700,000 (Action)

14. Approval of two Amendments to Long-term Power Purchase Agreements:
    a. Third Amendment to Chaparral Solar, LLC Power Purchase and Sale Agreement (Action)
    b. Second Amendment to Arica Solar, LLC Power Purchase and Sale Agreement (Action)

15. Approval of a Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase and Sale Agreement for Renewable Supply with Buena Vista Energy, LLC, And Any Necessary Ancillary Documents with a Power Delivery Term of 5 Years Beginning on January 1, 2023, in an Amount Not to Exceed $37 Million (Action)

16. Approval of Increased Budget Flexibility in Community Energy Programs (Action)

17. Board Members' Reports (Discussion)

INFORMATIONAL REPORTS

18. Update on Marketing, Outreach Activities, and Account Services

19. Update on Regulatory Policy Activities

20. Update on Legislative Activities

21. Update on Community Energy Programs

22. Update on Energy Supply Procurement

23. Report on California Community Power (CCP) Joint Powers Authority

24. Industry Acronyms and Terms

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's 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

A. **Videoconference with Computer Audio – see Option 1 below**
B. **Videoconference with Phone Call Audio– see Option 2 below**
C. **Calling in via Telephone/Landline – see Option 3 below**

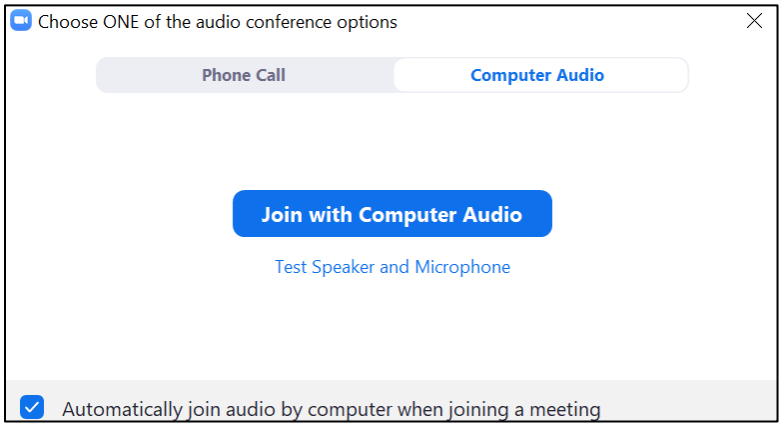
Videoconference Options:

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.

Option 1 Videoconference with Computer Audio:

1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation: https://pencleanenergy.zoom.us/j/82688645399
2. The Zoom application will open on its own or you will be instructed to open Zoom.
3. 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.



4. Click the blue, "Join with Computer Audio" button.
5. In order to enable video, click on "Start Video" in the bottom left-hand corner of the screen. This menu bar is also where you can mute/unmute your audio.

Option 2 Videoconference with Phone Call Audio:

1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation: https://pencleanenergy.zoom.us/j/82688645399
2. The Zoom Application will open on its own or you will be instructed to Open Zoom.



3. After the application opens, the pop-up screen below will appear asking you to choose ONE of the audioconference options. Click on the Phone Call option at the top of the pop-up screen.
4. Please dial +1(346)248-7799
5. You will be instructed to enter the meeting ID: **826-8864-5399 followed by #**
6. You will be instructed to enter in your participant ID. Your participant ID is unique to you and is what connects your phone number to your Zoom account
7. After a few seconds, your phone audio should be connected to the Zoom application on your computer
8. In order to enable video, click on "Start Video" in the bottom left-hand corner of the screen. This menu bar is also where you can mute/unmute your audio

Audio Only Options:

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.

Option 3: Calling in via Telephone/Landline:

1. Dial +1(346)248-7799
2. You will be instructed to enter the meeting ID: **826-8864-5399 followed by #**
3. 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
4. You will be instructed to enter the meeting passcode **2075 followed by #**

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: August 15, 2022
BOARD MEETING DATE: August 25, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy Authority

SUBJECT: Resolution to Make Findings Allowing Continued Remote Meetings Under Brown Act

RECOMMENDATION:
Adopt a resolution finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees.

BACKGROUND:
On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which rescinded his prior Executive Order N-29-20 and set a date of October 1, 2021 for public agencies to transition back to public meetings held in full compliance with the Brown Act. The original Executive Order provided that all provisions of the Brown Act that required the physical presence of members or other personnel as a condition of participation or as a quorum for a public meeting were waived for public health reasons..

On September 16, 2021, the Governor signed AB 361, a bill that formalizes and modifies the teleconference procedures implemented by California public agencies in response to the Governor's Executive Orders addressing Brown Act compliance during shelter-in-place periods. AB 361 allows a local agency to continue to use teleconferencing under the same basic rules as provided in the Executive Orders when certain circumstances occur or when certain findings have been made and adopted by the local agency.

AB 361 requires that, if the state of emergency remains active for more than thirty (30) days, the agency must make findings by majority vote to continue using the bill's exemption to the Brown Act teleconferencing rules. The findings are to the effect that the need for teleconferencing persists due to the nature of the ongoing public health emergency and the social distancing recommendations of local public health officials. **Effectively, this means that agencies, including PCEA, must agendize a Brown Act**

meeting and make findings regarding the circumstances of the emergency on a thirty (30) day basis. If at least thirty (30) days have transpired since its last meeting, the Boards must vote whether to continue to rely upon the law's provision for teleconference procedures in lieu of in-person meetings.

AB 361 allows for meetings to be conducted virtually *as long as* there is a gubernatorially-proclaimed public emergency in combination with (1) local health official recommendations for social distancing or (2) adopted findings that meeting in person would present risks to health. AB 361 will sunset on January 1, 2024.

On September 25, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361. Out of an abundance of caution given AB 361's narrative that describes each legislative body's responsibility to reauthorize remote meetings, staff and counsel brings this memo and corresponding resolution to the attention of the Board of Directors.

On October 28, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On November 18, 2021 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On December 16, 2021 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On January 27, 2022 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On February 24, 2022 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On March 24, 2022 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On April 28, 2022 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On May 26, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On June 23, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On July 28, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

DISCUSSION:

Because of continuing concerns regarding COVID-19 transmission, especially when individuals are grouped together in close quarters, it is recommended that the Peninsula Clean Energy Board of Directors avail itself of the provisions of AB 361 allowing continuation of online meetings by adopting findings to the effect that conducting in-person meetings would present risk to the health and safety of attendees. A resolution to that effect and directing staff to agendize the renewal of such findings in the event that thirty (30) days has passed since the Board's last meeting, is attached hereto.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO,

STATE OF CALIFORNIA

*** * * * * ***

RESOLUTION FINDING THAT, AS A RESULT OF THE CONTINUING COVID-19 PANDEMIC STATE OF EMERGENCY DECLARED BY GOVERNOR NEWSOM, MEETING IN PERSON FOR MEETINGS OF THE PENINSULA CLEAN ENERGY BOARD OF DIRECTORS WOULD PRESENT IMMINENT RISKS TO THE HEALTH OR SAFETY OF ATTENDEES

WHEREAS, on March 4, 2020, the Governor proclaimed pursuant to his authority under the California Emergency Services Act, California Government Code section 8625, that a state of emergency exists with regard to a novel coronavirus (a disease now known as COVID-19); and

WHEREAS, on June 4, 2021, the Governor clarified that the "reopening" of California on June 15, 2021 did not include any change to the proclaimed state of emergency or the powers exercised thereunder, and as of the date of this Resolution, neither the Governor nor the Legislature have exercised their respective powers pursuant to California Government Code section 8629 to lift the state of emergency either by proclamation or by concurrent resolution in the state Legislature; and

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20 that suspended the teleconferencing rules set forth in the California Open Meeting law, Government Code section 54950 et seq. (the "Brown Act"), provided certain requirements were met and followed; and

WHEREAS, on September 16, 2021, Governor Newsom signed AB 361 that provides that a legislative body subject to the Brown Act may continue to meet without fully complying with the teleconferencing rules in the Brown Act provided the legislative body determines that meeting in person would present imminent risks to the health or safety of attendees, and further requires that certain findings be made by the legislative body every thirty (30) days; and,

WHEREAS, on January 5, 2022, Governor Newsom extended the sunset provision of AB361 and Government Code Section 11133(g) to January 1, 2024 due to surges and instability in COVID-19 cases; and,

WHEREAS, California Department of Public Health ("CDPH") and the federal Centers for Disease Control and Prevention ("CDC") caution that COVID-19 continues to be highly transmissible and that even fully vaccinated individuals can spread the virus to others; and,

WHEREAS, the Board has an important governmental interest in protecting the health, safety and welfare of those who participate in its meetings;

WHEREAS, on September 25, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361. Out of an abundance of caution given AB 361's narrative that describes each legislative body's responsibility to reauthorize remote meetings, staff and counsel bring this resolution to the attention of the Board of Directors, and;

WHEREAS, on October 28, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

WHEREAS, on November 18, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

WHEREAS, on December 16, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

WHEREAS, on January 27, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

WHEREAS, on February 24, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

WHEREAS, on March 24, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

WHEREAS, on April 28, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

WHEREAS, on May 26, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

WHEREAS, on June 23, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

WHEREAS, on July 28, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the Board deems it necessary to find that meeting in person would present imminent risks to the health or safety of attendees, and thus intends to invoke the provisions of AB 361 related to teleconferencing.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that

1. The recitals set forth above are true and correct.

2. The Board finds that meeting in person would present imminent risks to the health or safety of attendees.

3. Staff is directed to return no later than thirty (30) days, or, alternatively, at the next scheduled meeting of the Board, after the adoption of this resolution with an item for the Board to consider making the findings required by AB 361 in order to continue meeting under its provisions.

4. Staff is directed to take such other necessary or appropriate actions to implement the intent and purposes of this resolution.

* * * * * *

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

Thursday, July 28, 2022
6:30 p.m.
Zoom Video Conference and Teleconference

CALL TO ORDER

Meeting was called to order at 6:32 p.m. in virtual teleconference.

ROLL CALL

Participating Remotely:

Dave Pine, San Mateo County
Warren Slocum, San Mateo County arrived at 6:40 p.m.
Rick DeGolia, Atherton, *Chair*
Coleen Mackin, Brisbane
Donna Colson, Burlingame, *Vice Chair*
Roderick Daus-Magbual, Daly City arrived at 7:50 p.m.
Carlos Romero, East Palo Alto
Sam Hindi, Foster City
Harvey Rarback, Half Moon Bay
Laurence May, Hillsborough
Betsy Nash, Menlo Park
Anders Fung, Millbrae
Tygarjas Bigstyck, Pacifica
Jeff Aalfs, Portola Valley
Giselle Hale, Redwood City arrive at 7:20 p.m.
Marty Medina, San Bruno
Laura Parmer-Lohan, San Carlos
Rick Bonilla, San Mateo
James Coleman, South San Francisco arrived at 7:50 p.m.
Jennifer Wall, Woodside

Pradeep Gupta, Director Emeritus
John Keener, Director Emeritus

Absent:

Julia Mates, Belmont
Raquel Gonzalez, Colma
Tom Faria, Los Banos

A quorum was established.

PUBLIC COMMENT

Nelly Wogberg, Board Clerk, directed the Board to read the public comment from Eric Brooks on the Peninsula Clean Energy Board Agenda Page.

ACTION TO SET THE AGENDA AND APPROVE REMAINING CONSENT AGENDA ITEMS

Director Mackin had a question on outreach with Silicon Valley Bicycle Coalition for Agenda Item Number 4. Rafael Reyes, Director of Energy Programs, explained that the principal outreach for the E-Bikes for Everyone Program is not through the Silicon Valley Bicycle Coalition but rather directly through Peninsula Clean Energy and outreach partners that work directly with low-income households.

Director Bigstyck asked when the waitlist will be opened again for the E-bikes For Everyone Program. Rafael explained this this program could become an annual program due to its popularity.

MOTION: Director Bonilla moved, seconded by Director Parmer-Lohan to set the Agenda, and approve Agenda Item Numbers 1-6.

1. Adopt Findings Pursuant to AB 361 to Continue Fully Teleconferenced Committee Meetings Due to Health Risks Posed by In-Person Meetings.

2. Approval of the Minutes for the June 29, 2022 Meeting.

3. Approval of An Amendment to The Existing Retention Agreement with the Law Firm of Keyes & Fox LLP Increasing the Amount By $250,000 for a Total Not-To-Exceed Amount of $650,000.

4. Approval of a Modification of the E-Bikes for Everyone Program Budget, Increasing the Amount by $150,000 for a Total Not-to-Exceed Amount of $690,000.

5. Approval of the Revised Employee Handbook.

6. Authorize Execution of an Agreement Between Peninsula Clean Energy and Maher Accountancy for the Period of July 1, 2022 Through June 30, 2023 in an Amount Not-to-Exceed $243,750.

MOTION PASSED: 17-0 (Absent: Belmont, Colma, Daly City, Los Banos, Redwood City, Millbrae)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Slocum	X			
Atherton	Director DeGolia	X			
Belmont	Director Mates				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 May	X			

Los Banos	Director Faria				X
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck	X			
Portola Valley	Director Aalfs	X			
Redwood City	Director Hale				X
San Bruno	Director Medina	X			
San Carlos	Director Parmer-Lohan	X			
San Mateo	Director Bonilla	X			
South San Francisco	Director Coleman				X
Woodside	Director Wall	X			
	Totals	17			6

REGULAR AGENDA

7. Chair Report

Chair DeGolia shared that while on vacation in Ireland he shared information on Peninsula Clean Energy's mission.

8. CEO Report

Jan Pepper, CEO, gave a report including a staffing update welcoming new Chief Financial Officer, Kristina Cordero, posted openings, and an update on presentations to local City Councils.

Director Emeritus Gupta asked about the Wright Solar Project and was disappointed to learn that the storage component for the site would not be going forward. Jan explained that negotiations had been ongoing for two years, but the hedge fund, KKR, did not want to move ahead with the storage component. KKR is interested in selling the Wright Solar Project and potentially the future buyers will be interested in adding storage.

Vice Chair Colson asked if it would make sense to work with Clenera to add storage ourselves. Jan explained that Clenera is owned by a foreign owner and is not able to add the solar storage themselves. Vice Chair Colson asked if perhaps some state investment funds might be able to facilitate this.

Chair DeGolia asked if any Board Members have contacts with KKR to let Jan know. Jan explained that KKR is looking to exit the renewable energy field altogether.

Public Comment: Drew asked if Peninsula Clean Energy would own a generation source.

Jan explained that Peninsula Clean Energy could invest in generation projects which some other Community Choice Aggregators have done. Chair DeGolia added that this potential project is very large and worth a future board discussion.

9. Citizens Advisory Committee Report

Cheryl Oliver Schaff, Citizens Advisory Committee (CAC) Vice Chair, gave a report on the July 14th CAC meeting including information on the partnership between BlocPower and the City of Menlo Park.

Director Bonilla asked if the work with Menlo Spark will pay prevailing wage. Director Nash responded that this was currently being looked at.

10. Update on the Diversity, Equity, Accessibility, and Inclusion (DEAI) project (Discussion)

Shayna Barnes, Operations Specialist, introduced GCAP Services, the consultant working on the DEAI Project.

Ed Salcedo, GCAP President, introduced the DEAI project. Ed, along with Sharon Stelling Qualls, GCAP senior consultant, presented an update on the DEAI project including DEAI within Peninsula Clean Energy, a project timeline, survey and interview backgrounds, legislation and regulatory analysis, and DEAI policy, workshops and documents.

Shayna continued with the presentation and shared information on key takeaways from the survey and interviews.

Vice Chair Colson shared information on REACH, a program that encourages embracing DEAI perspectives and practices and asked if Peninsula Clean Energy might be able to become an ally of the organization.

Director Medina asked what Peninsula Clean Energy staff is doing to respond to allegations of employees who have experienced concerns within the workplace. Shayna explained that increased staff training, hiring an HR Director, and management's attention are being used to address those concerns. Jan Pepper, Chief Executive Officer, noted that some follow-up actions have been taken and that the new HR Director will have a large influence on DEAI implementation in the organization.

Director Parmer-Lohan offered a suggestion for consideration towards psychological safety so that everyone can be seen and heard.

Director Hale asked for clarification on the addition of a full-time HR Manager. Jan explained that having someone with Peninsula Clean Energy full-time to focus on DEAI implementation as well as evaluations, onboarding, and other HR related items will be valuable given that our contracted HR is no longer serving our needs as we've grown.

Jan Pepper expressed her thanks to Shayna Barnes and Kirsten Andrews-Schwind for their work on moving this project forward.

11. Authorize the Chief Executive Officer to Execute Necessary Agreements with California Community Power and Participating Community Choice Aggregators for Renewable Resources from Ormat Nevada Inc. and Open Mountain Energy, in amounts not to exceed and terms as follows: (a) Ormat (term 20 years and not to exceed 405 million dollars); and (b) Open Mountain (term 20 years and not to exceed 41 million dollars) (Action)

Chelsea Keys, Interim Director of Power Resources, gave a presentation that covered the RFO background and timeline, mid-term reliability decision for 2023-2026, Peninsula Clean Energy allocation, effective load carrying capacity factors, RFO results and shortlist, contract structure and an overview of the two geothermal projects.

Director Emeritus Gupta noted the higher cost associated with firm power and asked about the agreement terms with Open Mountain Energy should they fail to obtain California Independent System Operator (CAISO) approval. Chelsea explained that it is the responsibility of the Community Choice Aggregator to obtain the import capability to qualify the resource for resource adequacy, and the contract is set up so there are different interties to obtain the import capability.

Chair DeGolia asked if Peninsula Clean Energy didn't get the maximum capacity from the Ormat project, where would Peninsula Clean Energy go to fulfill the remaining unfilled obligations for firm energy? Chelsea explained Peninsula Clean Energy has a 19 MW Net-Qualifying Capacity (NQC) requirement or 23 MW nameplate and Peninsula Clean Energy has a few projects in negotiation that could potentially help meet that requirement. Chair DeGolia asked when the deadline for the firm power requirement needs to be satisfied. Chelsea explained that the requirement is in 2026.

Director Bonilla shared that he was on the procurement committee and that these two projects are advantageous for Peninsula Clean Energy.

MOTION: Director Bonilla moved, seconded by Director Parmer-Lohan to approve a Resolution Delegating Authority to the Chief Executive Officer to Execute Necessary Agreements with California Community Power and Participating Community Choice Aggregators for Renewable Resources from Ormat Nevada Inc. and Open Mountain Energy, LLC as follows:

1. Ormat Nevada Inc. (Ormat) - Portfolio of Geothermal Projects
    a. Project Participation Share Agreement (PPSA) between Peninsula Clean Energy Authority, CC Power and participating community choice aggregators (Attachment 1)
    b. Power Purchase Agreement (PPA) - Buyer Liability Pass Through Agreement (BLPTA) between Peninsula Clean Energy Authority, CC Power and Ormat Nevada Inc. (Attachment 2)
    c. Expected Participation Share of 17.1% or 10.94 MW with quantity not to exceed 21.38 MW
    d. Delivery term of 20 years starting on or about June 1, 2024
    e. Dollar authority not to exceed $405,000,000
2. Open Mountain Energy LLC., (OME) - Fish Lake Geothermal
    a. Project Participation Share Agreement (PPSA) between Peninsula Clean Energy Authority, CC Power and participating community choice aggregators (Attachment 3)
    b. Power Purchase Agreement (PPA) - Buyer Liability Pass Through Agreement5 Item No. 11 -2- (BLPTA) between Peninsula Clean Energy Authority, CC Power and OME (Attachment 4)
    c. Expected Participation Share of 17.8% or 2.31 MW
    d. Delivery term of 20 years starting on or about April 1, 2024
    e. Dollar authority not to exceed $41,000,000

MOTION PASSED: 19-0 (Absent: Belmont, Colma, Los Banos, Millbrae)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Slocum	X			
Atherton	Director DeGolia	X			
Belmont	Director Mates				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 May	X			
Los Banos	Director Faria				X
Menlo Park	Director Nash	X			
Millbrae	Director Fung				X
Pacifica	Director Bigstyck	X			
Portola Valley	Director Aalfs	X			
Redwood City	Director Hale	X			
San Bruno	Director Medina	X			
San Carlos	Director Parmer-Lohan	X			
San Mateo	Director Bonilla	X			
South San Francisco	Director Coleman	X			
Woodside	Director Wall	X			
	Totals	19			4

12. Summary of Findings from Annual Awareness/Perception Research (Discussion)

KJ Janowski, Director of Marketing and Community Relations, gave a presentation with an Update on Awareness and Perception including performance indicators, methodology, Persuasion Monitor and trend in San Mateo County and Los Banos; brand perception, resident priorities and climate change impact/attitudes between San Mateo County and Los Banos.

Chair DeGolia noted that on slide 95, the percentages for San Mateo County did not add up to 100%. This has since been corrected on the presentation.

Director Pine asked for clarification on the Peninsula Clean Energy favorability number under Key Performance Indicators. KJ explained that favorability percentages have been around 61-63%. This year there was a drop due to an increase in ratings for those who were “not sure” and an increase in “somewhat unfavorable”.

Director Emeritus Gupta asked for clarification on the 24% of San Mateo County customers who are aware that Peninsula Clean Energy is lower than PG&E rates, but that 49% of San Mateo County customers had their highest priority be lower rates. KJ explained that many customers see that their bills are going up and they want lower bills, and many customers are not doing a comparison in costs between Peninsula Clean Energy and PG&E to notice the 5% savings in generation.

Director Nash suggested that a financial situation might be limiting the responses to purchase products to mitigate climate change. KJ agreed and added that about 50% of customers in Los Banos are on CARE/FERA rates. Leslie Brown, Director of Account Services, offered that the CARE/FERA numbers are significantly higher in Los Banos.

Chair DeGolia asked if there was any way to separate our billing from that of PG&E to encourage awareness and favorability by having a more direct access to customers. KJ explained that through GovDelivery emails to customers aided awareness has increased and that there will be an increase

in the number of emails that will be sent out to customers. These emails are being addressed as “Dear Peninsula Clean Energy Customers” which should positively impact aided awareness.

Leslie Brown, Director of Account Services, added that Investor-Owned Utilities are required by legislation to be the billing agent for Community Choice Aggregators. Leslie also explained that as customers generally do not want an additional bill this could result in opt outs for simplicity’s sake.

Director Mackin shared that she asks frequently if people are aware of Peninsula Clean Energy but isn’t sure they know we are a community energy provider. This could be an important message as the public are wary of corporate energy companies. KJ explained that PG&E is viewed very unfavorably in San Mateo County and that Peninsula Clean Energy customer concerns are not being reflected in the participation rate which includes low opt-outs.

Leslie Brown added that PG&E is not allowed to be heavy handed with sales tactics and to report or encourage customers to report problematic phone calls with PG&E so they can follow up. PG&E is filing their own code of conduct violation with the California Public Utilities Commission and takes these reports seriously.

13. Electrification Messaging: Update on Research and Implications (Discussion)

KJ Janowski, Director of Marketing and Community Relations, gave a presentation on electrification messaging

Director Bonilla shared that he felt encouraged by this information.

Vice Chair Colson suggested if looking at data on sea level rise could be part of a holistic conversation to help people understand the value in investments for the long-term.

Director Parmer-Lohan expressed her gratitude to KJ and the team for this report and hopes the team can figure out how to communicate the value that Peninsula Clean Energy brings to the table, inspire action to community members, and how can we each take a step towards reducing greenhouse gas emissions.

Director Rarback offered a real-world example of the Half Moon Bay electrification ordinance that would require burnout of existing methane appliances to be electrified. Director Rarback shared that the pushback from the public was very negative with a complaint that the upfront cost is too high. KJ shared that incentives and rebates will still be needed with electrification messaging.

Chair DeGolia expressed gratitude for the in-depth information shared in this presentation and noted that it was important how much health and safety stands out as a priority. People will react more strongly when they are informed that methane gas hurts their health, but not as strongly that they will clear the air if they use electricity.

Director Romero asked if tabs in the survey would disaggregate the data by socioeconomic rank. as he is interested in the difference between Daly City or East Palo Alto customers with a lower household income in comparison with Los Banos customers. KJ agreed that this is a good point and shared that survey was done as an email survey with 23% of respondents as renters and the remaining as homeowners.

Director Bigstyck shared that it was impressive to see the data from the back end and the simplicity on the front end. Director Bigstyck shared that he is excited about the messaging Peninsula Clean Energy can offer.

Public Comment: Jason Mendelson

Jan Pepper, Chief Executive Officer, offered her gratitude to KJ and team for their expertise in marketing and helpful insights.

14. Board Members' Reports

None

ADJOURNMENT

Meeting was adjourned at 8:58 p.m.

PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: August 11, 2022
BOARD MEETING DATE: August 26, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy
Rafael Reyes, Director of Energy Programs

SUBJECT: Approval of Contract with Optony for the Local Government Fleets Program for a total of $390,000 over 3 years

RECOMMENDATION

Delegate authority to the CEO to sign the agreement with Optony for a total of $390,000 over three years.

BACKGROUND

Peninsula Clean Energy's mission is to reduce greenhouse gas (GHG) emissions in its service territory and aims to support this mission through investment in local community programs. In support of this effort, the Board approved the Peninsula Clean Energy Program Roadmap in September 2018, which identifies programs for 2019 and beyond to include transportation electrification measures, such as new and used vehicle purchase incentives, a multi-year electric vehicle (EV) infrastructure program, fleets, e-bikes, and shared mobility.

Transportation emissions are the most significant challenge to deep decarbonization in San Mateo County. These on-road emissions account for roughly half of direct emissions within the County. Approximately 40% of transportation emissions are from local commercial, rental, and government fleets that range from light-duty passenger vehicles to heavy-duty trucks.

In November 2020, the Peninsula Clean Energy Board of Directors approved a proposal to develop a Local Government Fleets Program with a total budget of $900,000, which

included technical assistance to public fleets, incentives, and a vehicle-to-building bidirectional charging demonstration project.

DISCUSSION

The Local Government Fleets Program is designed to accelerate public agency fleettransition to EVs through hands-on technical assistance and incentives and is expected to serve 6 – 9 local agency fleets over 3 years. This assistance is particularly valuable to public agencies as the California Air Resources Board is considering regulations in the draft Advanced Clean Fleets Regulation that will require at least half of fleets' annual procurement to be electric, starting in 2024[1].

The technical assistance in the Local Government Fleets program is meant to provide public fleet managers with the tools they need to prepare for a fleet-wide transition to electric vehicles and construction design assistance to plan and execute a project to install EV charging stations at a fleet facility. The assistance will be free to the public agency and all public agencies are eligible.

The full technical assistance package to be made available to public fleet managers is outlined below:

1. **Fleet Replacement Plan**. An analysis of the fleet and vehicle uses and replacement plan that identifies electric vehicle alternatives and their total cost of ownership and cost benefit through electrification. The replacement plan also includes an Energy Needs Assessment, which will estimate the types of chargers needed to fuel the EV fleet.
2. **Charging Infrastructure Plan**. An assessment of a public fleet facility, chosen by the agency, and project plans for the installation of EV charging stations.
3. **Construction engineering.** Stamped electrical drawings and other site designs to expedite project planning and permitting, if requested by the fleet manager.
4. **Funding plan.** Recommended rebate and funding opportunities appropriate for the project.
5. **Charge Optimization Plan.** An analysis of unmanaged and managed charging costs to provide the fleet manager a complete understanding of EV fleet operating costs.

Fleets will also have the option to utilize an Energy Management System to minimize ongoing costs through charge management. Peninsula Clean Energy will cover the upfront costs and a year of subscription costs. These costs are included in the Optony contract for the Board's review.

To hire a contractor that will provide technical assistance to public fleet managers in the Local Government Fleets Program, Peninsula Clean Energy ran a competitive bid process and selected Optony, with subcontractors Glumac and the Mobility House, as the

[1] https://ww2.arb.ca.gov/sites/default/files/2022-05/220504acfpres_ADA.pdf

intended winner. The RFP review committee includes staff from Peninsula Clean Energy, Silicon Valley Clean Energy, and MCE.

Optony is the recommended prime contractor on the project and will lead the Fleet Replacement and Charging Infrastructure Plans. Optony brings extensive expertise and background in fleet electrification with prior experience conducting EV infrastructure planning for Alameda County and Fleet Electrification plans for the City of Fremont. The Mobility House, on subcontract, will lead Energy Optimization Plans for fleets and provide ongoing charge management, if the local agency chooses to utilize this ongoing service. The Mobility House, based in Belmont, is a leading EV fleet energy management company with charge management projects across the United States and Europe. Glumac, also on subcontract, will provide construction design documents such as single-line diagrams and other electrical engineering, to help expedite the local agency contractor bidding process and permit approvals.

The Local Government Fleets Program is expected to kick off in fall 2022 with an initial overview and recruitment workshop for public fleet managers to occur in early Q4 2022. This workshop will provide fleet managers with the details of the program and solicit interest to participate. Peninsula Clean Energy staff will work closely with the contractor to recruit public agencies and engage with local agency staff.

FISCAL IMPACT

Up to $390,000 over 3 years, as part of the Local Government Fleets Program approved budget.

STRATEGIC PLAN

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation and initiate the transition to clean energy buildings

- Key Tactic 2: Bolster electrification of fleets and shared transportation
- Key Tactic 5: Support local government initiatives to advance decarbonization

Objective C: Innovation and Scale: Leverage leadership, innovation, and regulatory action for scaled impact

- Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

RESOLUTION NO. _____

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

* * * * * *

RESOLUTION DELEGATING AUTHORITY FOR THE CHIEF EXECUTIVE OFFICE TO EXECUTE AGREEMENT WITH OPTONY, RESULTING IN PAYMENTS BY PENINSULA CLEAN ENERGY IN AN AMOUNT NOT TO EXCEED $390,000 FOR THE LOCAL GOVERNMENT FLEETS PROGRAM, AND IN A FORM APPROVED BY THE GENERAL COUNSEL

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

WHEREAS, Peninsula Clean Energy was formed on February 29, 2016; and

WHEREAS, Peninsula Clean Energy has as a strategic objective supporting the decarbonization of San Mateo County; and

WHEREAS, local government fleets are a source of greenhouse gasses and significant source of exposure to vehicles; and

WHEREAS, local governments have an interest in electrifying their fleets to implement climate action plan measures; and

WHEREAS, local governments face significant challenges purchasing electric vehicles and implementing associated charging systems; and

WHEREAS, electrifying all powered modes of transportation to reduce greenhouse gasses is part of PCE's program roadmap as approved by this Board; and

WHEREAS, in November 2020, the Peninsula Clean Energy approved a Local Government Fleet Program with a total budget of $900,000; and

WHEREAS, Peninsula Clean Energy requires support to implement the Local Government Fleet Program and provide technical assistance to local public fleets; and

WHEREAS, Optony, having demonstrated necessary expertise, and prior public fleet electrification experience though a competitive bid solicitation, was selected by Peninsula Clean Energy to assist in implementation of the Local Government Fleets Program.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to finalize and execute the agreement with Optony in an amount not to exceed $390,000 over 3 years and in a form approved by the General Counsel.

* * * * * *

AGREEMENT BETWEEN THE PENINSULA CLEAN ENERGY AUTHORITY AND OPTONY

This Agreement is entered into this [day] day of August, 2022, by and between the Peninsula Clean Energy Authority, a joint powers authority of the state of California, hereinafter called "PCEA," and Optony, hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 6508 of the Joint Exercise of Powers Act, PCEA may contract with independent contractors for the furnishing of services to or for PCEA; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of Public Fleet electrification technical assistance and energy management.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1 Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services
Exhibit B—Payments and Rates

2 Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for PCEA in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

3 Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, PCEA shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. PCEA reserves the right to withhold payment if PCEA determines that the quantity or quality of the work performed is unacceptable. In no event shall PCEA's total fiscal obligation under this Agreement exceed three hundred and ninety thousand ($390,000) dollars. In the event that the PCEA makes any advance payments, Contractor agrees to

refund any amounts in excess of the amount owed by the PCEA at the time of contract termination or expiration.

4 Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from August XX, 2022 through August 30, 2025.

5 Termination; Availability of Funds

This Agreement may be terminated by Contractor or by the Chief Executive Officer of the PCEA or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement that are consistent with those services described in Exhibit A and performed to the satisfaction of PCEA. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

PCEA may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or PCEA funds by providing written notice to Contractor as soon as is reasonably possible after PCEA learns of said unavailability of outside funding.

6 Intellectual Property and Ownership of Work Product

PCEA shall and does own all titles, rights, and interests in all new materials, tangible or not, created in whatever medium and developed uniquely for PCEA by the Contractor pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations therefore, and all forms of intellectual property ("Work Products") created by Contractor and any subcontractors under this Agreement. Contractor hereby assigns all titles, rights, and interests in all Work Products to PCEA. At the end of this Agreement, or in the event of termination, all Work Products shall be promptly delivered to PCEA.

Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of PCEA. Contractor shall not dispute, directly or indirectly, PCEA's exclusive right and title to the Work Products, nor the validity of the intellectual property embodied therein.

Contractor shall (1) retain its rights to and ownership of pre-existing or open-source materials and/or may (2) retain one copy of Work Products for archival use, but in either instance must notify PCEA and identify any such materials in writing prior to the commencement of work under this Agreement.

7 Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of PCEA and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of PCEA employees.

8 Hold Harmless

8.1 General Hold Harmless

Contractor shall indemnify and save harmless PCEA and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Contractor or its employees/officers/agents;

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, to the extent caused by the concurrent active or passive negligence of PCEA and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which PCEA has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8.2 Release and Hold Harmless in Customer/Subcontractor Contracts

PCEA shall have the opportunity to review, prior to their execution, any contracts executed by Contractor to implement this Agreement. In addition, unless waived in advance in writing by PCEA, any such contracts shall contain the following terms:

8.3 Release of Claims Against, and Hold Harmless of, Peninsula Clean Energy Authority

Customer/Subcontractor also discharges and releases the Peninsula Clean Energy Authority (PCEA) and its officers, employers, employees, and agents from and against any and all claims, demands, liabilities, obligations, damages or chose in action, legal or equitable, of whatever kind or nature, including negligence by PCEA, in which Customer/Subcontractor, and Customer/Subcontractor's successors in interest, heirs, estates or personal representatives, or family members, now may have or assert, or may have had in the past or may have in the future, against PCEA as the result of, based upon, arising out of, or connected with PCEA's involvement with the Project. Customer/Subcontractor is on notice of and hereby specifically and expressly waives the provisions of California Civil Code § 1542, which provides that a "general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Customer/Subcontractor also agrees to indemnify and hold harmless PCEA from any and all claims, actions, suits, procedures, costs, expenses, damages, and liabilities, including attorney's fees and costs, brought as a result of PCEA's involvement with the Project, and to reimburse PCEA for any such expenses incurred.

For purposes of this provision, PCEA is hereby intended to be a third-party beneficiary of any and all contracts executed by Contractor to implement this Agreement, pursuant to California Civil Code § 1559.

9 Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of PCEA. Any such assignment or subcontract without PCEA's prior written consent shall give PCEA the right to automatically and immediately terminate this Agreement without penalty or advance notice.

10 Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own

expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

11 W-9 Form and Submission of Invoices

Invoices shall only be submitted by electronic form by sending an email to the **PCEA project contact's email address**. Contractor shall submit a completed W-9 form electronically to the same email addresses. Contractor understands that no invoice will be paid by PCEA unless and until a W-9 Form is received by PCEA.

12 Insurance

12.1 General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by PCEA, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish PCEA with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to PCEA of any pending change in the limits of liability or of any cancellation or modification of the policy.

12.2 Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

12.3 Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor,

anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

Yes	Comprehensive General Liability (Applies to all agreements)	$1,000,000
Yes	Motor Vehicle Liability Insurance for motor vehicles used in performing services	$1,000,000
Yes	Professional Liability Insurance for licensed professionals	$1,000,000

PCEA and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that if the PCEA or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, PCEA, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

- Limitation of Liability

To the fullest extent permitted by law, the total liability, in the aggregate, of Optony, Optony's officers, directors, owners, partners, employees, agents, and subconsultants, to Client, and anyone claiming by, through, or under Client for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to this Project or Agreement from any cause or causes, including but not limited to negligence, professional errors and omissions, strict liability, breach of contract, or breach of warranty, **shall not exceed the required limits of insurance in this Contract**. The liability limit in this section will not apply to any claim, damage or liability due to gross negligence or willful misconduct. Client further covenants that it will not, under any circumstances, bring a lawsuit, demand, or claim of any kind against Optony's individual employees, officers, directors or agents and that Client's sole remedy will be against Optony.

13 Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

14 Non-Discrimination and Other Requirements

14.1 General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

14.2 Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to PCEA upon request.

14.3 Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This

Section applies only to contractors who are providing services to members of the public under this Agreement.

14.4 **Employee Benefits**

With respect to the provision of benefits to its employees, Contractor shall ensure that employee benefits provided to employees with domestic partners are the same as those provided to employees with spouses.

14.5 **Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60–741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

14.6 **History of Discrimination**

Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

_X_ No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.

___ Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide PCEA with a written explanation of the outcome(s) or remedy for the discrimination.

14.7 **Reporting; Violation of Non-discrimination Provisions**

Contractor shall report to the Chief Executive Officer of PCEA the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or Section 13, above. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a

general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the Chief Executive Officer, including but not limited to the following:

1. termination of this Agreement;
2. disqualification of the Contractor from being considered for or being awarded a PCEA contract for a period of up to 3 years;
3. liquidated damages of $2,500 per violation; and/or
4. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the Chief Executive Officer.

To effectuate the provisions of this Section, the Chief Executive Officer shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and PCEA.

15 Confidential Information

(a) Contractor shall maintain in confidence and not disclose to any third party or use in any manner not required or authorized under this Agreement any and all Confidential Information held by PCEA.

(b) The term “Confidential Information” includes all information, documents, and materials owned by PCEA, including technical, financial, business, or PCEA customer information which is not available to the general public, as well as information derived from such information. Information received by Contractor shall not be considered Confidential Information if: (i) it is or becomes available to the public through no wrongful act of Contractor; (ii) it is already in the possession of Contractor and not subject to any confidentiality agreement between the Parties; (iii) it is received from a third party without restriction for the benefit of PCEA and without breach of this Agreement; (iv) it is independently developed by Contractor; (v) it is disclosed pursuant to a requirement of law, including, but not limited to, the California Public Records Act (Cal. Gov’t Code Section 6250, et seq.); or (vi) is disclosed to or by a duly empowered government agency, or a court of competent jurisdiction after due notice and an adequate opportunity to intervene is given to PCEA, unless such notice is prohibited.

(c) As practicable, PCEA shall mark Confidential Information with the words “Confidential” or “Confidential Material” or with words of similar import, or, if that is not possible, PCEA shall notify the Contractor (for example, by cover e-mail transmitting an

electronic document) that the material is Confidential Information. PCEA's failure or delay, for whatever reason, to mark or notify Contractor at the time the material is produced shall not take the material out of the coverage of this Agreement.

(d) Contractor will direct its employees, contractors, consultants, and representatives who have access to any Confidential Information to comply with the terms of this Section.

(e) Upon termination or expiration of this Agreement, Contractor shall, at PCEA's exclusive direction, either return or destroy all such Confidential Information and shall so certify in writing, provided, however, any Confidential Information (i) found in drafts, notes, studies, and other documents prepared by or for PCEA or its representatives, or (ii) found in electronic format as part of Contractor's off-site or on-site data storage/archival process system, will be held by Contractor and kept subject to the terms of this provision or destroyed at Contractor's option. The obligations of this provision will survive termination or expiration of this Agreement.

16 Data Security

If, pursuant to this Agreement, PCEA shares with Contractor personal information as defined in California Civil Code Section 1798.81.5(d) about a California resident ("Personal Information"), Contractor shall maintain reasonable and appropriate security procedures to protect that Personal Information and shall inform PCEA immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. Contractor shall not use Personal Information for direct marketing purposes without PCEA's express written consent. For purposes of this provision, security procedures are "reasonable and appropriate" when they (i) adequately address all reasonably foreseeable threats to Personal Information, (ii) are appropriate to the quantity, sensitivity, and type of Personal Information accessed and the way that information will be accessed, and (iii) comply with all laws, regulations, and government rules or directives applicable to the Contractor in connection with its access of Personal Information.

17 Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after PCEA makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by PCEA, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by PCEA.

(c) Contractor agrees upon reasonable notice to provide to PCEA, to any Federal or State department having monitoring or review authority, to PCEA's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

18 Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

19 Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

20 Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of PCEA, to:

Name/Title: Jan Pepper, Chief Executive Officer
Address: 2075 Woodside Road, Redwood City, CA 94061
Telephone: 650-260-0100
Email: jpepper@peninsulacleanenergy.com

In the case of Contractor, to:

Name/Title: Byron Pakter
Address: 5201 Great America Pkwy, Suite 320, Santa Clara, CA 95054
Telephone: (510) 705-2811
Email: Byron.Pakter@OptonyUSA.com

21 Electronic Signature

PCEA and Contractor wish to permit this Agreement, and future documents executed pursuant to this Agreement, to be digitally signed in accordance with California law. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

22 No Recourse Against PCEA's Member Agencies

Contractor acknowledges and agrees that PCEA is a Joint Powers Authority, which is a public agency separate and distinct from its member agencies. All debts, liabilities, or obligations undertaken by PCEA in connection with this Agreement are undertaken solely by PCEA and are not debts, liabilities, or obligations of its member agencies. Contractor waives any recourse against PCEA's member agencies.

23 Required Approvals for Joint or Cooperative Marketing or Promotion

Any joint or cooperative marketing or cross-promotion between PCEA and Contractor shall be approved in advance by PCEA. Contractor shall not represent PCEA, its employees or programs in any marketing communications without prior approval by PCEA. "Marketing communications" is used here to mean advertising, direct marketing, internet marketing, promotion and public relations. This includes, but is not limited to printed, online or broadcast advertisements; printed or digital flyers, posters, or brochures; in-person, email, direct mail, web site, social media or other communications. All marketing communications that reference PCEA, its employees or programs shall be reviewed in their final formats and approved by PCEA prior to use.

* * *

In agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

PENINSULA CLEAN ENERGY AUTHORITY

By: _____

Chief Executive Officer, Peninsula Clean Energy Authority

Date: _____

OPTONY INC.

By: _____

Chief Executive Officer, Optony Inc.

Date: _____

Exhibit A

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

Project Overview

Contractor will provide fleet electrification planning assistance to public agency fleets in Peninsula Clean Energy's service territory. This program will provide a full suite of technical assistance components to fleet managers from overall planning to project design to post-project charging optimization.

The Contractor will provide hands on assistance to public agency fleet managers that have committed to replacing vehicles in their fleets with electric alternatives in the next year. Technical assistance will be a comprehensive package, further outlined in this scope of work, including a fleet replacement plan, specific project engineering and design, including construction documents to be utilized during the installation bidding process, EV charging infrastructure recommendations, recommended charging schedules specific to vehicle duty cycles to minimize ongoing costs, and a funding plan for each project that outlines and assists each agency in obtaining rebates, grants, and other funding assistance.

The goal of the program is to provide this level of technical assistance to about 6-9 local agency fleets over the 3-year scope of the program. The program is open to all public agencies in Peninsula Clean Energy's service territory and electric vehicles of all types and classes are eligible, though vehicles and charging infrastructure is expected to be mostly fleet-focused. Agency recruitment will be led by Peninsula Clean Energy staff. In addition to the technical assistance to be provided by the Contractor, Peninsula Clean Energy is also providing limited gap-funding assistance to help pay for vehicle replacements and charging infrastructure, to be administered by Peninsula Clean Energy.

Scope of Work

The scope of work of this project is outlined in the key objectives and other sections below.

Objectives

1. Enable deployment of at least 5 EVs and associated charging infrastructure, for each fleet engaged in the program, and at least 6 – 9 total participating agencies.

2. Prepare participating agencies to plan for and comply with upcoming state public fleet electrification targets.
3. Support non-participating agencies with fleet electrification best practices and case studies in support of upcoming state public fleet electrification targets.
4. Leverage available funding to the greatest extent practicable to minimize cost to the participating agencies while ensuring expedient project delivery.
5. Facilitate maximum operational cost savings to fleet managers and Peninsula Clean Energy renewable energy alignment objectives with charge management solutions.

Contractor Tasks

Contractor shall provide the following:

1 Administrative Tasks

1.1 Kickoff Meeting

Participate in a kickoff meeting with PCE to review objectives, budget, timeline, administrative processes, and contract at a mutually determined time.

1.2 Monthly Progress Report and Call

Provide a short monthly progress report and associated call with the designated PCE contract administrator. This report will outline project progress, challenges encountered, a description of additional funding or resources secured, and objectives for the following month. Major supplementary documentation developed in the course of work must be submitted with the Progress Report as agreed with the PCE contract administrator. This supplementary documentation may include technical designs, vehicle and/or charging infrastructure recommendations and/or specifications, and any materials developed for partner use.

1.3 Expense Report

Provide a monthly expense report beginning the month after the contract start date and every month thereafter, or another schedule as mutually determined, submitted with the corresponding Monthly Progress Report, documenting expenses including: labor (hours, rate, total), subcontractor expenses (with invoices), and equipment (with invoices). The expense report must include the total expenditures for the quarter and running expense total.

1.4 Annual Report

Provide an annual report that includes an executive summary, major accomplishments in the prior year, lessons learned and recommendations for future work, overview and assessment of fleet replacement plans and EV charging project plans delivered in the previous year, and financial summary comparing actual expenditures to the project budget. Draft reports will be submitted to Peninsula Clean Energy for review and approval before being finalized.

The annual report should also include key performance indicators, such as:

- Total fleets engaged, including a status summary
- Total fleets receiving support
- Expected number of EVs and charging infrastructure to be deployed, by fleet
- Reduction in total ownership costs to fleets
- Estimated fuel and emissions savings, pet fleet

1.5 **Final Report**

Provide a final report for public distribution, subject to review and approval by Peninsula Clean Energy, that includes an executive summary, challenges encountered and lessons learned, best practices for other public agency fleets, case studies suitable for sharing with other fleets, summary of total program impact and key performance indicators utilized in annual reports.

2 **Program Tasks**

2.1 **Local public agency staff engagement and data collection**

In coordination with Peninsula Clean Energy staff, Contractor will facilitate outreach and engagement with local agency staff and other stakeholders to collect fleet and other relevant data and assist in project planning. This engagement will include the following:

1. Organize and schedule meetings with public agency staff, in coordination with Peninsula Clean Energy, develop agendas, circulate meeting minutes, etc.
2. Facilitate a kickoff meeting with public agency staff and Peninsula Clean Energy and follow up meetings, as relevant, to gather:
    - Baseline information (e.g. fleet inventories, “as builts,” current electrical infrastructure layout, panel schedules, and capacity, etc.)
    - Existing or proposed near-term and long-term fleet transition policies
    - Other information needed to scope specific projects

3. Contractor will gather information on vehicle data, including vehicle characteristics and duty cycles and facility information (e.g. electrical capacity and other relevant details).
4. Contractor will utilize templates for data collection that seek to minimize the level of effort needed on behalf of fleet managers.
5. Contractor will share data obtained from public agencies with Peninsula Clean Energy.

2.2 Develop Vehicle Replacement and Procurement Plans and Energy Needs Assessments

Contractor will develop vehicle replacement and procurement plans that outline a roughly 10-year, or other schedule as mutually determined by Contractor and public agency, plan for each agency. The plans will include an analysis of the total vehicle fleet, estimated duty cycles and vehicle use, factor in any relevant public fleet emissions reductions targets set by local or state agencies (e.g. the California Air Resources Board Advanced Clean Fleet rules for public agencies and Peninsula Clean Energy's goal of zero emissions by 2035), and include the following:

1. Analysis of existing fleet vehicles and current duty cycles.
2. Identification of 1 for 1 electric vehicle alternative options for each vehicle in the fleet, noting market availability and when replacements are not yet available or practical due to conditions such as range, hauling capacity, or other use cases (e.g. pursuit-rated police vehicles). Recommended electric vehicle replacements don't need to be an exhaustive list. Contractor will note general availability of these vehicles on cooperative purchasing contracts (e.g. Sourcewell, Drive EV Fleets, California Department of General Services, etc.,) to streamline future vehicle procurement.
3. Vehicle replacement schedule that aligns with the fleet's typical replacement cycle, but also factors in state or local electrification timing requirements such as the California Air Resources Board Advanced Clean Fleet regulations. When practical, replacement schedules should start with "low-hanging fruit" options such as pool cars, light-duty vehicles, etc. as well as agency priority replacements, before moving to more difficult use cases over time.
4. Estimated purchase price and an approximated total cost of ownership of each vehicle replacement in comparison to the internal-combustion engine equivalent over the service life of the vehicle.

5. Recommended charging infrastructure types for each vehicle, which factors in estimated daily duty cycles (e.g. Level 2, high-power Level 2, DC fast charging of various power capacities, etc.) and vehicle charging needs. Recommendations for specific charging infrastructure models for the vehicle replacements identified, including piggybacking and cooperative contract procurement options (e.g. Sourcewell, Drive EV Fleets, etc.), if available, to streamline project timelines.
6. Energy Needs Assessment for the electric fleet, which includes a calculation of each vehicle replacement's estimated annual electricity needs.

Vehicle replacement and procurement plans should note the following, when applicable:

1. Consolidation opportunities to replace multiple underutilized vehicles with a fewer number of vehicles.
2. "Right-sizing" opportunities to replace a vehicle with a smaller vehicle, if the duty cycle or use has changed.

Contractor shall make proprietary tools or software (e.g. Municipal Fleet Planning Tool) available to fleet managers for the duration of the project.

Vehicle replacement and procurement plans will be reviewed by both the participating agency and Peninsula Clean Energy and contractor will correct, edit, and amend the plans prior to being finalized.

2.3 **Produce Charging Infrastructure Project Plans and Site Designs**

Contractor will produce complete project plans for the installation of EV charging infrastructure at the location(s) chosen by the participating agency. Project plans should seek to include other utility programs such as PG&E EV Fleets Program, which covers electricity upgrades and other front of the meter capacity upgrades, as relevant. Project plans should also future proof as much as practical and relevant. These plans shall include:

1. Facility assessment, including the determination of electrical infrastructure capacity to support recommended charging equipment, existing electrical service, potential connection points for EV charging infrastructure, identification of suitable locations for supporting electrical infrastructure (panels, transformers, etc.), ADA requirements as necessary, potential trenching and/or conduit run routes, identify other site-specific challenges or opportunities to the project.
2. Electrical load analyses, as needed.

3. Project cost estimate.
4. Construction engineering site design documents that the agency can use in a public bid to hire contractors for installation services. These documents will include:
    a. Basis of Design
        i. Project summary and description
        ii. Engineering requirements and performance specifications
        iii. Identification of ADA compliant EV stalls, if required
        iv. Considerations for grading, if required
        v. Equipment specifications and cutsheets
        vi. Other documents, as required by the public agency, to bid these charging station installation projects or receive permits
    b. Schematic Design Documents
        i. Architectural renderings (a.k.a. “as builts”) of the parking areas and other facilities, as relevant
        ii. Electrical single-line diagrams
        iii. Trenching and/or conduit routes
        iv. Panel schedules, if required
5. Contractor shall arrange for a site walk with local agency contact to gather information to complete this task, as necessary.
6. Charging infrastructure project plans will be reviewed by both the participating agency and Peninsula Clean Energy and contractor will correct, edit, and amend the plans prior to being finalized.

2.4 **Funding Package Overview**

For each project, Contractor shall provide a detailed Funding Package Overview, which includes:

1. Currently available funding options for both the vehicles and charging infrastructure from relevant state and local agencies, including:
    a. The Clean Vehicle Rebate Project

b. Hybrid and Zero-Emission Truck and Bus Boucher Incentive Project

c. PG&E EV Fleets Program

d. Bay Area Air Quality Management District

e. Peninsula Clean Energy

f. Others to be determined.

2. The Overview will include any requirements unique to the funding agency such as vehicle utilization, access, vehicle types or use cases, etc.

3. Contractors should seek to opportunities to stack funding, as relevant and allowable, to minimize costs to public agencies.

4. Contractors shall also provide all information to the agencies to minimize effort needed by the fleet managers to apply for funding.

5. The Funding Package Overview for each participating agency shall be reviewed and approved by Peninsula Clean Energy before being finalized.

2.5 Charging Schedule and Optimization Plan

For each project, Contractor will provide a Charging Schedule and Optimization Plan, in the form of a brief memo, which includes:

1. Simulated 15-minute charging load profiles based on vehicle behavior, duty cycles, and total energy needs, with and without charge optimization

2. Costs and other impacts of optimized and non-optimized charging

3. Recommended charging schedules based on maximum cost benefit to fleet, including time of use and demand charge optimization, and to the degree feasible, benefit to the grid

4. Peninsula Clean Energy will review and approve Charging Schedule and Optimization Plans before being finalized.

~~4.~~5. Contractor to provide training to public agency fleet manager on charge management basics, explanations of key concepts (demand charges, time of use rates, etc.), and benefits of charge management. Training can be incorporated into memo or delivered in another format with Peninsula Clean Energy's approval.

2.6 Charge Management System (Mobility House Energy Services)

Contractor shall:

1. Provide the option for fleet managers to utilize The Mobility House ChargePilot energy management system with the equipment and capabilities specified below and in Exhibit C included at the price indicated in Exhibit B.
2. The use of The Mobility House Energy Services are at the discretion and approval of both the participating fleet and Peninsula Clean Energy.
3. Peninsula Clean Energy to pay for the upfront costs of the Charge Management System, at the costs outlined in Exhibit B, at its sole discretion.
4. Fleets may choose to renew the Charge Management System, at the costs outlined in Exhibit B, at their sole discretion.
5. Following the conclusion of the first year, if a local agency decides not to renew the system, Contractor will remove any hardware installed at the project site(s).
6. Charge Management System will be offered with the functionalities outlined below:

ChargePilot hardware components include:

1. ChargePilot Starter Kit
2. ChargePilot Dynamic Add-on Kit, if necessary
3. Commissioning

ChargePilot charge management system shall include:

1. Dashboard, which contains:
    a. Available chargers (total, available, in-use, waiting, in-error chargers);
    b. Grid limit;
    c. Fleet load (and site load, if applicable) in near real-time.
    d. Electric vehicle State of Charge;
    e. Charging power per charging port;
    f. Energy consumption per vehicle; .

ChargePilot charging management software shall include the following charge management functionality, depending on module selected by the agency. All modules to

be provided for free to the local agency for 1 year, following the date of commissioning, and then subject to renewal to the prices indicated in Exhibit B.

1. Primary Charging and Energy Management, which includes:
    i. Monitoring, metering, and error handling;
    ii. Access to web-based user interface for monitoring, user management, analytics, etc.;
    iii. Optimization of charging considering available power or a user-defined peak load;
    iv. Reduction of electricity costs (by reducing demand charges).

    With this module:

    i. EVs can be charged using a first-in-first-charged (FIFC) method wherein the vehicles which arrive and plug in first get charged first.
    ii. EVs can be charged using equal distribution as and when they get plugged in for charging.
    iii. Charge ports can be prioritized to provide full power to a specific vehicle that might have an urgent charging need.

2. Dynamic Load Management, which includes:
    i. The same features as Charging and Energy Management (all the features included above);
    ii. Optimization of charging considering available power or user-defined peak load, and/or building load/site load

    With this module:

    i. EVs can be charged using a first-in-first-charged (FIFC) method wherein the vehicles which arrive and plug-in first get charged first, however, the charging gets throttled based on demand from other consumers on site e.g., an elevator or bus wash facility, ensuring that the power available on a specific site is used optimally.
    ii. EVs can be charged using equal distribution as and when the vehicles get plugged in for charging, but the charging gets

throttled based on demand from other consumers on site e.g., an elevator or bus wash facility.

3. Fleet Charging and Energy Management, which includes:
    i. Same features as Charging and Energy Management
    ii. Optimization of charging considering available power or the user-defined peak load, as well as vehicle schedules and vehicle energy demand
    iii. Allows for the input of EV schedules manually or via a 3rd-party fleet management systems.

    With this module:

    i. EVs are charged based on their schedule information (arrival time and departure time, which can be input manually or automatically and dynamically via an API), as well as on the basis of the vehicle's energy demand (the SoC requirement can be input via an API).

2.7 **Information Sharing Events with Non-Participating Agencies**

Contractor to provide information, best practices, lessons learned, etc. to public stakeholders, including other public agencies that are not participating in the program, to generally promote fleet electrification. This will include participation in a minimum of two webinars or events, outlined below, and at least one case study, outlined further in Final Report, above.

1. Webinar or Event 1: Recruitment. Contractor will prepare presentation materials and participate in event that promotes the program to fleet managers and other key staff from local fleets, including an overview of fleet electrification processes, benefits and considerations of electrification, preview of project engagement steps and schedule, etc. This webinar or event is expected to take place within the first 2-4 months of the program and is intended to solicit interest in the program.
2. Webinar or Event 2: Promoting Results. Contractor will prepare presentation materials and participate in an event that promotes project results, best practices and lessons learned, benefits facilitated with fleet managers and local agencies, etc. to non-participating fleet managers to share information and encourage future participation in the program. This webinar is expected to take place after the first year of the program and is intended to share information and further encourage non-participating agencies to begin electrification efforts.

Peninsula Clean Energy will review and approve Contractors' presentation materials prior to being shared with the public.

3 Project Deliverables

1. Public Fleet electrification packages, which each include the following elements[1]:

    a. Report summarizing baseline data collection, fleet composition or asset lists, etc.
    b. Spreadsheet-based model with vehicle replacement plan scenarios, including:
        i. Total cost of ownership analysis
        ii. Replacement timeline
        iii. Identified vehicles as replacement options
    c. Spreadsheet-based model with charging needs assessment, including number and types of charging stations required for an all-electric fleet
    d. Memo summarizing project charging infrastructure plan for one site, including project overview, number of charging stations to be installed, determination of electrical capacity of the site to support recommended charging infrastructure, and futureproofing elements to be included
    e. Basis of Design and Schematic Design construction documents for one project site per fleet
    f. Memo summarizing relevant funding program opportunities and "to do" list of information needed to apply for relevant funding programs and important dates and deadlines
    g. Charging optimization memo that includes charging cost scenarios for managed and unmanaged charging
2. 3 Annual Reports
3. 1 Final Report, including at least 1 case study that highlights an exemplary fleet electrification story
4. 2 Events or Webinars

4 Schedule

[1] Unless determined by Peninsula Clean Energy that not all components are necessary for a specific project with a public fleet since not all fleets will need all deliverables outlined in this agreement. For example, a public fleet that already has conducted a vehicle replacement plan, may not require a new replacement plan, but would require the other project components specified in this contract.

Peninsula Clean Energy expects to engage 6-9 fleets over 3 years in this program. The number of overall engagements and timeline subject to change, based on mutual determination. Not all engagements will include all the deliverables outlines below.

Contractor shall provide the following deliverables at the scheduled outlined below for each fleet engagement in the program. Contractor will allow for a minimum of two weeks for review, by Peninsula Clean Energy and participating agencies, of key deliverables such as the Vehicle Replacement & Procurement Plans and the Charging Infrastructure Project Plans.

Deliverable	**Deadline, Months Following Project Kickoff per Fleet**
Data collection (deliverable A)	1
Vehicle Replacement & Procurement Plan and Energy Needs Assessment (deliverables B – C)	3
Funding package (Deliverable F)	3
Charging schedule and optimization plan (Deliverable G)	4
Charging Infrastructure Project Plan and Site Designs (deliverables D – E)	5

Delivery of charge management system components to be coordinated to be delivered at the time of charging infrastructure installation.

Exhibit B

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 fee schedule and terms:

1. Payments will not exceed the contact total of $390,000, further outlined below.
    a. Project Deliverables Budget: $270,500
    b. Project Administration: $36,000
    c. The Mobility House Energy Services: $55,896
    d. Contingency: $27,604
    e. Total not to exceed: $390,000
2. Contractor will invoice Peninsula Clean Energy on a monthly basis according to the fixed fees on a milestone (or percentage completed of each milestone) basis in the Project Deliverables Budget Summary table below.
3. Contractor will invoice Peninsula Clean Energy for Administrative expenses, not to exceed $36,000, on a monthly basis, based on the rates below.
4. Payment terms shall on a net-30 basis.

Project Deliverables Budget Summary:

Fleet Size (Vehicles)	Fleet Replacement Plan & Energy Needs Assessment	Charging Infrastructure Plan	Site Designs	Charging Schedule and Optimization Plan	Total
Small: 1-199	$10,000	$8,000	$7,750	$6,000	$31,750
Medium: 200-400	$14,000	$10,000	$10,000	$6,000	$40,000
Total Deliverables Budget[2]					$270,500

[2] Based on 6 small projects and 2 medium projects

The Mobility House Energy Services Summary:

ChargePilot Starter kits & hardware*		Qty	MSRP	Discount	Price	**Total**
One-time	ChargePilot AC/DC Starter Kit	1	$4,900.00	15.00%	$4,165	**$4,165**
One-time	Dynamic add-on package	1	$1,950.00	15.00%	$1,657	**$1,657**
Commissioning*		**Qty**	**MSRP**	**Discount**	**Price**	**Total**
One-time	Charge port commissioning 0-50 kW	5	$275.00	15.00%	$233	**$1,165**
Software		**Qty**	**MSRP**	**Discount**	**Your Price**	**Total**
One year of ChargePilot Fleet Charging & Energy Management		12	$600.00	100.00%	$-	**$-**
**Assumes an average first phase charger deployment of 5 charge ports under 50 kW*				**Total per fleet**		**$6,987 per fleet**
				Total for 8 fleets		**$55,896**

Annual Renewal Costs for Fleets (starting after year 1, if a fleet chooses to renew):

Subscription Level	Annual Cost per Charge Port
Primary Charging & Energy Management	$408
Dynamic Charging & Energy Management	$510
Fleet Charging & Energy Management	$612

The Mobility House Energy Services includes:

1. ChargePilot Starter Kit
2. ChargePilot Dynamic Add-on Kit
3. Commissioning, including training on the ChargePilot system made available to the fleet
4. 1 year of Fleet Charging and Energy Management

Hourly Administrative Budget Summary:

Company	Position				
	Principal	Director	Senior Engineer	Engineer	Analyst or Project Manager
Optony	$325	$225	$225	$185	$185

Exhibit C

The Mobility House ChargePilot Charging and Energy Management System



ChargePilot

Charging and Energy Management System

Confidentiality Clause

The information contained in this document and all attached exhibits or appendices is confidential, privileged and only for the information of the intended person / company and may not be used, published or redistributed without the prior written consent of The Mobility House LLC. Any form of reproduction, dissemination, copying, disclosure, modification, distribution and or publication of this material is strictly prohibited. In case of violation we will reserve the right for legal actions.

I. Company Profile

The Mobility House's mission is to create an emissions-free energy and mobility future. Since 2009, the company has developed an expansive partner ecosystem to smartly integrate electric vehicles into the power grid, including electric vehicle charger manufacturers, 750+ installation companies, 65+ energy suppliers, and leading automotive manufacturers. The Mobility House's unique vendor-neutral and interoperable technology approach to charging and energy management has already been successfully installed at over 700 sites around the world.

The Mobility House has multiple international landmark charging and energy management projects in operation, including managing multiple megawatts of charging capacity for large transit fleets such as King County Metro, Antelope Valley Transit and St. Louis Metro Transit.

US: R&D and location: 545 Harbor Blvd. Belmont, CA 94002, USA

Web address: https://www.mobilityhouse.com/usa_en/

II. ChargePilot – Charging and Energy Management System

This section outlines the key features of ChargePilot that satisfy and exceed the Technical Specifications listed in the RFI. In addition, a "compliance matrix" has also been attached to summarize how the ChargePilot solution satisfies all RFI requirements.

ChargePilot, an Open Charge Point Protocol (OCPP) compliant system, charges electric vehicle fleets intelligently, reliably and cost efficiently. With just one system, fleet managers can centrally monitor and manage all chargers, dynamically schedule charging across vehicles and chargers to reduce overall power demand, manage loads and keep track of fleet's energy consumption while charging. ChargePilot is modular and grows with your needs, providing the flexibility to design and plan for future growth. ChargePilot optimizes the use of available power, charging and energy infrastructure.

ChargePilot processes different real-time parameters such as total available power, building load, electricity rates, vehicle battery State-of-Charge (SoC), and EV schedules, in order to optimize when and how much to charge each vehicle. The goal is to smooth out expensive peak loads ("peak shaving") and take advantage of low-cost charging windows, which significantly reduces electricity (e-fueling) expenditures. ChargePilot controls the charging cycle to manage the use of power from the utility grid for reduction of peak demand charges and general fleet charging management.

Figure 3 – Load Management using ChargePilot

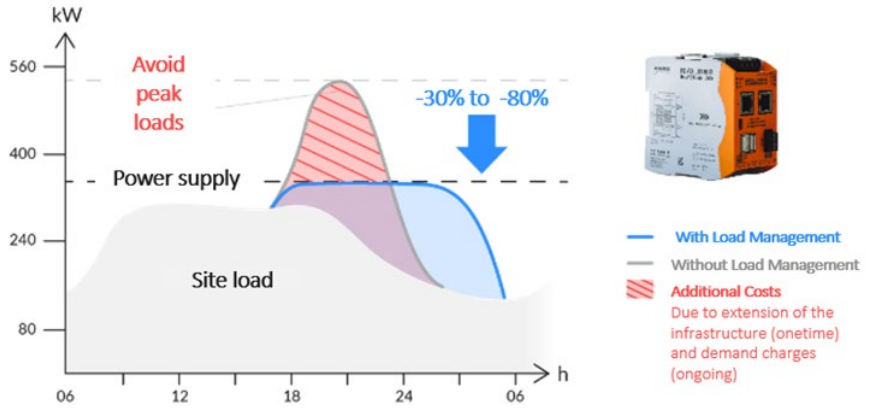
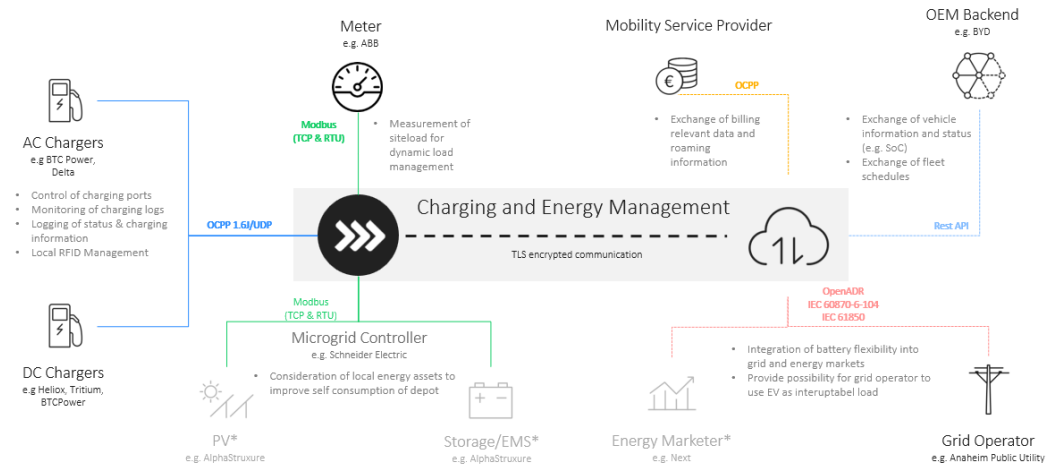


Figure 2 below shows Charge Pilot's open system approach and different interfaces that enable the integration of several 3rd party systems such as chargers, onboard vehicle telematics systems, fleet management systems, microgrid controllers or distributed energy resources (DERs).

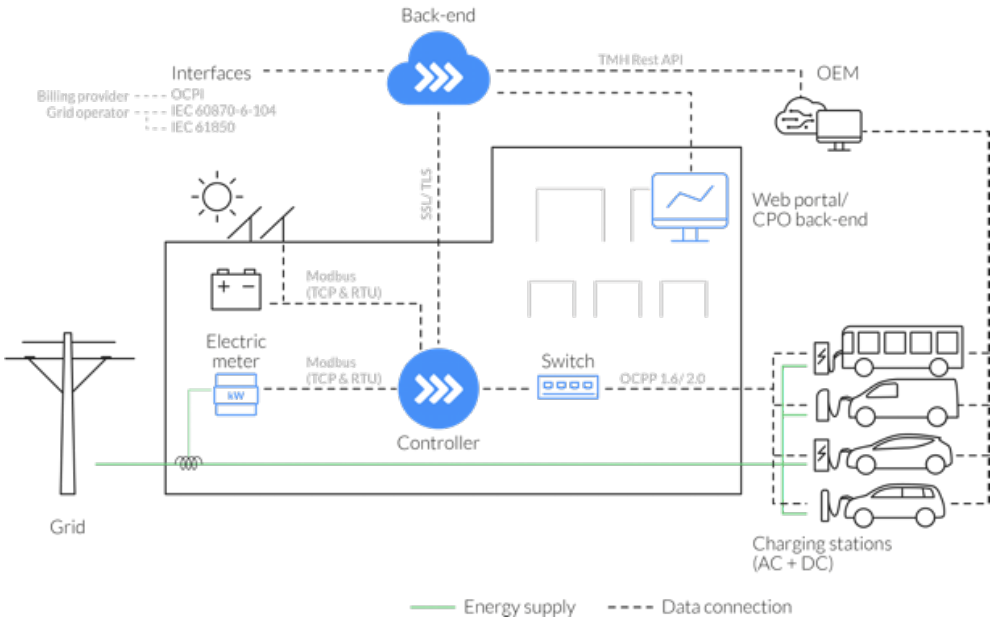
Figure 4 – ChargePilot Interfaces



ChargePilot communicates with chargers via the OCPP 1.6J or 2.0 communication protocol. ChargePilot communicates with onboard vehicle telematics systems via the system's open APIs.

In order to ensure the highest level of reliability, the ChargePilot system architecture applies both local and cloud intelligence. All chargers are physically connected to an onsite controller using Ethernet and by thus fulfilling the low voltage requirement to reduce the simultaneous factor behind the fuse. The controller communicates with the charging stations using open-source communication protocol, OCPP and ensures that charging processes can be controlled even if there are network or internet connectivity issues. The following figure provides an overview of the architecture.

Figure 5 – ChargePilot System Architecture



a. Charging Management Module

There are 3 different ChargePilot load management configurations:

1. **Primary Charging and Energy Management,** which includes:

- Monitoring, metering, and error handling;
- Access to our web-based user interface for monitoring, user management, analytics, etc.;
- Optimization of charging considering available power or a user-defined peak load;
- Reduction of electricity costs (by reducing demand charges).

With this module:

i. EVs can be charged using a first-in-first-charged (FIFC) method wherein the vehicles which arrive and plug in first get charged first.
ii. EVs can be charged using equal distribution as and when they get plugged in for charging.
iii. Charge ports can be prioritized to provide full power to a specific vehicle that might have an urgent charging need.

2. **Dynamic Load Management,** which includes:

- The same features as Charging and Energy Management (all the features included above);
- Optimization of charging considering available power or user-defined peak load, and/or building load/site load

With this module:

i. EVs can be charged using a first-in-first-charged (FIFC) method wherein the vehicles which arrive and plug-in first get charged first, however, the charging gets throttled based on demand from other consumers on site e.g., an elevator or bus wash facility, ensuring that the power available on a specific site is used optimally.
ii. EVs can be charged using equal distribution as and when the vehicles get plugged in for charging, but the charging gets throttled based on demand from other consumers on site e.g., an elevator or bus wash facility.

3**. Fleet Charging and Energy Management**, which includes:

- Same features as Charging and Energy Management
- Optimization of charging considering available power or the user-defined peak load, as well as vehicle schedules and vehicle energy demand
- Allows for the input of EV schedules manually or via a 3rd-party fleet management systems.

With this module:

i. EVs are charged based on their schedule information (arrival time and departure time, which can be input manually or automatically and dynamically via an API), as well as on the basis of the vehicle's energy demand (the SoC requirement can be input via an API).

b. Dashboard and User Interface

The ChargePilot controller is connected to the Mobility House's backend system via a secure https internet connection. Using the ChargePilot web portal, the fleet manager and technical support staff can manage users, monitor the status of all charging stations in near real-time, and access statistical data on power consumption, charging cost, and emissions reductions - from anywhere, at any time. The two primary methods of vehicle or driver authentication include Radio Frequency Identification (RFID) or Auto Charge.

All sites and every charging station can be viewed from the ChargePilot user interface (UI). The system displays the charger and charging status (total, available, in-use, waiting, in-error chargers) in near real time for every site remotely from a computer, table, or phone which supports the use of browsers such as Chrome, Firefox, Edge. The view across sites allows an operator to view all assets in one interface.

The ChargePilot main dashboard shows the following information across sites:

- Available chargers (total, available, in-use, waiting, in-error chargers);
- Grid limit;
- Fleet load (and site load) in near real-time.

The user can select a specific site to view in detail and view the following information:

- Electric vehicle State of Charge;
- Charging power per charging port;
- Energy consumption per vehicle;

- Fleet load (and site load) in near real-time.

An analytics section of the UI displays total energy used over a user selected period, cost of energy, GHG emissions saved, charging events, kWh charged for each electric vehicle. From the UI, each charger can be restarted remotely, or the charging session can be stopped. The fleet operator can see everything in a user-friendly interface with the ability to export and import certain data sets.

Please see sample screen shots with explanatory captions below.

Figure 7 – ChargePilot Main Dashboard: Monitoring and managing charging across depots. This screenshot shows a project with 3 depots/sites and 24 chargers across the 3 locations. The main dashboard includes all error messages.

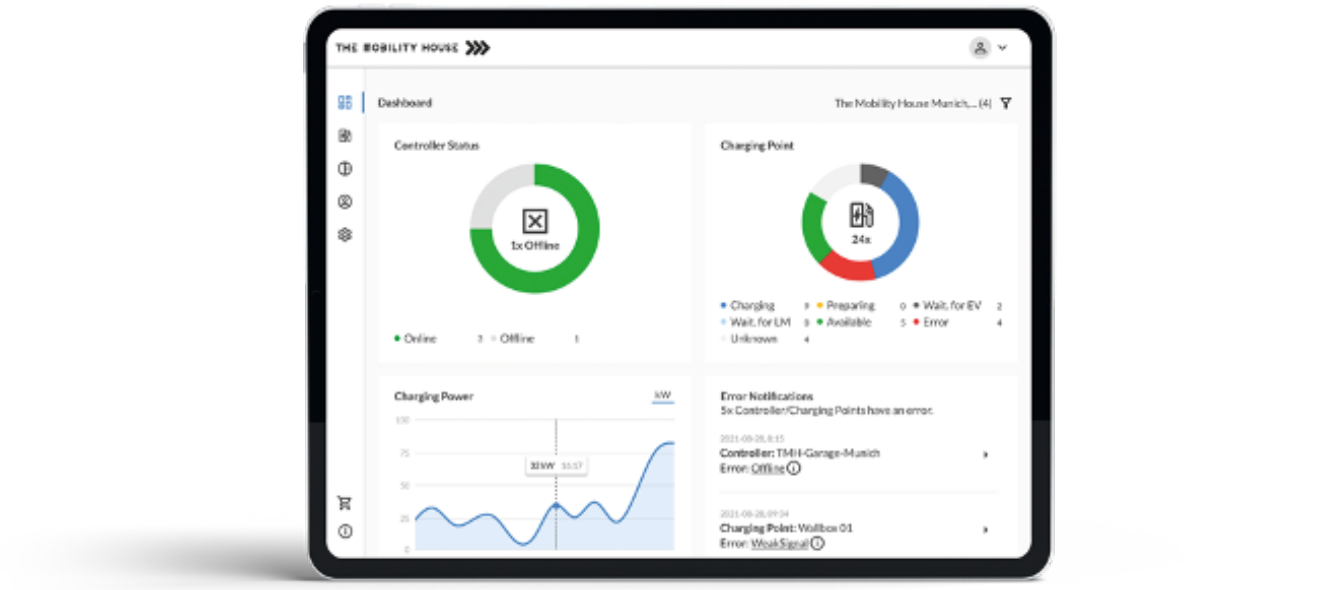


Figure 8 - Selection of sites. This allows the user to select either a global view across several sites or a local view of a specific site.

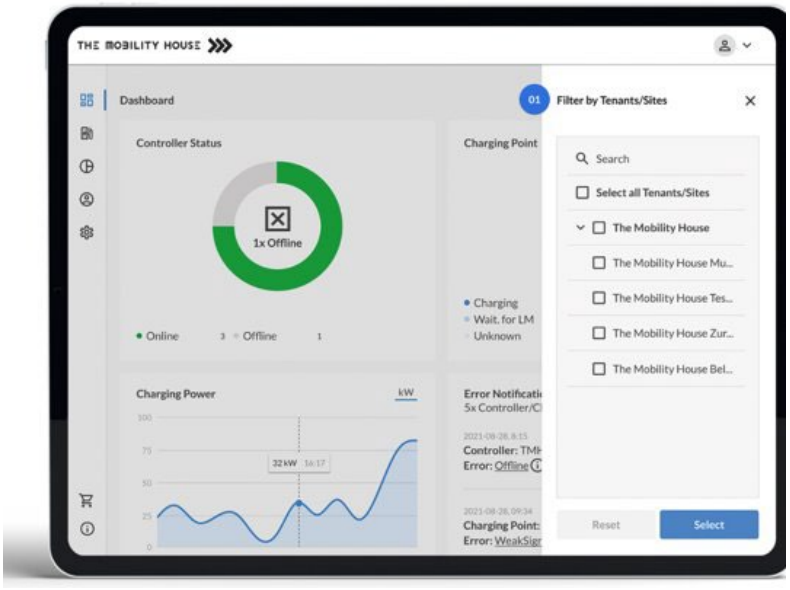


Figure 9 – Displays chargers' status, vehicle ID connected, charging power, SoC, plug in time and ability to control chargers remote at a single or multiple sites. Displays specific site with 6 chargers

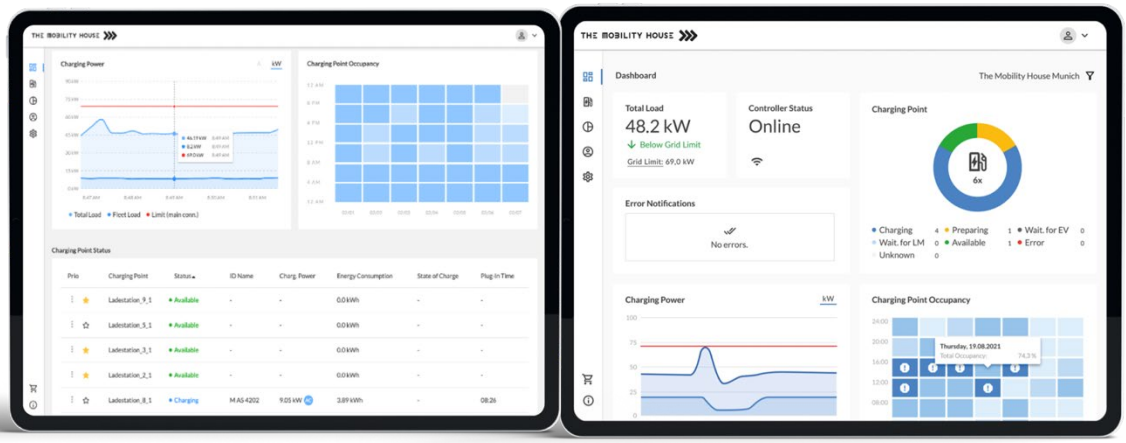


Figure 10 – Displays the summary of charging sessions in a given date range including vehicle ID, charger ID, total time & power consumed in a session, and cost of charge sessions

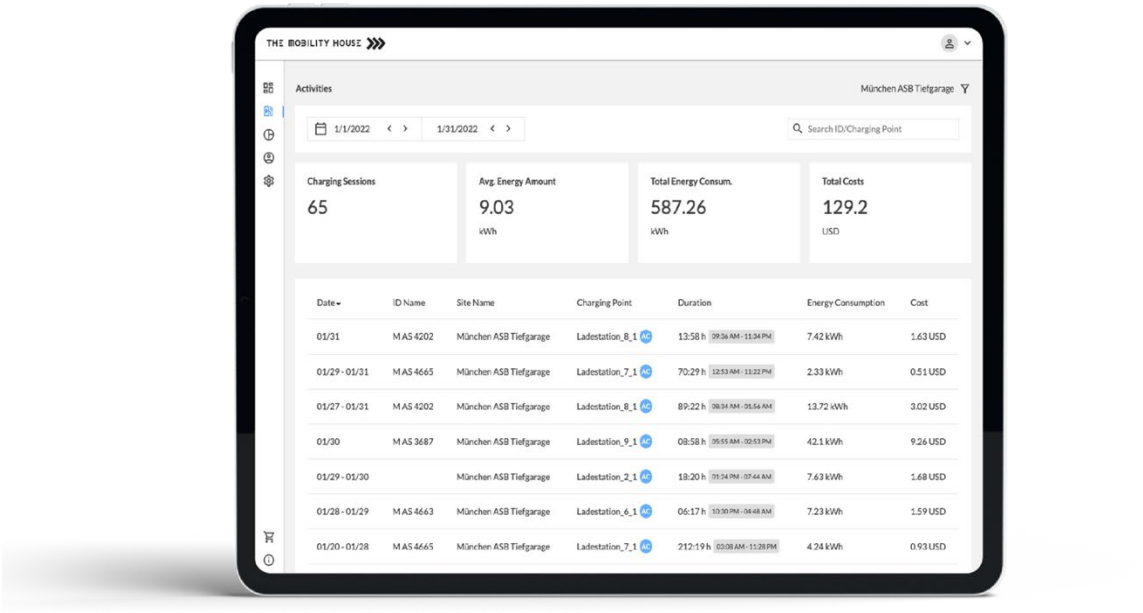


Figure 11 – Depot statistics over a selected period with peak load, total power, total cost and CO2 emissions savings I

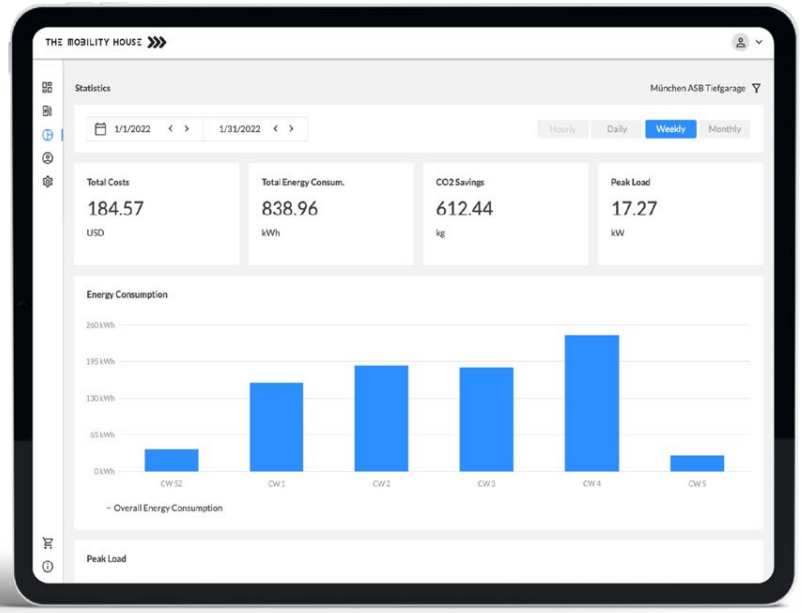


Figure 12 – Depot statistics over a selected period with peak load, total power, total cost and CO2 emissions savings II



Figure 13 – Site Settings and Vehicle Management

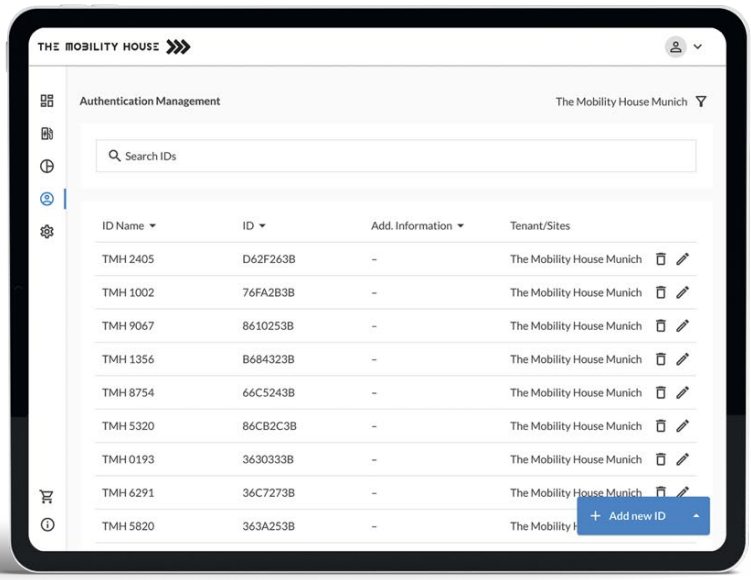
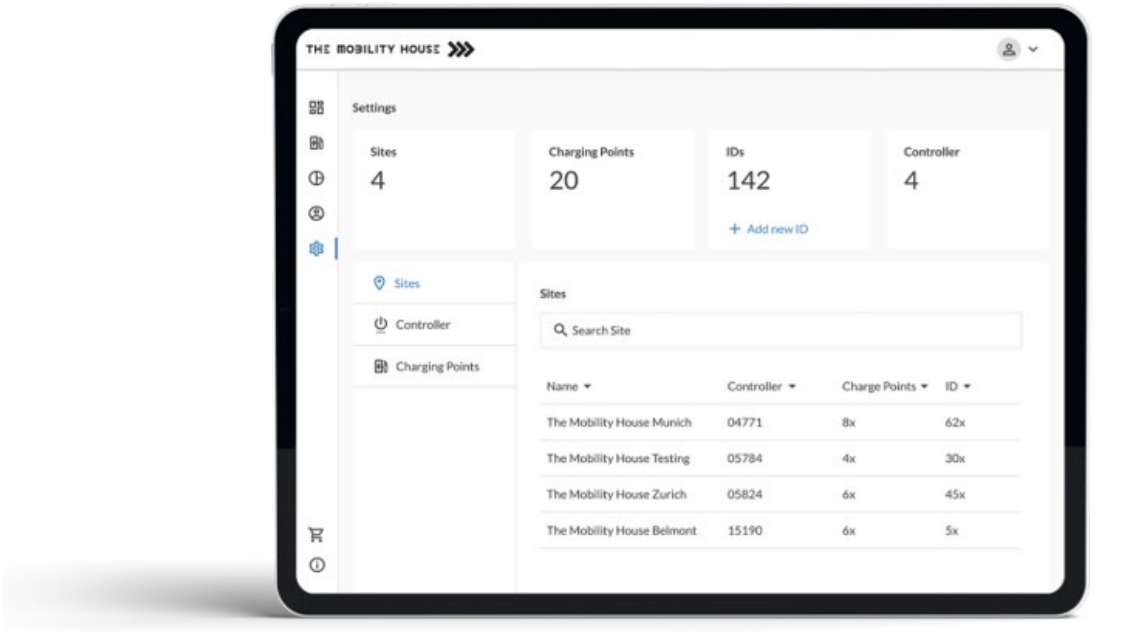


Figure 14 – Real time snapshot of the user interface for an electric vehicle project with 4 depots, 20 chargers and 142 electric vehicles using ChargePilot



c. Data collection and statistics

ChargePilot provides the hours of use per charger as well as the amount of electricity used per charger for a user-defined period. This defined period could align with peak and off-peak pricing periods to understand charger utilization in various periods. It also provides the amount of electricity used and the cost of electricity used per charging session per vehicle for various internal and external reporting purposes. This information can be seen on the ChargePilot dashboard or can be downloaded as a CSV file for analytics and reports.

d. Connectivity

The ChargePilot controller connects to the chargers via Ethernet.

Internet connectivity for communication from the controller to the cloud backend can be provided via a 3G/4G/LTE cellular router or by connecting directly to the local Internet Service Provider (ISP).

e. Resiliency, Redundancy, and Reliability

The optimizer, which enables smart charging and energy management, runs locally on the The Mobility House local controller. Therefore, if a site loses connectivity, the local controller manages the CEM with

local intelligence and configuration such that the site does not go over user-specified grid limits and incur high costs for peak loads (provided manually or via an API).

f. Data points

The following data points are collected for every charging session, displayed in near-real time in the UI and stored in the cloud and local data drives for future use. THE MOBILITY HOUSE receives all these data points in 10 second intervals and can collect them as frequently as every second, if supported by the charging station.

i. *Time*
ii. *Date*
iii. *EVSE ID (Charger ID)*
iv. *User ID (Or EV ID)*
v. *Unique ID for each vehicle getting charged*
vi. *Vehicles connect and disconnect times*
vii. *Average power per charge event*
viii. *Total energy per charge event*
ix. *Total cost per charge event*
x. *EVSE Status per charge event*
xi. *Error Status*
xii. *State of Charge per charge event*

g. Warranty, Maintenance & Support

The Mobility House standard offering includes a 2-year warranty for the hardware component. This warranty includes complete replacements, and site visits, if necessary.

All future software updates are included in the subscription and will be remotely installed at no additional cost.

III. In Summary

1. **ChargePilot is an extensively vetted solution**: As described above, ChargePilot has been vetted, evaluated, and has been deployed at more than 700 depots.
2. **Web based portal**: ChargePilot has a web-based portal accessible by any device by web browser. It allows creation of users as well as management of users, chargers and EVs. It can also provide alerts and generate reports.
3. **Charging Cost Optimization:** ChargePilot actively manages charging to minimize the total cost of charging based on electrical rates on a specific site without compromising operational requirements.
4. **OCPP1.6/2.0 compliant, hardware agnostic and interoperable solution**: ChargePilot is a hardware agnostic, open standards-based, interoperable charging and energy management solution that has been integrated with multiple charging hardware companies.

5. **Grid limit optimization**: The grid limit optimization feature provided by ChargePilot not only saves CapEx and OpEx costs, but also saves time by not requiring grid service upgrades at sites that are constrained by their existing service.
6. **Local controller:** ChargePilot is built on a hybrid solution approach; along with the cloud backend, it utilizes a local controller onsite to increase reliability and resiliency.
7. **24/7 live monitoring:** The Mobility House provides 24/7 pro-active monitoring for all sites managed by ChargePilot.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: August 15, 2022
BOARD MEETING DATE: August 25, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer

SUBJECT: Appointment of Kristina Cordero as Peninsula Clean Energy Treasurer

RECOMMENDATION:
Approve the appointment of Kristina Cordero, Chief Financial Officer of Peninsula Clean Energy (PCE), as PCE's Treasurer/Auditor/Controller ("Treasurer").

BACKGROUND:
The Joint Exercise of Powers Act (Government Code Sections 6500, *et seq.*), under which PCE was created, requires that each Joint Powers Authority ("JPA") have a Treasurer.

Sections 6505.5 and 6505.6 govern who may serve as Treasurer. The options include (1) the County Treasurer; (2) a member city Treasurer; (3) a Certified Public Accountant; (4) a PCE officer; or (5) a PCE employee.

PCE's JPA agreement selected the County Treasurer as Treasurer (Section 3.9.3).

Under the JPA agreement, the Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time.

DISCUSSION:
The Board previously appointed Andrew Stern, PCE's permanent Chief Financial Officer ("CFO"), as Treasurer in 2018 because his duties and responsibilities closely aligned with the responsibilities of the Treasurer role, as outlined below. Mr. Stern's employment will be voluntarily terminated soon. As a result, PCE has hired Kristina Cordero as the replacement Chief Financial Officer with the same duties and responsibilities for financial management and control. Ms. Cordero began her employment with PCE on July 25, 2022.

Per Government Code Sections 6505.5 and 6505.6, the Treasurer's duties would be as follows:

1. Receive and make receipt for money, to be held in PCE's credit;
2. Be responsible, upon his or her official bond, for the safekeeping and disbursement of all of PCE's money;
3. Pay, when due, out PCE's money, all sums payable on PCE's outstanding bonds and coupons;
4. Pay any other sums due from PCE from PCE's money, or any portion thereof, "only upon warrants of the public officer performing the functions of auditor or controller who has been designated by the agreement";
5. Verify and report in writing on the first day of July, October, January, and April of each year to PCE and to public agency members the amount of money the Treasurer holds for PCE, the amount of receipts since the Treasurer's last report, and the amount paid out since the last report; and
6. Cause an independent audit to be made by a certified public accountant or public accountant.

PCE's JPA agreement lays out responsibilities of the Treasurer, including "report[ing] directly to the Board" and "comply[ing] with the requirements of treasurers of incorporated municipalities." In addition, the JPA agreement requires the Treasurer to comply with Article 5 of the agreement, including the following:

1. All funds of PCE shall be held in separate accounts in the name of PCE and not commingled with funds of any member agency or any other person or entity.
2. All funds of PCE 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.
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 (meaning the JPA agreement or other adopted policies). 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.

Because the CFO's duties and responsibilities align closely with the responsibilities of the Treasurer role, Staff is recommending that the Board appoint the CFO to the position of Treasurer/Auditor/Controller.

RESOLUTION NO. _____

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

* * * * * *

RESOLUTION APPROVING APPOINTMENT OF CHIEF FINANCIAL OFFICER, KRISTINA CORDERO, AS TREASURER EFFECTIVE ON JULY 25, 2022

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

WHEREAS, the Exercise of Powers Act (Government Code Section 6500 *et seq.*), under which PCE was created, requires that each Joint Powers Authority ("JPA") have a Treasurer; and

WHEREAS, Government Code Sections 6505.5 and 6505.6 govern who may serve as Treasurer, the options for which include (1) the County Treasurer; (2) a member city Treasurer; (3) a Certified Public Accountant; (4) a PCE officer; or (5) a PCE employee; and

WHEREAS, he JPA Agreement that formed PCE selects the County Treasurer as Treasurer, but provides that the Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time; and

WHEREAS, the Board previously appointed its permanent Chief Financial Officer ("CFO") as Treasurer because the duties and responsibilities closely align with the responsibilities of the Treasurer role; and

WHEREAS, PCE recently hired a new, permanent Chief Financial Officer ("CFO") who began employment with PCE on July 25, 2022, whose duties and responsibilities closely align with the responsibilities of the Treasurer role.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board approves the appointment of Kristina Cordero as Treasurer of the Peninsula Clean Energy Authority effective on July 25, 2022.

* * * * * *

Item No. 5

PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: August 18, 2022
BOARD MEETING DATE: August 25, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Chelsea Keys, Interim Director of Power Resources
Sara Maatta, Senior Renewable Energy Analyst

SUBJECT: 2021 Power Content Label

RECOMMENDATION

Approve Resolution Approving Peninsula Clean Energy's 2021 Power Source Disclosure Annual Reports and Power Content Label, Confirming the Accuracy of the Information Provided in the 2021 Power Source Disclosure Reports and Power Content Label and Delegating Authority to the Chief Executive Officer to Submit the Attestation to the California Energy Commission. (Action)

BACKGROUND

California Public Utilities Code requires all retail sellers of electric energy, including Peninsula Clean Energy, to disclose "accurate, reliable, and simple-to-understand information on the sources of energy" that are delivered to their respective customers. Applicable regulations direct retail sellers to provide such communications no later than October 1 for the previous calendar year. The format for the required communications is highly prescriptive, offering little flexibility to retail sellers when presenting such information to customers. This format has been termed the "Power Content Label" by the California Energy Commission (CEC). Information presented in the Power Content Label includes the proportionate share of total energy supply attributable to various resource types, including both renewable and conventional fuel sources.

In the event that a retail seller meets a certain percentage of its supply obligation from unspecified resources, the report must identify such purchases as "unspecified sources of power." As the Board is aware, certain of Peninsula Clean Energy's supply agreements allow for the use of such unspecified purchases to satisfy a portion of Peninsula Clean Energy's energy requirements. These purchases have been appropriately identified as "unspecified sources of power" in the Power Content Label.

Beginning with the 2021 reporting year, retail suppliers are required to calculate the greenhouse gas (GHG) emissions intensity of their electricity portfolios and report the results in the Power Source Disclosure Report and on the Power Content Label. The methodology for calculating the emissions intensity is determined by the CEC, and retail suppliers are required to use the CEC's methodology. Any marketing or retail product claim by a retail supplier related to the GHG emissions intensity of an electricity portfolio must be consistent with the GHG emissions intensity disclosed on the relevant Power Content Label. Retail suppliers may provide additional information to customers describing other actions related to greenhouse gases that are unrelated to the electricity portfolio.

DISCUSSION

During the 2021 calendar year, Peninsula Clean Energy successfully delivered a substantial portion of its electric energy supply from various renewable energy sources, including solar, wind and small hydroelectricity. For our ECOplus customers, the percentage of supply attributable to renewable energy sources approximated forty-nine percent (49.2%) according to the Power Content Label, and the total supply from carbon-free resources was one hundred percent (100%)[1]. The calculation of renewable content for the CEC's Power Content Label differs from the calculation for the CPUC's Renewable Portfolio Standard. Using the Renewable Portfolio Standard calculation, the renewable content of ECOplus was over fifty-one percent (51.6%). These amounts meet our targets of fifty percent (50%) renewable and one hundred percent (100%) renewable or carbon-free energy. For our ECO100 customers, the percentage of supply attributable to renewable energy sources comprised one hundred percent (100%).

The 2021 calendar year Power Content Label includes the GHG Emissions Intensity factor calculated per the CEC's methodology. For our ECOplus customers, the GHG Emissions Intensity for 2021 was 5 lbs of carbon dioxide equivalent per megawatt-hour of electricity (CO_2e/MWh). In comparison, the average intensity for California utilities in 2021 was 466 lbs CO_2e/MWh. For our ECO100 customers, the GHG Emissions Intensity for 2021 was 0 lbs CO_2e/MWh.

Beginning with reporting for the 2019 calendar year, the CEC requires supplies purchased from Asset Controlling Suppliers (ACS supplies) to be disaggregated in the Power Content Label into distinct fuel types, such as large hydroelectric, nuclear, and unspecified sources of power. Peninsula Clean Energy did not purchase any ACS supplies in 2021.

Consistent with applicable regulations, Peninsula Clean Energy will complete requisite customer communications in accordance with the October 1, 2022 deadline.

[1] The percentages on the Power Content Label may not add up exactly due to rounding. The Power Content Label template is provided by the California Energy Commission as a "locked" Excel spreadsheet. The template does not allow us to make any changes to add a decimal place or fix rounding.

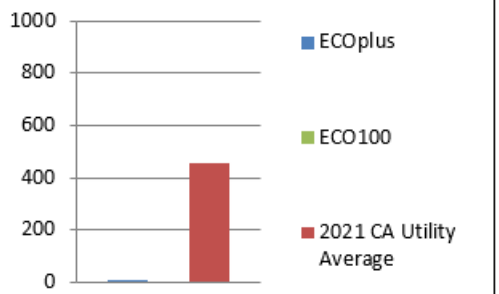
While developing Peninsula Clean Energy's 2021 Power Content Label, staff performed a detailed review of all power purchases completed for the 2021 calendar year. This review included an inventory of all renewable energy transfers within Peninsula Clean Energy's Western Renewable Energy Generation Information System (WREGIS) accounts and pertinent transaction records. Staff developed the Power Source Disclosure Annual Reports (Annual Reports) for the ECOplus and ECO100 products and submitted these reports to the CEC by June 1, 2022. In addition, the ECO100 product for 2021 has been certified by Green-e, a process which included an external audit. Based on staff's review of available data, the information presented in the Annual Reports and the Power Content Label was determined to be accurate.

To fulfill its Power Content Label reporting obligation, Peninsula Clean Energy must also provide the CEC with an attestation regarding the veracity of information included in the Power Content Label. In consideration of the aforementioned internal review and applicable regulations, staff requests that the Board accept this determination and attest to the veracity of information included in Peninsula Clean Energy's 2021 Power Content Label, which will soon be distributed to Peninsula Clean Energy customers.

Copies of Peninsula Clean Energy's 2021 Power Source Disclosure Reports are included as Exhibits A and B. A copy of Peninsula Clean Energy's 2021 Power Content Label is reproduced below:

2021 POWER CONTENT LABEL
Peninsula Clean Energy Authority
www.peninsulacleanenergy.com

Greenhouse Gas Emissions Intensity (lbs CO_2e/MWh)			Energy Resources	ECOplus	ECO100	2021 CA Power Mix
ECOplus	ECO100	2021 CA Utility Average	**Eligible Renewable**[1]	**49.2%**	**100.0%**	**33.6%**
5	**0**	**456**	Biomass & Biowaste	9.0%	0.0%	2.3%
			Geothermal	0.0%	0.0%	4.8%
			Eligible Hydroelectric	0.6%	0.0%	1.0%
			Solar	20.3%	50.0%	14.2%
			Wind	19.4%	50.0%	11.4%
			Coal	**0.0%**	**0.0%**	**3.0%**
			Large Hydroelectric	**50.8%**	**0.0%**	**9.2%**
			Natural Gas	**0.0%**	**0.0%**	**37.9%**
			Nuclear	**0.0%**	**0.0%**	**9.3%**
			Other	**0.0%**	**0.0%**	**0.2%**
			Unspecified Power[2]	**0.0%**	**0.0%**	**6.8%**
			TOTAL	**100.0%**	**100.0%**	**100.0%**



Percentage of Retail Sales Covered by Retired Unbundled RECs[3]**:**	**0%**	**0%**	

[1]The eligible renewable percentage above does not reflect RPS compliance, which is determined using a different methodology.

[2]Unspecified power is electricity that has been purchased through open market transactions and is not traceable to a specific generation source.

[3]Renewable energy credits (RECs) are tracking instruments issued for renewable generation. Unbundled renewable energy credits (RECs) represent renewable generation that was not delivered to serve retail sales. Unbundled RECs are not reflected in the power mix or GHG emissions intensities above.

For specific information about this electricity portfolio, contact:	**Peninsula Clean Energy Authority** **1-866-966-0110**
For general information about the Power Content Label, visit:	http://www.energy.ca.gov/pcl/
For additional questions, please contact the California Energy Commission at:	Toll-free in California: 844-454-2906 Outside California: 916-653-0237

STRATEGIC PLAN

The Power Content Label supports the Power Resources Objective A for Low Cost and Stable Power: Develop and implement power supply strategies to procure low-cost, reliable power and specifically Key Tactic 4 to Manage portfolio to meet risk, cost and reliability objectives.

RESOLUTION NO. _____

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

* * * * * *

RESOLUTION CONFIRMING THE ACCURACY OF THE INFORMATION PROVIDED IN PENINSULA CLEAN ENERGY'S 2021 POWER SOURCE DISCLOSURE ANNUAL REPORTS AND POWER CONTENT LABEL AND DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE ANY REQUIRED DOCUMENTATION

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 "PCEA") was formed on February 29, 2016; and

WHEREAS, launch of service for Phase I occurred in October 2016, and launch of service for Phase II occurred in April 2017; and

WHEREAS, the California Public Utilities Code requires all retail sellers of electric energy, including Peninsula Clean Energy, to disclose "accurate, reliable, and simple-to-understand information on the sources of energy" that are delivered to their respective customers; and

WHEREAS, staff completed a detailed review of all power purchases for the 2021 calendar year and developed the 2021 Power Source Disclosure Annual Reports; and

WHEREAS, staff is presenting to the Board for its review the 2021 Power Content Label, which is based on the information in the 2021 Power Source Disclosure Annual Reports; and

WHEREAS, the Board wishes to attest to the veracity of information presented in the 2021 Power Content Label.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED by the Board as follows:

SECTION 1: The Board approves the 2021 Power Source Disclosure Annual Reports and 2021 Power Content Label.

SECTION 2: The Board attests to the veracity of information provided in the 2021 Power Source Disclosure Annual Reports and Power Content Label.

SECTION 3: The Board authorizes the Chief Executive Officer, or designee, to execute and submit the attestation of the 2021 Power Source Disclosure Annual Reports and 2021 Power Content Label to the California Energy Commission.

* * * * * *

2021 POWER SOURCE DISCLOSURE ANNUAL REPORT
For the Year Ending December 31, 2021

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

GENERAL INSTRUCTIONS

RETAIL SUPPLIER NAME
Peninsula Clean Energy Authority

ELECTRICITY PORTFOLIO NAME
ECOplus

CONTACT INFORMATION	
NAME	Chelsea Keys
TITLE	Interim Director of Power Resources
MAILING ADDRESS	2075 Woodside Road
CITY, STATE, ZIP	Redwood City, 94063
PHONE	650-382-2002
EMAIL	ckeys@peninsulacleanenergy.com
WEBSITE URL FOR PCL POSTING	www.peninsulacleanenergy.com

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

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

If you have questions, contact Power Source Disclosure (PSD) staff at PSDprogram@energy.ca.gov or (916) 805-7439.

INTRODUCTION

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

A complete Annual Report includes the following tabs:

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

INSTRUCTIONS

Schedule 1: Procurements and Retail Sales

Retail suppliers of electricity must complete this schedule by entering information about all power procurements and generation that served the identified electricity portfolio covered in this filing in the prior year. The schedule is divided into sections: directly delivered renewables, firmed-and-shaped imports, specified non-renewables, and procurements from ACSs. Insert additional rows as needed to report all procurements or generation serving the subject product. Provide the annual retail sales for the subject product in the appropriate space. At the bottom of Schedule 1, provide the retail suppliers' other electricity end-uses that are not retail sales, such as transmission and distribution losses. Retail suppliers shall submit a purchase agreement or ownership arrangement documentation substantiating that any eligible firmed-and-shaped product for which it is claiming an exclusion was executed prior to January 1, 2019. **Any retail supplier that offered multiple electricity portfolios in the prior year must submit separate Annual Reports for each portfolio offered.**

Specified Purchases: A Specified Purchase refers to a transaction in which electricity is traceable to specific generating facilities by any auditable contract trail or equivalent, such as a tradable commodity system, that provides commercial verification that the electricity claimed has been sold once and only once to retail consumers. Do not enter data in the grey fields. For specified purchases, include enter following information for each line item:

Facility Name - Provide the name used to identify the facility.
Fuel Type - Provide the resource type (solar, natural gas, etc.) that this facility uses to generate electricity.
Location - Provide the state or province in which the facility is located.
Identification Numbers - Provide all applicable identification numbers from the Western Renewable Energy Generation Information System (WREGIS), the Energy Information Agency (EIA), and the California Renewables Portfolio Standard (RPS).
Gross Megawatt Hours Procured - Provide the quantity of electricity procured in MWh from the generating facility.
Megawatt Hours Resold - Provide the quantity of electricity resold at wholesale.

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

Schedule 2: Retired Unbundled RECs

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

Schedule 3: Annual Power Content Label Data

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

ACS Resource Mix Calculator

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

GHG Emissions Factors

This tab will be displayed for informational purposes only; it will not be used by reporting entities, since the emissions factors below auto-populate in the relevant fields on Schedules 1 & 3.

Attestation

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

2021 POWER SOURCE DISCLOSURE ANNUAL REPORT
SCHEDULE 1: PROCUREMENTS AND RETAIL SALES
For the Year Ending December 31, 2021
Peninsula Clean Energy Authority
ECOplus

Instructions: Enter information about power procurements underlying this electricity portfolio for which your company is filing the Annual Report. Insert additional rows as needed. All fields in white should be filled out. **Fields in grey auto-populate as needed and should not be filled out.** For EIA IDs for unspecified power or specified system mixes from asset-controlling suppliers, enter "Unspecified Power", "BPA", or "Tacoma Power" as applicable. For specified procurements of ACS power, use the ACS Procurement Calculator to calculate the resource breakdown comprising the ACS system mix. **Procurements of unspecified power must not be entered as line items below; unspecified power will be calculated automatically in cell N9**. Unbundled RECs must not be entered on Schedule 1; these products must be entered on Schedule 2. At the bottom portion of the schedule, provide the other electricity end-uses that are not retail sales including, but not limited to transmission and distribution losses or municipal street lighting. Amounts should be in megawatt-hours.

Retail Sales (MWh)	**3,030,741**
Net Specified Procurement (MWh)	3,176,599
Unspecified Power (MWh)	-
Procurement to be adjusted	145,858
Net Specified Natural Gas	-
Net Specified Coal & Other Fossil Fuels	-
Net Specified Nuclear, Large Hydro, Renewables, and ACS Power	3,176,599
GHG Emissions (excludes grandfathered emissions)	7,470
GHG Emissions Intensity (in MT CO_2e/MWh)	0.0025

DIRECTLY DELIVERED RENEWABLES

Facility Name	Fuel Type	State or Province	WREGIS ID	RPS ID	N/A	EIA ID	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO_2e/MWh)	GHG Emissions (in MT CO_2e)	N/A
Biglow Canyon Wind Farm - Biglow Canyon 3	Wind	OR	W1588	63056A		56485	5,789		5,789	5,523	-	-	
Biglow Canyon Wind Farm - Biglow Phase 2	Wind	OR	W1268	63055A		56485	36,345		36,345	34,676	-	-	
Buena Vista Energy Windfarm - Buena Vista Ener	Wind	CA	W165	60124A		56446	91,993		91,993	87,769	-	-	
Copper Mountain Solar 4 - Copper Mountain Sola	Solar	NV	W5023	62662A		59814	100		100	95	-	-	
Elevation Solar C - Elevation Solar C	Solar	CA	W5298	63192A		59964	7,479		7,479	7,136	-	-	
Hayworth Solar - Hayworth Solar	Solar	CA	W4719	62744A		59009	2,774		2,774	2,647	-	-	
High Winds - High Winds, LLC	Wind	CA	W229	60726A		56075	17,323		17,323	16,528	-	-	
Mega Hydro #1 (Clover Creek) - Mega Hydro #1 (	Eligible hydro	CA	W623	60227A		P236	1,360		1,360	1,298	-	-	
Mega Renewables (Bidwell Ditch) - Mega Renewa	Eligible hydro	CA	W625	60165A		10880	11,728		11,728	11,189	-	-	
Mega Renewables (Hatchet Creek) - Mega Renev	Eligible hydro	CA	W626	60166A		10882	3,077		3,077	2,936	-	-	
Mega Renewables (Roaring Creek) - Mega Renev	Eligible hydro	CA	W627	60167A		10881	1,449		1,449	1,382	-	-	
Mustang Two Whirlaway - Mustang Two Whirlawa	Solar	CA	W9615	63730A		62015	255,430		255,430	243,702	-	-	
Wheelabrator Shasta - Wheelabrator Shasta	Biomass & biowa	CA	W759	60094A		50881	285,747		285,747	272,627	0.0274	7,470	
Shiloh I Wind Project - Shiloh I Wind Project LLC	Wind	CA	W231	60488A		56362	266,013		266,013	253,799	-	-	
Sky RIver Wind Energy Center - Sky River Wind -	Wind	CA	W530	63763A		50536	13,112		13,112	12,510	-	-	
Sky River Wind Energy Center - Sky River Wind F	Wind	CA	W531	63763A		50536	11,032		11,032	10,525	-	-	
Tucannon River Wind Farm - Tucannon River 1	Wind	WA	W4482	63027A		58571	52,519		52,519	50,108	-	-	
Tucannon River Wind Farm - Tucannon River 2	Wind	WA	W4483	63027A		58571	5,347		5,347	5,101	-	-	
Voyager Wind 2 - Voyager Wind 2	Wind	CA	W7267	63686A		61582	117,306		117,306	111,920	-	-	
Western Antelope Blue Sky Ranch B - Western An	Solar	CA	W5300	61518A		59961	8,615		8,615	8,219	-	-	
Wright Solar Park - Wright Solar Park	Solar	CA	W8785	62620A		59525	368,909		368,909	351,970	-	-	
									-	-	#N/A		

FIRMED-AND-SHAPED IMPORTS

Facility Name	Fuel Type	State or Province	WREGIS ID	RPS ID	EIA ID of REC Source	EIA ID of Substitute Power	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO_2e/MWh)	GHG Emissions (in MT CO_2e)	Eligible for Grandfathered Emissions?
									-	-	#N/A		
									-	-	#N/A		
									-	-	#N/A		
									-	-	#N/A		
									-	-	#N/A		

SPECIFIED NON-RENEWABLE PROCUREMENTS

Facility Name	Fuel Type	State or Province	N/A	N/A	N/A	EIA ID	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO_2e/MWh)	GHG Emissions (in MT CO_2e)	N/A
Balch #1 PH	Large hydro	CA				217	18,714		18,714	17,855	-	-	
Balch #2 PH	Large hydro	CA				218	54,326		54,326	51,831	-	-	
Belden	Large hydro	CA				219	77,350		77,350	73,798	-	-	
Bucks Creek	Large hydro	CA				220	5,477		5,477	5,225	-	-	
Butt Valley	Large hydro	CA				221	12,864		12,864	12,273	-	-	
Caribou 1	Large hydro	CA				222	17,185		17,185	16,396	-	-	
Caribou 2	Large hydro	CA				223	74,682		74,682	71,253	-	-	
Cresta	Large hydro	CA				231	40,368		40,368	38,515	-	-	

Drum #1	Large hydro	CA				235	6,336		6,336	6,045	-	-	
Drum #2	Large hydro	CA				236	49,920		49,920	47,628	-	-	
Electra	Large hydro	CA				239	28,226		28,226	26,930	-	-	
Haas	Large hydro	CA				240	10,562		10,562	10,077	-	-	
James B Black	Large hydro	CA				249	159,151		159,151	151,844	-	-	
Kings River	Large hydro	CA				254	2,610		2,610	2,490	-	-	
Pit 1	Large hydro	CA				265	5,531		5,531	5,277	-	-	
Pit 3	Large hydro	CA				266	18,238		18,238	17,401	-	-	
Pit 4	Large hydro	CA				267	12,427		12,427	11,857	-	-	
Pit 5	Large hydro	CA				268	47,021		47,021	44,862	-	-	
Pit 6	Large hydro	CA				269	9,796		9,796	9,346	-	-	
Pit 7	Large hydro	CA				270	12,012		12,012	11,460	-	-	
Poe	Large hydro	CA				272	10,279		10,279	9,807	-	-	
Rock Creek	Large hydro	CA				275	12,618		12,618	12,039	-	-	
Salt Springs	Large hydro	CA				279	3,097		3,097	2,955	-	-	
Stanislaus	Large hydro	CA				285	6,029		6,029	5,752	-	-	
Tiger Creek	Large hydro	CA				287	8,439		8,439	8,052	-	-	
Chicago Park 1	Large hydro	CA				412	15,556		15,556	14,842	-	-	
Forbestown	Large hydro	CA				417	2,148		2,148	2,050	-	-	
Woodleaf	Large hydro	CA				419	2,936		2,936	2,801	-	-	
Colgate Powerhouse 454	Large hydro	CA				454	67,363		67,363	64,270	-	-	
Narrows 2 Powerhouse - 455	Large hydro	CA				455	962		962	918	-	-	
Kerckhoff #2 PH	Large hydro	CA				682	7,587		7,587	7,239	-	-	
Kerr	Large hydro	MT				2188	2,699		2,699	2,575	-	-	
Rocky Reach	Large hydro	WA				3883	46,268		46,268	44,144	-	-	
Grant County	Large hydro	WA				3887	253,670		253,670	242,022	-	-	
Box Canyon Dam	Large hydro	WA				3891	137,063		137,063	130,770	-	-	
Rock Island	Large hydro	WA				6200	19,981		19,981	19,064	-	-	
Lake Chelan	Large hydro	WA				6424	14,339		14,339	13,681	-	-	
Boundary	Large hydro	WA				6433	20,795		20,795	19,840	-	-	
Hoover	Large hydro	AZ				8902	48,340		48,340	46,120	-	-	
Lucky Peak	Large hydro	ID				10014	47,494		47,494	45,313	-	-	
Bridge River 1	Large hydro	BC				P202	3,049		3,049	2,909	-	-	
Bridge River 2	Large hydro	BC				P203	409		409	390	-	-	
Cheakamus	Large hydro	BC				P204	281		281	268	-	-	
GM Shrum	Large hydro	BC				P206	165,795		165,795	158,182	-	-	
Kootenay	Large hydro	BC				P209	7,980		7,980	7,614	-	-	
Mica	Large hydro	BC				p210	29,732		29,732	28,367	-	-	
Peace Canyon	Large hydro	BC				p211	3,300		3,300	3,148	-	-	
Revelstoke	Large hydro	BC				p212	8,480		8,480	8,091	-	-	
Seven Mile	Large hydro	BC				p213	3,665		3,665	3,497	-	-	
									-	-	#N/A		

PROCUREMENTS FROM ASSET-CONTROLLING SUPPLIERS

Facility Name	Fuel Type	N/A	N/A	N/A	N/A	EIA ID	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO_2e/MWh)	GHG Emissions (in MT CO_2e)	N/A
										-	#N/A		
										-	#N/A		
										-	#N/A		
										-	#N/A		

END USES OTHER THAN RETAIL SALES	MWh

2021 POWER SOURCE DISCLOSURE ANNUAL REPORT
SCHEDULE 2: RETIRED UNBUNDLED RECS
For the Year Ending December 31, 2021
Peninsula Clean Energy Authority
ECOplus

INSTRUCTIONS: Enter information about retired unbundled RECs associated with this electricity portfolio. Insert additional rows as needed. All fields in white should be filled out. Fields in grey auto-populate as needed and should not be filled out.

Total Retired Unbundled RECs	-

RETIRED UNBUNDLED RECS				
Facility Name	Fuel Type	State or Province	RPS ID	Total Retired (in MWh)

2021 POWER SOURCE DISCLOSURE ANNUAL REPORT
SCHEDULE 3: POWER CONTENT LABEL DATA
For the Year Ending December 31, 2021
Peninsula Clean Energy Authority
ECOplus

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

	Adjusted Net Procured (MWh)	Percent of Total Retail Sales
Renewable Procurements	1,491,659	49.2%
Biomass & Biowaste	272,627	9.0%
Geothermal	-	0.0%
Eligible Hydroelectric	16,805	0.6%
Solar	613,769	20.3%
Wind	588,459	19.4%
Coal	-	0.0%
Large Hydroelectric	1,539,082	50.8%
Natural gas	-	0.0%
Nuclear	-	0.0%
Other	-	0.0%
Unspecified Power	-	0.0%
Total	**3,030,741**	**100.0%**

Total Retail Sales (MWh)	**3,030,741**

GHG Emissions Intensity (converted to lbs CO_2e/MWh)	**5**

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

2021 POWER SOURCE DISCLOSURE ANNUAL REPORT ATTESTATION FORM
For the Year Ending December 31, 2021
Peninsula Clean Energy Authority
ECOplus

I, _____Janis C. Pepper_____,
_Chief Executive Officer____, declare under penalty of perjury, that the statements contained in this report including Schedules 1, 2, and 3 are true and correct and that I, as an authorized agent of _Peninsula Clean Energy Authority_, have authority to submit this report on the company's behalf. I further declare that the megawatt-hours claimed as specified purchases as shown in these Schedules were, to the best of my knowledge, sold once and only once to retail customers.

Name: ____Janis C. Pepper_____
Representing (Retail Supplier):__Peninsula Clean Energy Authority_____
Signature: _____ Janis C. Pepper
Dated: _____ May 31, 2022
Executed at: _____ Redwood City, CA

2021 POWER SOURCE DISCLOSURE ANNUAL REPORT
For the Year Ending December 31, 2021

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

GENERAL INSTRUCTIONS

RETAIL SUPPLIER NAME
Peninsula Clean Energy Authority

ELECTRICITY PORTFOLIO NAME
ECO100

CONTACT INFORMATION	
NAME	Chelsea Keys
TITLE	Interim Director of Power Resources
MAILING ADDRESS	2075 Woodside Road
CITY, STATE, ZIP	Redwood City, 94063
PHONE	650-382-2002
EMAIL	ckeys@peninsulacleanenergy.com
WEBSITE URL FOR PCL POSTING	www.peninsulacleanenergy.com

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

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

If you have questions, contact Power Source Disclosure (PSD) staff at PSDprogram@energy.ca.gov or (916) 805-7439.

INTRODUCTION

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

A complete Annual Report includes the following tabs:

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

INSTRUCTIONS

Schedule 1: Procurements and Retail Sales

Retail suppliers of electricity must complete this schedule by entering information about all power procurements and generation that served the identified electricity portfolio covered in this filing in the prior year. The schedule is divided into sections: directly delivered renewables, firmed-and-shaped imports, specified non-renewables, and procurements from ACSs. Insert additional rows as needed to report all procurements or generation serving the subject product. Provide the annual retail sales for the subject product in the appropriate space. At the bottom of Schedule 1, provide the retail suppliers' other electricity end-uses that are not retail sales, such as transmission and distribution losses. Retail suppliers shall submit a purchase agreement or ownership arrangement documentation substantiating that any eligible firmed-and-shaped product for which it is claiming an exclusion was executed prior to January 1, 2019. **Any retail supplier that offered multiple electricity portfolios in the prior year must submit separate Annual Reports for each portfolio offered.**

Specified Purchases: A Specified Purchase refers to a transaction in which electricity is traceable to specific generating facilities by any auditable contract trail or equivalent, such as a tradable commodity system, that provides commercial verification that the electricity claimed has been sold once and only once to retail consumers. Do not enter data in the grey fields. For specified purchases, include enter following information for each line item:

Facility Name - Provide the name used to identify the facility.
Fuel Type - Provide the resource type (solar, natural gas, etc.) that this facility uses to generate electricity.
Location - Provide the state or province in which the facility is located.
Identification Numbers - Provide all applicable identification numbers from the Western Renewable Energy Generation Information System (WREGIS), the Energy Information Agency (EIA), and the California Renewables Portfolio Standard (RPS).
Gross Megawatt Hours Procured - Provide the quantity of electricity procured in MWh from the generating facility.
Megawatt Hours Resold - Provide the quantity of electricity resold at wholesale.

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

Schedule 2: Retired Unbundled RECs

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

Schedule 3: Annual Power Content Label Data

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

ACS Resource Mix Calculator

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

GHG Emissions Factors

This tab will be displayed for informational purposes only; it will not be used by reporting entities, since the emissions factors below auto-populate in the relevant fields on Schedules 1 & 3.

Attestation

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

2021 POWER SOURCE DISCLOSURE ANNUAL REPORT
SCHEDULE 1: PROCUREMENTS AND RETAIL SALES
For the Year Ending December 31, 2021
Peninsula Clean Energy Authority
ECO100

Instructions: Enter information about power procurements underlying this electricity portfolio for which your company is filing the Annual Report. Insert additional rows as needed. All fields in white should be filled out. **Fields in grey auto-populate as needed and should not be filled out.** For EIA IDs for unspecified power or specified system mixes from asset-controlling suppliers, enter "Unspecified Power", "BPA", or "Tacoma Power" as applicable. For specified procurements of ACS power, use the ACS Procurement Calculator to calculate the resource breakdown comprising the ACS system mix. **Procurements of unspecified power must not be entered as line items below; unspecified power will be calculated automatically in cell N9**. Unbundled RECs must not be entered on Schedule 1; these products must be entered on Schedule 2. At the bottom portion of the schedule, provide the other electricity end-uses that are not retail sales including, but not limited to transmission and distribution losses or municipal street lighting. Amounts should be in megawatt-hours.

Retail Sales (MWh)	**270,988**
Net Specified Procurement (MWh)	270,988
Unspecified Power (MWh)	-
Procurement to be adjusted	-
Net Specified Natural Gas	-
Net Specified Coal & Other Fossil Fuels	-
Net Specified Nuclear, Large Hydro, Renewables, and ACS Power	270,988
GHG Emissions (excludes grandfathered emissions)	0
GHG Emissions Intensity (in MT CO_2e/MWh)	0.0000

DIRECTLY DELIVERED RENEWABLES

Facility Name	Fuel Type	State or Province	WREGIS ID	RPS ID	N/A	EIA ID	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO_2e/MWh)	GHG Emissions (in MT CO_2e)	N/A
Wright Solar Park	Solar	CA	W8785	62620A		59525	135,494	-	135,494	135,494	-	-	
Voyager Wind II	Wind	CA	W7237	63686A		61582	135,494	-	135,494	135,494	-	-	
									-	-	#N/A		

FIRMED-AND-SHAPED IMPORTS

Facility Name	Fuel Type	State or Province	WREGIS ID	RPS ID	EIA ID of REC Source	EIA ID of Substitute Power	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO_2e/MWh)	GHG Emissions (in MT CO_2e)	Eligible for Grandfathered Emissions?
									-	-	#N/A		
									-	-	#N/A		
									-	-	#N/A		
									-	-	#N/A		
									-	-	#N/A		

SPECIFIED NON-RENEWABLE PROCUREMENTS

Facility Name	Fuel Type	State or Province	N/A	N/A	N/A	EIA ID	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO_2e/MWh)	GHG Emissions (in MT CO_2e)	N/A
									-	-	#N/A		
									-	-	#N/A		
									-	-	#N/A		
									-	-	#N/A		

PROCUREMENTS FROM ASSET-CONTROLLING SUPPLIERS

Facility Name	Fuel Type	N/A	N/A	N/A	N/A	EIA ID	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO_2e/MWh)	GHG Emissions (in MT CO_2e)	N/A
										-	#N/A		
										-	#N/A		
										-	#N/A		
										-	#N/A		

END USES OTHER THAN RETAIL SALES	MWh

2021 POWER SOURCE DISCLOSURE ANNUAL REPORT
SCHEDULE 2: RETIRED UNBUNDLED RECS
For the Year Ending December 31, 2021
Peninsula Clean Energy Authority
ECO100

INSTRUCTIONS: Enter information about retired unbundled RECs associated with this electricity portfolio. Insert additional rows as needed. All fields in white should be filled out. Fields in grey auto-populate as needed and should not be filled out.

Total Retired Unbundled RECs	-

RETIRED UNBUNDLED RECS				
Facility Name	Fuel Type	State or Province	RPS ID	Total Retired (in MWh)

2021 POWER SOURCE DISCLOSURE ANNUAL REPORT
SCHEDULE 3: POWER CONTENT LABEL DATA
For the Year Ending December 31, 2021
Peninsula Clean Energy Authority
ECO100

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

	Adjusted Net Procured (MWh)	Percent of Total Retail Sales
Renewable Procurements	270,988	100.0%
Biomass & Biowaste	-	0.0%
Geothermal	-	0.0%
Eligible Hydroelectric	-	0.0%
Solar	135,494	50.0%
Wind	135,494	50.0%
Coal	-	0.0%
Large Hydroelectric	-	0.0%
Natural gas	-	0.0%
Nuclear	-	0.0%
Other	-	0.0%
Unspecified Power	-	0.0%
Total	**270,988**	**100.0%**

Total Retail Sales (MWh)	**270,988**

GHG Emissions Intensity (converted to lbs CO_2e/MWh)	**-**

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

2021 POWER SOURCE DISCLOSURE ANNUAL REPORT ATTESTATION FORM
For the Year Ending December 31, 2021
Peninsula Clean Energy Authority
ECO100

I, _____Janis C. Pepper_____,
_Chief Executive Officer____, declare under penalty of perjury, that the statements contained in this report including Schedules 1, 2, and 3 are true and correct and that I, as an authorized agent of _Peninsula Clean Energy Authority_, have authority to submit this report on the company's behalf. I further declare that the megawatt-hours claimed as specified purchases as shown in these Schedules were, to the best of my knowledge, sold once and only once to retail customers.

Name: ____Janis C. Pepper_____
Representing (Retail Supplier):__Peninsula Clean Energy Authority_____
Signature: _____ Janis C. Pepper **_____**
Dated: _____ May 31, 2022 **_____**
Executed at: _____ Redwood City, CA **_____**

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: August 18, 2022
BOARD MEETING DATE: August 25, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Kim Le, Senior Manager of Data and Technology

SUBJECT: Approval of Contract Amendment with NewGen Strategies in the amount of $75,000 for the Peninsula Clean Energy Data Warehouse Ongoing Support & Maintenance for the Period of November 1, 2022 Through December 31, 2023 in an Amount Not-to-Exceed $220,000

RECOMMENDATION:

Approval of the Board for an amendment to the contract with NewGen to continue services for ongoing support and other analyses by increasing the amount of the contract by $75,000 to a not-to-exceed amount of $220,000 and extending the term through December 31, 2023.

BACKGROUND:

Peninsula Clean Energy's mission is to reduce greenhouse gas (GHG) emissions and reinvest in the San Mateo County community. To support the mission, PCE is developing a data warehouse to provide rapid, accurate, secure, and flexible analysis of large volumes of energy data and associated attributes.

This Phase 1 effort will build and establish a data management system that is designed to store historical and ongoing data from various sources to enable and support analytics functions. The overarching goal is to provide each team at PCE a means to access data from a single source of truth data warehouse and create and download reports and dashboards for analysis.

DISCUSSION:

Peninsula Clean Energy has been in contract with NewGen since February 2021 to build a functional data warehouse, and NewGen has successfully delivered on Phase 1. The

foundation and pipelines of a data management system have been established, and PCE Staff have the means for extracting data across various data sources.

PCE would like to continue our contractual relationship with NewGen to maintain and enhance the current system and analysis engine, to help us make data-driven decisions.

FISCAL IMPACT:

The cost of the contract to be increased by $75,000 (above the previous contract amendment amount of $145,000) to a revised not-to-exceed an amount of $220,000.

STRATEGIC PLAN:

The ongoing maintenance and enhancement of Peninsula Clean Energy's data warehouse and management system supports PCE's Strategic Plan in the following areas:

Organizational Excellence: Objective C, Data and Technology

- Increase data analytics capability to enable energy-related analyses, program impact measures, & consumer insights for continuous improvement
- Implement scalable systems that maximize advances in IT
- Implement systems and procedures to ensure data accuracy, privacy, and security
- Create an executive dashboard with key organizational metrics to guide strategic and operational decision-making
- Provide ongoing technology training for staff and equip them with appropriate tools

RESOLUTION NO. _____

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

* * * * * *

RESOLUTION TO APPROVE AN AMENDMENT TO THE CONTRACT WITH NEWGEN STRATEGIES TO CONTINUE SERVICES FOR ONGOING SUPPORT AND ANALYSES AND TO INCREASE THE NOT-TO-EXCEED AMOUNT BY $75,000 FOR A TOTAL NOT-TO-EXCEED AMOUNT OF $220,000

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 "PCEA") was formed on February 29, 2016; and

WHEREAS, Peninsula Clean Energy desires to develop a data warehouse to provide rapid, accurate, secure, and flexible analysis of large volumes of energy data and associated attributes; and

WHEREAS, a contract with NewGen was signed effective on February 1, 2021 to build and establish a data management system that is designed to store historical and ongoing data from various sources to enable and support analytics from a single source of data; and

WHEREAS, Peninsula Clean Energy is now seeking to amend the contract with NewGen to extend the term through December 31, 2023.

WHEREAS, Peninsula Clean Energy is now seeking to amend the contract with NewGen to include a renewal of the services for ongoing support and analysis for an additional amount of $75,000 (not to exceed $220,000), an amount which exceeds the delegated threshold of $100,000 per PCEA's policy; and

WHEREAS, NewGen has heretofore provided services to Peninsula Clean Energy in a satisfactory manner.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to execute the contract amendment of Peninsula Clean Energy's data warehouse contract with NewGen to increase the not to exceed amount to $220,000.

* * * * * *

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: August 12, 2022
BOARD MEETING DATE: August 25, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: KJ Janowski, Director of Marketing and Community Relations

SUBJECT: Approval of Peninsula Clean Energy Social Media Policy

RECOMMENDATION:

Adopt a resolution approving Peninsula Clean Energy's Social Media Policy.

BACKGROUND:

Peninsula Clean Energy uses social media channels including, but not limited to, Facebook, Instagram, LinkedIn, NextDoor and Twitter, to enhance communication with the public as a means to exchange information, increase brand awareness, and build positive engagement. These channels allow for public comment.

DISCUSSION:

To date, Peninsula Clean Energy has not publicly stated its policy regarding the processes for posting content, responding to public comments, or deleting or hiding comments or submissions. While most of the public comment on Peninsula Clean Energy's social media channels is appropriate, relevant, and respectful of the other members of the public who can view the comments, from time to time PCE has considered removing derogatory comments made on our channels. It is a good practice to put in place a clear policy, post this policy on the PCE website, and link to it in the profile or description of Peninsula Clean Energy in each of our social media channels. Once approved by the Board, we will take these steps to make this policy known to the public.

STRATEGIC PLAN:

Marketing objectives in the 2020-2025 Strategic Plan include:

- Objective A: Elevate Peninsula Clean Energy's brand reputation as a trusted leader in the community and the industry. A key tactic supporting this objective is to tell the story of Peninsula Clean Energy through diverse channels.
- Objective B: Educate and engage stakeholders in order to gather input, inspire action, and drive program participation. A key tactic supporting this objective is to provide inspirational, informative content that spurs action to reduce emissions.

Our social media communications are an important tool in executing these tactics and achieving these objectives.

PENINSULA CLEAN ENERGY

RESOLUTION NO. _____

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

* * * * * *

RESOLUTION ADOPTING SOCIAL MEDIA POLICY

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

WHEREAS, Peninsula Clean Energy's social media channels are used to enhance communication with the public as a means to exchange information, increase brand awareness, and build positive engagement,

WHEREAS, Peninsula Clean Energy wishes to communicate a clear policy regarding treatment of public comments on its social media channels,

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board approves the adoption of the Social Media Policy.

* * * * * *

Social Media Policy

Peninsula Clean Energy's social media channels are used to enhance communication with the public as a means to exchange information, increase brand awareness, and build positive engagement. This document establishes protocol for best practices when engaging with customers on social media and shall be revised and adjusted if desired.

On Peninsula Clean Energy social media channels that allow public comment, Peninsula Clean Energy shall provide a clear statement that inappropriate posts are subject to removal, including but not limited to the following types of postings regardless of format (text, video, links, documents, etc.).

Policy

I. Peninsula Clean Energy is responsible for the content posted on its social media accounts and for determining who is authorized to post on those accounts on behalf of Peninsula Clean Energy.

II. Peninsula Clean Energy staff should strive to respond to comments on social media within two (2) business days, if a response is determined beneficial to the furtherance of Peninsula Clean Energy's mission.

III. Peninsula Clean Energy reserves the right to not respond to comments made on our social media posts or accounts and to review, delete, and/or hide comments or submissions that:

   a. contain profane or vulgar language;
   b. contain personal attacks of any kind;
   c. contain harassment of any individual or entity;
   d. contain content that promotes, fosters or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regards to public assistance, national origin, physical or mental disability or sexual orientation;
   e. contain hateful, threatening, libelous, or pornographic language or images;
   f. are spam;
   g. contain anything that could be illegal or fraudulent;
   h. promote particular services, products, or political organizations;
   i. infringe on copyrights or trademarks;
   j. contain factually inaccurate information about Peninsula Clean Energy;
   k. inaccurately imply endorsement, approval, or sponsorship by Peninsula Clean Energy;
   l. can be confused with official communications of Peninsula Clean Energy;
   m. violate other users' privacy, such as releasing personal information about others, including name, address, or phone number; or
   n. are duplicative or repetitive.

IV. All comments posted to Peninsula Clean Energy social media will be monitored by Peninsula Clean Energy staff. Peninsula Clean Energy reserves the right to deny access to its social media pages to any individual who violates the standards articulated in this policy.

V. A comment on any Peninsula Clean Energy social media channel is the opinion of the commentor or poster, and does not imply endorsement of, or agreement by, Peninsula Clean Energy.

If you require a response or are requesting services from Peninsula Clean Energy, please contact us at info@peninsulacleanenergy.com or call 866-966-0110.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: August 15, 2022
BOARD MEETING DATE: August 25, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Nelly Wogberg, Board Clerk, Peninsula Clean Energy Authority

SUBJECT: Approval of 2022 Amended Conflict of Interest Code for Peninsula Clean Energy

RECOMMENDATION:
Approve 2022 Amended Conflict of Interest Code for Peninsula Clean Energy

BACKGROUND:
The Political Reform Act prohibits a public official from using his or her official position to influence a governmental decision in which he or she has a financial interest. Every state and local agency must adopt a conflict of interest code that identifies all officials and employees within the agency who make governmental decisions based on the positions they hold. The individuals in the designed positions must disclose their financial interests as specified in the agency's conflict of interest code.

To help identify potential conflicts of interest, the law requires public officials and employees in designated positions in a conflict of interest code to report their financial interests on a form called Statement of Economic Interests (Form 700). The conflict of interest codes and the Form 700s are fundamental tools in ensuring that officials are acting in the public's best interest and not their own.

The Peninsula Clean Energy Board of Directors approved the first conflict of interest code on March 24, 2016. Updates to the code were approved on June 28, 2018 and on June 25, 2020.

DISCUSSION:
The Fair Political Practices Commission (FPPC) has instructed that a conflict of interest code must:

1. Provide reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented;

2. Provide to each affected person a clear and specific statement of his or her duties under the conflict of interest code; and

3. Adequately differentiate between designated employees with different powers and responsibilities.

The Three Components of a Conflict of Interest Code:

1. Incorporation Section (Terms of the Code) - This section designates where the Form 700s are filed and retained (i.e., the agency or the FPPC). This section also must reference Regulation 18730, which provides the rules for disqualification procedures, reporting financial interests, and references the current gift limit.

2. List of Designated Positions - The code must list all agency positions that involve the making or participation in making of decisions that "may foreseeably have a material effect on any financial interest." This covers agency members, officers and employees, and it may include volunteers on a committee if the members make or participate in making government decisions.

3. Detailed Disclosure Categories - A disclosure category is a description of the types of financial interests officials in one or more job classifications must disclose on their Form 700s. The categories must be tailored to the financial interests affected, and must not require public officials to disclose private financial information that does not relate to their public employment.

General Counsel drafted the conflict of interest code, attached hereto as Exhibit A, to comply with these requirements. This is a revision of the conflict of interest code adopted and approved by the Board of Directors in March 2016, and amended and approved in June 2018 and June 2020.

The 2022 revision adds the following designated employees:

- Alternate, Board of Directors
- Chief Innovation Officer
- Chief Operating Officer
- Senior Financial Analyst
- Senior Manager of Data and Technology
- Director of Human Resources
- Director of Government Affairs
- Director of Regulatory Policy
- Programs Manager
- Senior Power Resources Manager
- Senior Renewable Energy and Compliance Analyst

- Senior Manager of Marketing Communications
- Director of Local Resources
- Board Clerk

The 2022 revision updates titles for the following designated employees:

- Director of Account Services
- Director of Marketing and Community Relations

The 2022 revision removes the following designated employees:

- Director of Legislative and Regulatory Affairs
- Associate Manager of Distributed Energy Resources (DER)
- Marketing Communications Manager
- Renewable Energy and Compliance Analyst
- Office Manager

The 2022 revision changes the disclosure categories from 1,2,3,4 to 1,2 for the following positions:

- Senior Regulatory Analyst
- Strategic Accounts Manager
- Senior Manager of Community Relations

Conflict of Interest Code of
PENINSULA CLEAN ENERGY
A Joint Powers Authority

County of San Mateo
State of California

The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission (FPPC) has adopted a regulation (2 California Code of Regulations Section 18730) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the FPPC to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the FPPC are hereby incorporated by reference. This regulation and the attached Appendix, designating positions and establishing disclosure categories, shall constitute the conflict of interest code of Peninsula Clean Energy.

As directed by Government Code Section 82011, the code reviewing body is the Board of Supervisors for the County of San Mateo. Pursuant to 2 Cal. Code of Regs. Section 18227 and Government Code Section 87500, the County Clerk for the County of San Mateo shall be the official responsible for reviewing and retaining statements of economic interests and making the statements available for public inspection and reproduction.

Individuals holding designated positions shall file their statements of economic interests with Peninsula Clean Energy, which will make the statements available for public inspection and reproduction (Gov. Code Sec. 81008). Upon receipt of the statements, Peninsula Clean Energy shall make and retain copies and forward the originals to the County Clerk.

List of Designated Positions for Peninsula Clean Energy and Financial Disclosure Categories

Each person holding any position listed below must file statements disclosing the kinds of financial interest shown for the designated employee's position. Statements must be filed at the times and on the forms prescribed by law. Failure to file statements on time may result in penalties including but not limited to late fines.

Designated Employees	Disclosure Category
Member, Board of Directors	1,2,3,4
Alternate, Board of Directors	1,2,3,4
Chief Executive Officer	1,2,3,4
General Counsel	1,2,3,4
Associate General Counsel	1,2,3,4
Chief Innovation Officer	1,2,3,4
Chief Operating Officer	1,2,3,4
Chief Financial Officer	1,2,3,4
Senior Financial Analyst	1,2
Senior Manager of Data and Technology	1,2
Director of Human Resources	1,2,3,4
Director of Government Affairs	1,2,3,4
Director of Regulatory Policy	1,2,3,4
Senior Regulatory Analyst	1,2
Director of Account Services	1,2,3,4
Strategic Accounts Manager	1,2
Director of Energy Programs	1,2,3,4
Programs Manager	1,2,3,4
Director of Power Resources	1,2,3,4
Senior Power Resources Manager	1,2,3,4
Power Resources Manager	1,2,3,4
Senior Renewable Energy and Compliance Analyst	1,2,3,4
Senior Renewable Energy Analyst	1,2,3,4
Director of Marketing and Community Relations	1,2,3,4
Senior Manager of Community Relations	1,2
Senior Manager of Marketing Communications	1,2
Director of Local Resources	1,2,3,4
Board Clerk	1,2,3,4
Consultants*	1,2,3,4

*The Chief Executive Officer, after consultation with the County Counsel, shall review the duties and authority of all consultants retained by Peninsula Clean Energy. Those consultants who, within the meaning of 2 Cal. Code of Regs. Section 18700, et seq., are required to file statements of economic interests, shall do so. During each calendar year, Peninsula Clean Energy shall maintain a list of such consultants for public inspection in the same manner and location as this Conflict of Interest Code. Nothing herein excuses any consultant from any other provision of the Conflict of Interest Code, specifically those dealing with disqualification.

Description of Disclosure Categories

Category 1
A designated person assigned to Category 1 is required to disclose investments which may foreseeably be materially affected by any decision made or participated in by the designated employee.

Category 2
A designated person assigned to Category 2 is required to disclose interests in real property which may be materially affected by a decision made or participated in by the designated employee.

Category 3
A designated person assigned to Category 3 is required to disclose income which may be materially affected by any decision made or participated in by the designated employee.

Category 4
A designated person assigned to Category 4 is required to disclose any business entity in which the designated employee is a director, officer, partner, trustee, or holds any position of management which may be materially affected by any decision made or participated in by the designated employee.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: August 19, 2022
BOARD MEETING DATE: August 25, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority (PCEA) Board of Directors

FROM: Jan Pepper, Chief Executive Officer

SUBJECT: CEO Report

REPORT

Staff Updates
We have had successful recruitments for the following positions:

- EV Associate Programs Manager – Joe Ficalora joined us on August 22
- Power Resources Manager – Jeffrey Wright will be joining us on August 31
- Senior Renewable Energy Analyst – Moya Enright will be joining us on Sept 1
- Regulatory Compliance Analyst – Zsuzsanna Klara will be joining us on Sept 12

Recruitments
We are currently recruiting for the following open positions. The job descriptions can be found on the website:

Director of Power Resources
Strategic Accounts Manager

Presentations
I am continuing to make presentations on what's happening at Peninsula Clean Energy to various city councils:

- On August 8, I made a presentation to the Hillsborough City Council.
- On August 15, I made a presentation to the Burlingame City Council.

- On August 23, I will be making a presentation to the San Bruno City Council.

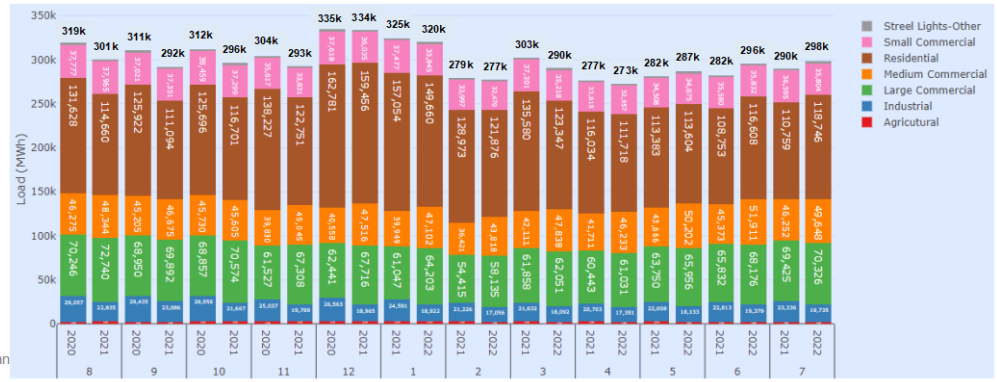
On August 17, I presented on our 100% renewables 24/7 goal to a group of interested jurisdictions from across the country, as organized by the World Resources Institute. The focus of this presentation was on renewable energy supply options and how to align generation profiles with load for local jurisdictions to start planning to support 24/7 clean energy deliveries to their constituents. Participating jurisdictions included the Port Authority of New York/New Jersey, and the cities of Ann Arbor, Iowa City, Des Moines, Cambridge, Salt Lake City, and South Lake Tahoe. In addition to the World Resources Institute, other presenters represented the National Renewable Energy Laboratory and the National Hydropower Association.

Diablo Canyon Discussions
On Friday afternoon, August 12, the California Energy Commission convened a joint agency workshop with the Governor's Office and the California Independent System Operator on electric reliability needs and the role the Diablo Canyon Power Plant could have in supporting mid-term reliability. The workshop explored actions about extending the operating license of Diablo Canyon by five to ten years (to 2029/2030 and with an option to 10/31/2035). The potential proposal includes a General Fund forgivable loan of $1.4B to PG&E, as well as fixed fees charged to all California electricity customers. We will continue to follow this proposal and report back to the Board with updates as they are announced.

Impact of COVID-19 on PCE Load
Attached to this report are summary graphs of the impact of COVID-19 on Peninsula Clean Energy's load. The first graph, "Monthly Load", shows the change in load on a monthly basis from August 2020 through July 2022. Monthly load is continuing to increase. We saw a 2% decrease in Peninsula Clean Energy's load in January-April 2022 compared to January-April 2021, however there was a year-over-year 2% increase in PCE's overall load in May 2022, a 5% increase in PCE's overall load in June 2022, and a 2% increase in PCE's load in July 2022. Also continuing the same pattern as reported last month, the second graph, "Monthly Load Changes by Customer Class", shows that industrial and residential load was lower in January-April 2022 compared to the same months in 2021. Industrial load has continued to stay lower from May through July 2022 compared to those same months in 2021. Residential load continues to show an increase since June 2022 through July 2022 compared to last year. Commercial load was higher in January-July 2022 compared to January-July 2021. The third graph, "Load Shapes (PCE)", shows the change overall in our load on an hourly basis. July 2022 load was higher than the comparable 2020-2021 loads in the evening and overnight hours. Thank you to Mehdi Shahriari on our Power Resources team for compiling these graphs.

Monthly Load

- 4% decrease in PCE's load in August-December 2021 compared to August-December 2020.
- 2% decrease in PCE's load in January-April 2022 compared to January-April 2021.
- 2% increase in PCE's load in May 2022 compared to May 2021.
- 5% increase in PCE's load in June 2022 compared to June 2021.
- 2% increase in PCE's load in July 2022 compared to July 2021.



Monthly Load Changes by Customer Class

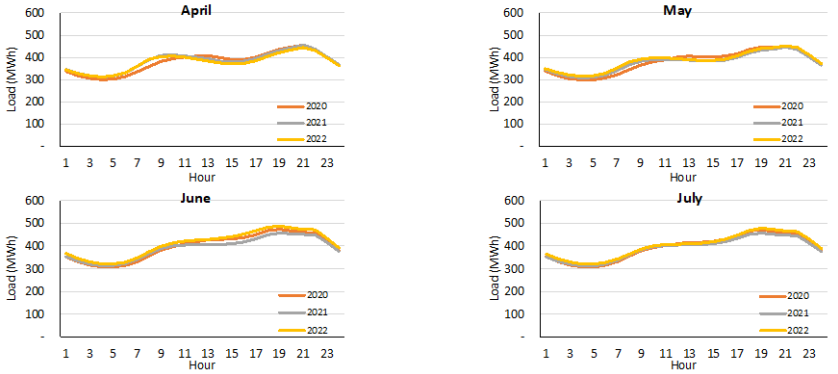
- In August-December 2021, Residential and Industrial load was significantly lower compared to same months in 2020, mainly due to the heatwaves that we experienced in 2020.
- In January-April of 2022, Industrial and Residential load was lower compared to same months in 2021. Commercial load was higher in January-April 2022 compared to January-April 2021.
- In May 2022, Industrial load was lower compared to May 2021. Commercial load was higher in May 2022 compared to May 2021.
- In June-July 2022, Industrial load was lower compared to June-July 2021. Commercial and Residential load was higher in June-July 2022 compared to June-July 2021.

Agricutural	5%	4%	0%	6%	0%	-5%	-7%	-7%	-12%	-15%	-5%	-6%
Industrial	-21%	-22%	-25%	-21%	-29%	-23%	-20%	-16%	-16%	-18%	-15%	-15%
Small Commercial	0%	1%	-3%	-5%	-4%	-4%	-4%	-6%	-3%	1%	1%	-2%
Medium Commercial	4%	3%	0%	13%	17%	18%	20%	14%	11%	15%	14%	7%
Large Commercial	4%	1%	2%	9%	8%	5%	7%	0%	1%	3%	4%	1%
Residential	-13%	-12%	-7%	-11%	-2%	-5%	-6%	-9%	-4%	0%	7%	7%
Street Lights-Other	-4%	-3%	-4%	-4%	-5%	-5%	-4%	-5%	-5%	-2%	1%	5%
PCE	-6%	-6%	-5%	-4%	0%	-1%	-1%	-4%	-1%	2%	5%	3%
Month	8	9	10	11	12	1	2	3	4	5	6	7

* For months 8-12, the heatmap shows how much load in 2021 was lower/higher compared to same month in 2020. For months 1-7, the heatmap shows how much load in 2022 was lower/higher compared to same month in 2021

Load Shapes (PCE)

- April: 2022 load was lower than 2021 load in the afternoon and evening hours. 2022 Load was higher than 2020 load in early morning hours.
- May: 2022 Load was higher than 2020-2021 load in the overnight and morning hours.
- June: 2022 Load was higher than 2020-2021 load in all hours.
- July: 2022 Load was higher than 2020-2021 load in the evening and overnight hours.



Peninsula Clean Energy

4

Reach Codes

Below is the table showing the status of Reach Code adoption by Peninsula Clean Energy jurisdictions. There have been no changes since last month. However numerous cities are beginning discussions on re-upping the new construction reach codes and some are beginning to explore existing construction codes. The format of this report will be updated next month to indicate New Construction renewals and Existing Construction steps.

Member Agency	Reach Code Status	Building (proposed)	EV
Belmont	Adopted	All-electric w/ exceptions	PCE model code
Brisbane	Adopted	All-electric w/ exceptions	PCE model code (variant)
Burlingame	Adopted	All-electric w/ exceptions	PCE model code (variant)
Daly City	Adopted	All-electric w/ exceptions	PCE model code
East Palo Alto	Adopted	All-electric w/ exceptions	PCE model code (variant)
Millbrae	Adopted	All-electric w/ exceptions	PCE model code (variant)
Menlo Park	Adopted	All-electric w/ exceptions	(existing EV code)
Pacifica	Adopted	All-electric w/ exceptions	(existing EV code)
County of San Mateo	Adopted	All-electric w/ exceptions	PCE model code
Redwood City	Adopted	All-electric w/ exceptions	PCE model code
San Mateo	Adopted	All-electric w/ exceptions (updated)	Increase EV capable
San Carlos	Adopted	All-electric w/ exceptions (updated)	PCE model code
South San Francisco	Adopted	All-electric w/ exceptions (residential)	PCE model code
Half Moon Bay	Adopted	All-electric new construction + end of flow	Under consideration
Hillsborough	Adopted	Electric-preferred code	
Colma	Adopted	Prewiring required	Increase EV capable
Atherton	Study session Feb 16. Intent to proceed in 2022.		
San Bruno	Study session Mar. 8. Intent to proceed.		
Portola Valley	Council intent to proceed in 2020.		
Foster City	Council briefing 2020		
Woodside	Declined		

Other Meetings and Events Attended by CEO

Attended weekly and monthly CalCCA Board and Executive Committee meetings.

Attended monthly CC Power Board Meeting on August 17

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: August 8, 2022
BOARD MEETING DATE: August 25, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer
Rafael Reyes, Director, Programs

SUBJECT: Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase and Sale Agreement for Renewable Supply with Renewable America, LLC and any necessary ancillary documents with a Power Delivery Term of 20 years starting at the Commercial Operation Date on or about December 1, 2023, in an amount not to exceed $12,700,000.

RECOMMENDATION

Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase Agreement for Renewable Supply with Renewable America, LLC and any necessary ancillary documents with a Power Delivery Term of 20 years starting at the Commercial Operation Date on or about August 1, 2023, in an amount not to exceed $12,700,000.

BACKGROUND

On June 21, 2018, the California Public Utilities Commission (CPUC) approved ("D.")18-06-027 *Alternate Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities* adopting new programs to promote the installation of renewable generation among residential customers in disadvantaged communities (DAC) as directed by the California Legislature in Assembly Bill (AB) 327(Perea). Pursuant to D.18-06-027, Community Choice Aggregators ("CCAs") may develop and implement their own DAC Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT) programs.

The key goals of these programs are to enable DAC residents meeting qualifying criteria to participate in renewable energy projects and promote development of renewable projects in DACs. Participating customers will receive a 20% discount on their full electric bill (PG&E and Peninsula Clean Energy charges). Peninsula Clean Energy elected to become a Program Administrator (PA) of the DAC-GT and CSGT programs so that it

could offer the program benefits to its customers. The value of the customer discount along with the costs of procuring a renewable resource and administering the program will be reimbursed by California ratepayers via the mechanisms as specified in the CPUC ruling.

Peninsula Clean Energy began enrolling DAC-GT customers in San Mateo County in January 2022 and customers in Los Banos in April 2022. Those customers are currently served by an interim resource procured from Marin Clean Energy pending Peninsula Clean Energy's procurement of a new renewable resource for the program.

Peninsula Clean Energy was allocated 1.236 MW for its DAC-GT program and 0.4025 MW for its CSGT program and was authorized to procure this capacity from new in-front-of-the-meter solar projects sited in DACs in PG&E service territory. An additional allocation will be allocated to Peninsula Clean Energy from PG&E to accommodate PG&E's DAC-GT customers in Los Banos who became PCE customers on April 1, 2022. As of the end of the opt-out date on June 1, 2022, 364 customers (out of the original 373 customers on PG&E's DAC-GT customer list) remained enrolled in Peninsula Clean Energy service. This translates to 1.33 MW of DAC-GT resource capacity that would be re-allocated from PG&E to Peninsula Clean Energy to serve these customers, based on their average electric load and the capacity factor of the renewable resource. Peninsula Clean Energy estimates the final determination of the Los Banos allocation will be in October 2022, and has a high level of confidence in this approval. The total allocation for PCE would be the San Mateo County + Los Banos allocations, or 1.24 + 1.33 = 2.57 MW.

Per the CPUC DAC program guidelines, Peninsula Clean Energy is authorized to procure up to the next integer (in this case, 3) MW of capacity, but will only be reimbursed up to its actual MW allocation. Leadership has elected to procure 3 MW to allow the possibility of an increase in Peninsula Clean Energy's allocation in the future. Until that new renewable resource is procured, Peninsula Clean Energy can serve customers via a qualifying interim resource. Peninsula Clean Energy executed a PPA with Marin Clean Energy for its existing Goose Lake Solar project, which meets DAC program guidelines, to provide for its DAC customers until a permanent resource is procured.

DISCUSSION

Permanent Resource Request for Offers

Pursuant to program guidelines, Peninsula Clean Energy launched a solicitation in November 2021 for new renewable resources sited in qualifying DACs. Seven DAC-GT projects were offered from 4 bidders. No CSGT offers were received.

Staff evaluated the viability, financial, and other attributes of the offers. The Dos Palos Clean Power project was determined to be in the top tier of projects that would provide the most value to Peninsula Clean Energy. Key among these was its executed Small Generator Interconnection Agreement (SGIA) with PG&E and consequential higher viability and earlier online date than other offers. The project is also located approximately 13 miles from Los Banos, CA.

Peninsula Clean Energy entered negotiations with Renewable America, the developer of the project beginning in May 2022.

Overview of Project

Project Name	Dos Palos Clean Power
Technology	Solar Photovoltaic
Solar Capacity	3 MW
Commercial Operation Date	August 1, 2023
PPA Term	20 years
Developer	Renewable America, LLC
Location	Dos Palos, CA

Dos Palos Clean Power is a 3 MWac Solar project located at 19553 Elgin Ave, Dos Palos, CA 93620 in Merced County. Its interconnection type is Energy Only so it will not provide ancillary services or resource adequacy.

The project is in census tract 6047002401, which is a qualifying DAC census tract as determined by the state screening tool CalEnviroScreen 4.0 with a score of 92%. The site is located within an agricultural zone as designated by Merced County. Within an agricultural zone, energy generation facilities for off-site energy use require a Conditional Use Permit as mentioned in the Solar Ordinance in Merced County. The project has a Lease Option Agreement (LOA) executed on June 18, 2021, with 15 acres of land secured for a period of 20 years. The LOA has an option for three 5-year extensions at the end of 20-year tenure. The property is permitted for a solar photovoltaic energy system and energy storage.

Developer

The project is being developed by Renewable America, LLC, (RNA) an Independent Power Producer (IPP) focused on providing solar energy to CCAs that serve their communities with locally generated power. As of today, its portfolio has a capacity of 235 MW solar and 450 MWh storage across 34 projects throughout California. RNA has recently partnered with Excelsior Renewable Energy Management Company LLP (Excelsior Energy Capital) as its capital partner that will fund its projects and be the long-term owner of the project. RNA will be responsible for the development of the project through commercial operations and will be funded by Excelsior. Both RNA and Excelsior Energy Capital (EEC) will be in-charge of construction of the project. RNA will manage the Engineering, Procurement, and Construction (EPC) process. EEC will provide construction financing and long-term debt for the project and will manage the asset during the operational phase of the project.

EEC's current investments include a diverse portfolio of utility-scale and distributed generation solar power plants, spanning multiple states and power markets in the United

States. Their offices are in Excelsior, MN and Portland, OR, and their team combines 100 years of experience investing in mid-market operating and post-development wind and solar generation in North America.

Environmental Review

A report from Panorama Environmental, Inc. from May 12, 2022 advises of the following:

- No special-status wildlife species were observed onsite during the 3 May reconnaissance survey. Although Swainson's hawks (*Buteo swainsoni*), were observed along Hwy 152. No focused wildlife surveys were performed for this assessment.
- The majority of the project site is used for row crop barley cultivation. As such, the site is regularly tilled and supports a monoculture of barley. Under the current agricultural use, the site does not appear to provide habitat for special-status plant species.

Typically, if the project does not impact any waters or wetlands, then federal or state waters/wetland permitting is not required. Project is an Area of Minimal Flood Hazard as per the FEMA Floodplain Map.

RNA advised it designs and builds its projects in a way that avoids impacts on wetlands and includes impact mitigation plans for federal/state endangered species. As most of its projects can serve the dual uses of farming and solar energy production, the proposed project would include the planting of pollinator friendly vegetation within the proposed solar development area to create a pollinator friendly habitat and enhance pollinator activities in the project area for the life of the project. This may also help ensure agricultural land uses continue at the project site as an increase in pollinator activities would support agricultural production both on and off site.

Workforce Requirements

RNA states that it is committed to supporting local suppliers and business enterprises that are owned by women, veteran, minority and or LGBT community through its development and construction activities. RNA has started engaging with workforce development providers such as GRID Alternatives and continues the workforce development planning towards economic and environmental justice. RNA also states a commitment to ensuring paying workers the correct prevailing wage rates for each craft, classification and type of work performed. and fostering training programs that offer participants hands-on installation training to develop their skills and increase employment opportunities. RNA is in the process of finalizing a workforce development plan (expected Q1, 2023) and will provide to Peninsula Clean Energy.

FISCAL IMPACT

As a Program Administrator of this CPUC program, Peninsula Clean Energy will be reimbursed for the cost of administering the program and up to its approved MW allocation for the above-market costs of its solar procurements (i.e. the cost of the generation to serve this program less the energy cost of Peninsula Clean Energy ‘s standard ECOPlus). Peninsula Clean Energy will not be reimbursed for costs associated with procuring above its program allocation. Peninsula Clean Energy will also be reimbursed for the administrative costs of delivering the program, which are not directly relevant to this PPA.

Peninsula Clean Energy program allocation = 2.57 MW, representing 85.7% of the generation of the 3 MW resourceFor this energy, Peninsula Clean Energy will incur the generation cost it has filed with the CPUC and be reimbursed for additional costs (contract price ($/MWh) minus filed generation cost ($/MWh) X generation (MWh)) above that value.

The Fiscal Impacts of the Dos Palos Clean Power project will not exceed $12.7M over the 20-year term of the agreement.

STRATEGIC PLAN

- Goal 1 – Power Resources
  - Objective C. Local Power Resources: Create a minimum of 20 MW of new power sources in our service territory by 2025
- Goal 3 – Community Energy Programs
  - Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

ATTACHMENTS

Dos Palos Clean Power Purchase Agreement (Redacted Version)

RESOLUTION NO. _____

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

* * * * * *

RESOLUTION DELEGATING AUTHORITY TO CHIEF EXECUTIVE OFFICER TO EXECUTE POWER PURCHASE AND SALE AGREEMENT FOR RENEWABLE SUPPLY WITH RENEWABLE AMERICA, LLC AND ANY NECESSARY ANCILLARY DOCUMENTS WITH A POWER DELIVERY TERM OF 20 YEARS BEGINNING AT THE COMMERCIAL OPERATION DATE ON OR ABOUT AUGUST 1, 2023, IN AN AMOUNT NOT TO EXCEED $12.7 MILLION.

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, launch of service for Phase I occurred in October 2016, and launch of service for Phase II occurred in April 2017; 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, as a Program Administrator of the California Public Utilities Commission DAC-GT and DAC-CSGT programs, Peninsula Clean Energy is required to procure an eligible renewable resource to serve program customers,

WHEREAS, consistent with its mission of reducing greenhouse gas emissions by expanding access to sustainable and affordable energy solutions, Peninsula Clean Energy seeks to execute a Power Purchase and Sale Agreement with Renewable America, LLC (Contractor) for 3 MW of power generation from the Dos Palos Clean Power solar project, based on Contractor's desirable offering of products, pricing, and terms; and

WHEREAS, the Dos Palos Clean Power project will contribute toward the Board's goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy by providing renewable generation for a term of twenty years starting on or about August 1, 2023; and

WHEREAS, staff is presenting to the Board for its review the Power Purchase and Sale Agreement, reference to which should be made for further particulars; 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 power from the Contractor; and

WHEREAS, the Board's decision to delegate to the Chief Executive Officer the authority to execute the Agreements is contingent on the Renewable America, LLC President & CEO signing the Agreement as presented herein to the Peninsula Clean Energy Board.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to:

Execute the Agreements and any ancillary documents with the Contractor with terms consistent with those presented, in a form approved by the General Counsel; and for a power delivery term of up to twenty years, in an amount not to exceed $12.7 million.

* * * * * *

Execution Version

POWER PURCHASE AND SALE AGREEMENT

FOR THE DISADVANTAGED COMMUNITY GREEN TARIFF

COVER SHEET

Seller: Dos Palos Clean Power LLC, a Delaware limited liability company

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

Description of Facility: A new 3 MW RPS-eligible AC photovoltaic electric generating facility located in Merced County, California (the "**Facility**"). The Facility shall produce Energy that is eligible to participate in California's Renewable Portfolio Standard and the Facility shall comply with the Voluntary Renewable Electricity Program. The Facility shall have its own CAISO Resource ID and may not serve any on-site or other loads, other than Facility station loads.

Facility Site: The Site of the Facility, as is further described in Exhibit A, shall be located in the following Disadvantaged Community within the retail service territory of Pacific Gas and Electric Company as is set forth in the most recently updated CalEnviroscreen system: 4.0, Census Tract Number: 6047002401. As of the Effective Date, the CalEnviroScreen Percentile of the Site is 92.3

Guaranteed Commercial Operation Date: [redacted]

Milestones:

Milestone	Completion Date
Site Control	[redacted]
Conditional Use Permit	[redacted]
System Impact Study Interconnection Results	[redacted]
Executed Interconnection Agreement	[redacted]
Procure Major Equipment	[redacted]
Financial Close	[redacted]
Construction Start	[redacted]
Initial Synchronization	[redacted]

Milestone	Completion Date
Commercial Operation Date	August 1st, 2023

Delivery Term: Twenty (20) Contract Years

Guaranteed Capacity: 3MW at the Delivery Point

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1	[redacted]
2	[redacted]
3	[redacted]
4	[redacted]
5	[redacted]
6	[redacted]
7	[redacted]
8	[redacted]
9	[redacted]
10	[redacted]
11	[redacted]
12	[redacted]
13	[redacted]
14	[redacted]

Contract Year	Expected Energy (MWh)
15	[redacted]
16	[redacted]
17	[redacted]
18	[redacted]
19	[redacted]
20	[redacted]

Monthly Expected Energy:[1]

Month	Expected Energy (MWh)
January	[redacted]
February	[redacted]
March	[redacted]
April	[redacted]
May	[redacted]
June	[redacted]
July	[redacted]
August	[redacted]

1 This table reflects Seller's Expected Energy by calendar month in the first Contract Year, as if the first Contract Year begins on January first. The first Contract Year may begin on another date, per the terms of this Agreement.

Month	Expected Energy (MWh)
September	[redacted]
October	[redacted]
November	[redacted]
December	[redacted]

Contract Price:

Contract Year	Contract Price ($/MWh)
1 through 20	[redacted]

Product:

- x Energy
- x Green Attributes: Portfolio Content Category 1
- x Future Environmental Attributes

Deliverability:

☒ Energy Only Status

☐ Full Capacity Deliverability Status

Scheduling Coordinator: Buyer or Buyer's Agent

Development Security: [redacted]

Performance Security: [redacted]

Damage Payment: [redacted]

Notice Addresses:

Seller:

Company Name: Dos Palos Clean Power LLC
Address: [redacted]

Attention: [redacted]

With a copy to:

Company Name: [redacted]

Office of the General Counsel
[redacted]

Scheduling:

Company Name: Peninsula Clean Energy Authority
Address: 2075 Woodside Road
Redwood City, CA 94061

Attention: Power Resources Department
Phone No.: (650) 260-0005
Email: scheduling@peninsulacleanenergy.com

Buyer:

Peninsula Clean Energy Authority
2075 Woodside Road
Redwood City, CA 94061
ATTN: Director of Power Resources

Phone No.: 650-260-0005
Email: contracts@peninsulacleanenergy.com

With a copy to:

Peninsula Clean Energy Authority
400 County Center, 6th Floor
Redwood City, CA 94063
Attention: David Silberman, General Counsel

Fax No.: (650) 363-4034
Phone No.: (650) 363-4749
Email: dsilberman@smcgov.org

[*Signatures on following page.*]

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

SELLER	BUYER
Dos Palos Clean Power LLC	Peninsula Clean Energy Authority
By: _____	By: _____
Name: [redacted]	PCE Executive Officer
Title: Managing Member	

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POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale 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 electric generating facility as described in Exhibit A; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, all Energy generated by the Facility and all Green Attributes related to the generation of such Energy;

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 3.13.

"**Adjusted Energy Production**" has the meaning set forth in Exhibit D.

"**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 any exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

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

"**Available Capacity**" means the capacity from the Facility, expressed in whole MWs, that is available at a particular time to generate Product.

"**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.

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

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

"**Buyer**" has the meaning set forth on the Cover Sheet.

"**Buyer Bid Curtailment**" means the occurrence of all of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to produce less Energy from the Facility for a period of time than is reflected in the VER Forecast for the Facility;

(b) for the same time period as referenced in (a), Buyer or the SC for the Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Energy forecasted to be produced from the Facility; and

(c) no other circumstances exist that constitute a Scheduled Maintenance, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a).

"**Buyer Curtailment Order**" means the instruction from Buyer to Seller to reduce generation from the Facility by the amount, and for the period of time set forth in such order, for reasons unrelated to a Scheduled Maintenance, Forced Facility Outage, Force Majeure Event and/or Curtailment Order, which instruction may be communicated to Seller in writing by electronic notice or other commercially reasonable means.

"**Buyer Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a (i) Buyer Bid Curtailment or (ii) Buyer Curtailment Order.

"**Buyer Default**" means a failure by Buyer to perform its obligations hereunder.

"**Buyer's WREGIS Account**" has the meaning set forth in Section 4.8(a).

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

"**CAISO Approved Meter**" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility less 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 Grid**" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

"**CAISO Operating Order**" means the "operating order" defined in Section 37.2.1.1 of the CAISO Tariff.

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

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

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

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

"**CEC Final Certification and Verification**" means that the CEC has certified the Facility as an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard, meeting all applicable requirements for certified facilities set forth in the *RPS Eligibility Guidebook, Ninth Edition* (or its successor), and that all Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

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

"**Change of Control**", in the case of Seller or another Person, means any circumstance in which Seller's or such other Person'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 or such other Person; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller or such other Person 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 or such other Person 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) shall be excluded from the total outstanding equity interests in Seller.

Notwithstanding the foregoing, in the case of Seller, (a) so long as the Ultimate Parent Controls Persons owning at least 1.5 MW of operating renewable electricity generating 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 Qualified Transferee and Buyer is given written notice of the Change of Control within five (5) Business Days of its occurrence.

"**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 3.13.

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.13.

"**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 Price**" has the meaning set forth in the Cover Sheet.

"**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.

"**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:

CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail Energy deliveries for any reason other than a Buyer Bid Curtailment;

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;

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

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

For the avoidance of doubt, if Buyer or Buyer's SC 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 from the Facility for such time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, not a Buyer Bid Curtailment.

"**Curtailment Period**" means the period of time, as measured using relevant current Settlement Intervals, during which Seller reduces generation 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) one hundred twenty (120).

"**Damage Payment**" means a liquidated damages payment in the amount indicated in the Cover Sheet.

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

"**Day-Ahead LMP**" means the LMP for the Day-Ahead Market.

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

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

"**Deemed Delivered Energy**" means the amount of Energy, expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period. The amount shall be equal to (a) the VER Forecast expressed in MWh, applicable to the Buyer Curtailment Period, or (b) if there is no VER Forecast available or Seller demonstrates to Buyer's reasonable satisfaction that the VER Forecast does not represent an accurate forecast of generation from the Facility, the amount determined by a third party reasonably acceptable to Buyer using an industry standard forecasting or back-casting methodology to determine the potential generation of the Facility as a function of Available Capacity, solar insolation and panel temperature, and other pertinent data for the period of time during the Buyer Curtailment Period, in either case less the amount of Metered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

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

"**Deficient Month**" has the meaning set forth in Section 4.8(e).

"**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 and ending on the anniversary of the Commercial Operation Date that is 20 Contract Years from 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 on the Cover Sheet, deposited with Buyer in conformance with Section 8.7.

"**Disadvantaged Community**" means a location as determined by the CPUC to be eligible for participation in the Disadvantaged Community Green Tariff.

"**Disadvantaged Community Green Tariff**" or "**DAC-GT**" means the program established by the CPUC to improve access to renewable generation for residential customers who live in disadvantaged communities and who meet income eligibility requirements to obtain discounted rates. As of the Effective Date, DAC-GT eligibility requirements for new RPS-eligible generators are set forth in CPUC Decisions 18-06-027, 18-10-007 and Resolution E-4999 and may be updated from time to time.

"**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.

"**Eligible Intermittent Resources Protocol**" or "**EIRP**" has the meaning set forth in the CAISO Tariff.

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

"**Energy**" means metered electrical energy, measured in MWh, which is produced by the Facility.

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

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

"**Excess MWh**" has the meaning set forth in Section 3.3(c).

"**Expected Energy**" has the meaning set forth in Section 4.7.

"**Facility**" means the facility described more fully in Exhibit A attached hereto.

"**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 Appendix A of 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 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 making power available at the Delivery Point and that is not the result of a Force Majeure Event.

"**Forced Labor**" has the meaning set forth in Section 13.3(d).

"**Forward Certificate Transfers**" has the meaning set forth in the WREGIS Operating Rules.

"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 (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating 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 Green Attributes and Capacity Attributes.

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

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

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

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

"**Green-e Energy National Standard**" means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.5, updated December 15, 2020, as may be further amended from time to time.

"**Guaranteed Capacity**" means **3** MW AC capacity measured at the Delivery Point.

"**Guaranteed Commercial Operation Date**" has the meaning set forth in Exhibit B.

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

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

"**Guaranteed RA Amount**" means the Qualifying Capacity of the Facility.

"**Imbalance Energy**" means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Metered Energy deviates from the amount of Scheduled Energy.

"**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 from the Facility to the interconnection point specified in the Interconnection Agreement.

"**Installed Capacity**" means the actual generating capacity of the Facility, measured at the Facility PNode and adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, 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 Agreement**" means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"**Interconnection 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.

"**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.

"**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 or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, 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.

"**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., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

"**Lost Output**" has the meaning set forth in Exhibit D.

"**Main Power Transformer**" means the Facility's main step-up transformer as depicted on the one-line diagram set forth in Exhibit A.

"**Metered Energy**" means the electric energy generated by the Facility, expressed in MWh, as recorded by the CAISO Approved Meter(s) and net of all Electrical Losses and Station Use.

"**Milestones**" means the development activities for significant permitting, interconnection, financing and construction milestones set forth in the Cover Sheet.

"**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.

"**Negative LMP**" means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP is less than zero dollars ($0).

"**Negative LMP Costs**" has the meaning set forth in Section 3.3(c).

"**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).

"**Other Facility(ies)**" means the electric generating or energy storage facility(ies), other than the Facility, utilizing any facilities shared with the Facility to enable delivery of energy from each such other generating or storage facility to the Delivery Point, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at each such other generating or storage facility, but (i) with respect to the Shared Facilities, excluding Seller's interests therein and (ii) excluding the real property on which each such other generating or storage facility is, or will be located, land rights and interests in land.

"**Outside Commercial Operation Date**" has the meaning set forth in Section 2(d) of Exhibit B.

"**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 Pacific Gas and Electric Company.

"**Party**" has the meaning set forth in the Preamble.

"**Performance Measurement Period**" has the meaning set forth in Section 4.7.

"**Performance Security**" means (i) cash, or (ii) a Letter of Credit, in the amount specified 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.

"**PNode**" has the meaning set forth in the CAISO Tariff.

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

"**Product**" has the meaning set forth on the Cover Sheet.

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

"**Project**" has the same meaning as Facility.

"**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 Reporting Entity**" has the meaning set forth in the WREGIS Operating Rules.

"**Qualified Transferee**" means an entity that (a) has a Tangible Net Worth of one hundred fifty million dollars ($150,000,000) or (b) has (i) a Tangible Net Worth of fifty million dollars ($50,000,000) and (ii) a Credit Rating of Baa3 or higher by Moody's or BBB- or higher by S&P, if rated by only one such entity, or a Credit Rating of Baa3 or higher by Moody's and BBB- or higher by S&P, if rated by both such entities, and, in any case, (c) is not a public utility regulated by the CPUC or an Affiliate thereof, and (d) has, or retains to operate the Facility a Person that has, at least

five (5) years of experience operating similar electricity generating facilities.

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**Remedial Action Plan**" has the meaning set forth in Section 2.4.

"**Renewable Energy Credit**" has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"**Renewable Energy Incentives**" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, provided in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

"**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.

"**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's WREGIS Account**" has the meaning set forth in Section 4.8(a).

"**Settlement Amount**" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the

Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0).

"**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 other than the Facility.

"**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.

"**Site Control**" means that Seller: (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

"**Station Use**" has the meaning given in the tariff of the retail provider of energy for the Facility and reflects:

(a) the electric energy that is used within the Facility (including to power the lights, motors, control systems, thermal regulation equipment and other electrical loads) and that is necessary for operation of the Facility; and

(b) the electric energy that is consumed within the Facility's electric energy distribution system as losses (other than any losses that are Electrical Losses).

"**System Emergency**" means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

"**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.

"**Test Energy**" means the Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Facility to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

"**Transmission System**" means the transmission facilities operated by the CAISO, now or hereafter in existence, or the distribution facilities operated by a Participating Transmission Owner or other distribution provider, which provide energy transmission service downstream from the Delivery Point.

"**Ultimate Parent**" means the entity that Controls, directly or indirectly, a Person and that is not Controlled by any other entity. As of the Effective Date, the Ultimate Parent of Seller is Renewable America LLC, a California limited liability company.

"**Variable Energy Resource**" or "**VER**" has the meaning set forth in the CAISO Tariff.

Variable Energy Resource Forecast" or "**VER Forecast**" means, for a given period, the final forecast of the Energy to be produced by the Facility prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol.

"**Voluntary Renewable Electricity Program**" is the program administered by the California Air Resources Board pursuant to Section 95841.1 of Title 17 of the California Code of Regulations.

"**WECC**" means the Western Electricity Coordinating Council or its successor.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.8(e).

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

"**WREGIS Operating Rules**" means those operating rules and requirements adopted by WREGIS as of January 4, 2021, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that 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 term "including" means "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) 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 delivered to Buyer certificates from a Licensed Professional Engineer substantially in the form of Exhibits G-1 and G-2;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the 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;

(d) Authorization to parallel the Facility was obtained by the Participating Transmission Owner prior to the Delivery Commencement Date.

(e) The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by the Delivery Commencement Date.

(f) The CAISO has provided notification supporting Commercial Operation.

(g) 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 Delivery Commencement that has not been met, Seller shall be entitled to a day for day extension of the Guaranteed Delivery Commencement Date for such Buyer (or its designee) actions or failure to act.

(h) 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 is in compliance with the requirements of the conditional use permit or other principal land use approval;

(i) Seller has received CEC Precertification;

(j) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, Qualified Reporting Entity service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(k) 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 in respect of the Facility;

(l) Seller has delivered to Buyer all reports, studies and analyses related to the Facility prepared by or for a third party, including any solar resource report or report by an independent engineer in connection with the financing of the construction or permanent operation of the Facility;

(m) Seller has delivered the Performance Security to Buyer;

(n) Seller has paid Buyer for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any;

(o) The Project shall have an approved tracking attestation on file with the Center for Resource Solutions (administrator of Green-E program).

(p) 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.

2.3 **Progress Reports**. The Parties agree time is of the essence in regards to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial

Operation Date, Seller shall provide to Buyer a Progress Report and 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 two (2) or more Milestones, or misses any one (1) by more than thirty (30) days, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date (or the ninetieth (90th) day after the missed Milestone completion date, as applicable), 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; 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 at the Contract Price, all of the Product produced by the Facility. Buyer shall re-sell all of the Energy purchased hereunder, and may, at its sole discretion, re-sell or use for another purpose all or a portion of the remainder of the Product, provided that such resale or use for another purpose will not relieve Buyer of any of its obligations under this Agreement. Except for Deemed Delivered Energy, Buyer has no obligation to pay Seller for any Product that is not delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order. 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.

3.2 **Sale of Green Attributes**. Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all of the Green Attributes produced by the Facility during the Delivery Term, and any Green Attributes associated with Test Energy.

3.3 **Compensation**. Buyer shall compensate Seller for the Product in accordance with this Section 3.3.

(a) Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Metered Energy that qualifies as PCC1 and is delivered to the Delivery

Point, plus Deemed Delivered Energy, if any, up to [redacted] of the Expected Energy for such Contract Year.

(b) If, at any point in any Contract Year, the amount of Metered Energy plus the amount of Deemed Delivered Energy exceeds [redacted] of the Expected Energy for such Contract Year, for each additional MWh of Product, as measured by the amount of Metered Energy plus Deemed Delivered Energy, if any, delivered to Buyer in such Contract Year, the price to be paid shall be [redacted] for the applicable Settlement Interval. If, at any point in any Contract Year, the amount of Metered Energy delivered to the Delivery Point plus the amount of Deemed Delivered Energy exceeds [redacted]

(c) If during any Settlement Interval, Seller delivers Product in amounts, as measured by the amount of Metered Energy, in excess of the product of the Installed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), [redacted]

3.4 **Imbalance Energy**.

(d) Buyer and Seller recognize that from time to time the amount of Metered Energy will deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Subject to Section 3.4(b), to the extent there are such deviations, any CAISO costs or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.

(e) If Seller is not in compliance with EIRP or any applicable provisions of this Agreement, including Section 4.4(d), or if Imbalance Energy results from any outage or reduction in the availability of the Facility that is not communicated to Buyer at least one hour prior to the deadline to submit Schedules to CAISO, then Seller will be responsible for and shall pay directly or promptly reimburse Buyer (and Buyer may offset amounts owed to Seller) for the aggregate Imbalance Energy charges assessed, net of the aggregate Imbalance Energy revenues earned, during such period of noncompliance and reasonably attributable to such noncompliance within the applicable Contract Year. At Buyer's request, Seller will cooperate with Buyer to develop a written administrative protocol to effectuate the Parties' agreement with respect to Imbalance Energy and scheduling.

3.5 **Ownership of Renewable Energy Incentives**. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably

cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.6 **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 without any adjustment to the Contract Price paid by Buyer under this Agreement. Subject to Section 3.13, Seller shall take all commercially 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.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any incremental expenses incurred by Seller associated with providing such Future Environmental Attributes; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy**. No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Green Attributes and Capacity Attributes on an as-available basis. As compensation for any such Test Energy, Green Attributes, and Capacity Attributes, Buyer shall pay Seller for each MWh of Test Energy an amount equal to fifty percent (50%) of the Contract Price for the first Contract Year.

3.8 **[**Reserved].

3.9 [Reserved]**.**

3.10 **CEC Certification and Verification**. Subject to Section 3.13, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Precertification and CEC Final Certification and Verification for the Facility. Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for CEC Final Certification and Verification. Seller shall obtain the final CEC Certification and Verification effective as of the Commercial Operation Date and shall maintain such CEC Certification and Verification throughout the Delivery Term. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Precertification or CEC Final Certification and Verification for the Facility. For the first one hundred eighty (180) days of the Delivery Term, provided that Seller has obtained and maintained CEC Precertification, Buyer shall

pay Seller the Contract Price for Product according to Section 3.3 regardless of whether Seller has obtained CEC Final Certification and Verification. If Seller has not obtained CEC Final Certification and Verification within one hundred eighty (180) days after the Commercial Operation Date, Buyer will compensate Seller for the Product at the lower of (i) the Contract Price, as adjusted according to Section 3.3, or (ii) the Day-Ahead LMP, for the remainder of the Delivery Term, or until Seller obtains CEC Final Certification and Verification. If Seller obtains CEC Final Certification and Verification after one hundred eighty (180) days after the Commercial Operation Date, Buyer will thereafter begin paying Seller the Contract Price for Product according to Section 3.3, and, if such CEC Final Certification and Verification relates back to all Energy delivered by Seller during the Delivery Term, will reimburse Seller for the difference between (x) any reduced amounts paid to Seller for Product under this Section 3.10 due to Seller's failure to obtain CEC Final Certification and Verification within one hundred eighty (180) days after the Commercial Operation Date, and (y) the amount that would have been paid to Seller had Seller timely obtained CEC Final Certification and Verification within one hundred eighty (180) days after the Commercial Operation Date. If Seller has not obtained CEC Final Certification and Verification within one (1) year of the Commercial Operation Date, then an Event of Default shall occur, Buyer shall have all remedies available under this Agreement, including under Section 11.2, and, in the event that Buyer terminates this Agreement under Section 11.2, Seller shall reimburse Buyer, in addition to any other amounts owed, in an amount equal to the difference between (a) the amount paid by Buyer to Seller for Product during the first one hundred eighty (180) days of the Delivery Term, and (b) the amount that would have been paid if the price for energy delivered during the first one hundred eighty (180) days of the Delivery Term were the Day Ahead LMP.

3.11 **Eligibility**. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

3.12 **California Renewables Portfolio Standard**. Subject to Section 3.13, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by California statute or by the CPUC or CEC from time to time.

3.13 **Compliance Expenditure Cap**. If Seller establishes to Buyer's reasonable satisfaction that a change in Laws occurring after the Effective Date has increased Seller's cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller's obligations under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed in Sections 3.13(a), (b), and (c), [redacted] ("**Compliance Expenditure Cap**"):

(a) CEC Certification and Verification; and

(b) Green Attributes; and

(c) Future Environmental Attributes.

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**."

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.

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, 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 3.13 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, these Compliance Actions for the remainder of the Contract Term.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and reasonable documentation of such costs from Seller.

The term "commercially reasonable efforts" as used in Sections 3.11 and 4.8(h) means efforts consistent with and subject to this Section 3.13.

3.14 **Disadvantaged Community Green Tariff**. Seller shall take all necessary steps to achieve and maintain the Facility's eligibility to participate in the Disadvantaged Community Green Tariff, including but not limited to, submitting all necessary information pertaining to the location of the Site and operations of the Facility to Buyer and such other parties as reasonably required by Buyer.

3.15 **Voluntary Renewable Energy Program**. Seller shall take all necessary steps to achieve and maintain the Facility's compliance with the Voluntary Renewable Electricity Program, including but not limited to, submitting all necessary information substantiating the Facility's RPS-eligibility and accounting of Green Attributes to the California Air Resources Board.

3.16 **Tariff Change in Law.** If a change in law after the Effective Date and before the Commercial Operation Date substantially alters the requirements for Seller to maintain the Facility's eligibility to participate in the Disadvantaged Community Green Tariff pursuant to Section 3.14, or to maintain the Facility's compliance with the Voluntary Renewable Electricity Program pursuant

to Section 3.15, and such change in law would require Seller to incur costs in excess o [redacted] f Guaranteed Capacity cumulatively during the Delivery Term, then either Party, on notice, may request the other Party to enter into negotiations to make the minimum changes to this Agreement necessary maintain the benefits, burdens and obligations set forth in this Agreement as of the Effective Date. If Buyer does not agree to waive Seller's obligations under Section 3.14 or 3.15, as applicable, or the Parties are otherwise unable, within one hundred eighty (180) after the sending of the notice requesting negotiations, either to agree upon changes to this Agreement or to resolve issues related to changes to this Agreement, then either Party may terminate this Agreement upon written Notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1**Error! Reference source not found.**.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept at the Delivery Point all Metered Energy on an as-generated, instantaneous basis. 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.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Facility as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility. Upon request of Buyer, Seller shall submit a Green-e® Energy Tracking Attestation Form ("**Attestation**") for Product delivered under this Agreement to the Center for Resource Solutions ("**CRS**") at https://www.tfaforms.com/4652008 or its successor. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted within thirty (30) days of Buyer's request or the last day of the month in which the applicable Energy was generated, whichever is later.

4.2 **Title and Risk of Loss**.

(a) Energy. Title to and risk of loss related to the Metered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **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 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 Seller's Scheduling Coordinator for the Facility effective as of the initial synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the initial synchronization of the Facility to the CAISO Grid. On and after initial synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as Seller'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 Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller'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 Seller'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 Sections 3.4(b) and 3.7, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties or fees resulting from any failure by Seller to abide by 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. 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, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as Seller'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 3.4(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 Seller'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 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 Available Capacity forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity and expected Metered Energy of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Expected Metered Energy. No less than ninety (90) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to

Buyer a non-binding forecast of expected Metered Energy, by hour, for the following calendar year in the form attached hereto as Exhibit L-1 or as reasonably requested by Buyer.

(b) Daily Forecast of Available 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 Facility's Available Capacity 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 Facility's Available Capacity

(c) Real-Time Available Capacity. During the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of one (1) MW or more, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These notices and changes to Available Capacity shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.4(d), then Seller shall send such communications by telephone and e-mail to Buyer.

4.5 **Dispatch Down/Curtailment**.

(a) General. Seller agrees to reduce the Facility's generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment. Buyer has no obligation to purchase or pay for any Product delivered in violation of any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, or for any Product that could not be delivered to the Delivery Point due to a Force Majeure Event.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders pursuant to a dispatch notice delivered to Seller, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with all Buyer Curtailment Periods at the applicable Contract Price.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Metered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, [redacted]

(d) 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 Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility and directed by Buyer, 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 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 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.6 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit D:

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of and to the extent required by Scheduled Maintenance on the Facility previously agreed to between Buyer and Seller.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during and to the extent required by any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration and extent (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of and to the extent required by System Emergency, Buyer Curtailment Period, or upon Notice of a Curtailment Order, or pursuant to the terms of the Interconnection Agreement or applicable tariff. In the event of a System Emergency, anticipated System Emergency, or other event or circumstance in which CAISO determines that there is or may be an imminent need for Energy supplies on the CAISO Grid, Seller shall use reasonable efforts to make the Product fully available, including by cancelling or deferring any Facility maintenance.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during and to the extent required by any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Expected Energy and Guaranteed Energy Production**. The quantity of Product, as measured by Metered Energy, that Seller expects to be able to deliver to Buyer during each Contract Year is set forth on the Cover Sheet ("**Expected Energy**"). Seller shall be required to deliver to Buyer an amount of Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below) in [redacted] during the Delivery Term ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means an amount of Product, as measured in MWh, equal to [redacted] Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent that Seller was unable to deliver Energy as a result of any Force Majeure Events, Buyer Default, Curtailment Periods and Buyer Curtailment Periods; to effectuate the foregoing excuse, Seller shall be deemed to have generated (1) the Deemed Delivered Energy in respect of Buyer Curtailment Periods, and (2) an amount of Energy determined in accordance with Exhibit D in respect of Lost Output. In addition, for purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer, in the first Contract Year of each Performance Measurement Period following a Performance Measurement Period as to which Seller has paid damages calculated in accordance with Exhibit D, [redacted] If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit D.

4.8 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.13, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Metered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification, issuance, and transfer of such WREGIS Certificates to Buyer, and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (**"Seller's WREGIS Account"**), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the accounts of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**") Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause itself or its agent to be designated as the Qualified Reporting Entity for the Facility. Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Metered Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates issued to Buyer for a calendar month as compared to the Metered Energy for the same calendar month ("**Deficient Month**"). If any WREGIS Certificate Deficit occurs, then the amount of Metered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that Buyer shall pay Seller for any Metered Energy that is Delivered by Buyer without corresponding WREGIS Certificates at a price equal to [redacted]Without limiting Seller's obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission. Seller shall use commercially reasonable efforts to rectify any WREGIS Certificate Deficit as expeditiously as possible.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Metered Energy in the same calendar month.

(g) STC REC-2. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(h) STC REC-1. Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

4.9 **Financial Statements**.

(a) **Seller 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.

(b) **Buyer Financial Statements**. Buyer shall provide to Seller both upon request and as indicated below: (a) within sixty (60) days following the end of its first, second and third fiscal quarters, unaudited quarterly financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied and (b) within one hundred eighty (180) days following the end of each fiscal year, annual audited financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied, provided that if Buyer's annual financial statements are publicly available on its website, Buyer will be deemed to have met the obligations set forth above.

4.10 **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, 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 determines are necessary to forecast output from the Facility, and comply with Law:

(i) real time, read-only access to meteorological measurements, transformer availability, any other facility availability information, and, if applicable, all parameters necessary for use in the equation under item (vii) of this list;

(ii) real time, read-only access to energy output 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 energy output information and meteorological measurements 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 Facility's CAISO revenue meter and all Facility meter data at the Site;

(iv) full, real time access to the Facility's Scheduling and Logging for the CAISO (OMS) client application, or its successor system;

(v) net plant electrical output at the CAISO revenue meter;

(vi) instantaneous data measurements at sixty (60) second or increased frequency for the following parameters, which measurements shall be provided by Seller to Buyer in a consolidated data report at least once every five minutes via flat file through a secure file transport protocol (FTP) system with an e-mail backup: (i) back panel temperature (ii) global horizontal irradiance, (iii) plane of array irradiance (if the panels are fixed) or direct normal irradiance (if the panels are tracking), (iv) wind speed, (v) peak wind speed (within one minute), (vi) wind direction, (vii) ambient air temperature, (viii) dewpoint air temperature or relative humidity, (ix) horizontal visibility, (x) precipitation (rain rate), (xi) precipitation (running 30 day total), and (xii) barometric pressure; and

(vii) an equation, updated on an ongoing basis to reflect the potential generation of the Facility as a function of insolation (and, if applicable, other weather factors). Such equation shall take into account the expected availability of the Facility. Seller shall reasonably cooperate with any request from Buyer to adjust the equation due to results that are inconsistent with the observed Facility output.

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 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 4.10(a), which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute 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 at least one (1) stand-alone meteorological station at the Site to monitor and report the meteorological data required in Section 4.10(a) of this Agreement. 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 4.10(a) of this Agreement.

(ii) Seller shall maintain the meteorological stations, 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 meteorological stations, 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 meteorological stations, 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 Imbalance Energy costs incurred under Section 3.4(b) 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 quality data 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, blackberry 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 Seller, 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.

(e) No later than ninety (90) days before the Commercial Operation Date, Seller shall provide one (1) year, if available, but no less than six (6) months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (i) the parameters (other than back panel temperature) identified in Section 4.10(a)(vi) above (all data, except peak values, should be 1-second samples averaged into 10-minute periods); (ii) elevation, latitude and longitude of the weather station; and (iii) any other data reasonably requested by Buyer.

4.11 **[Reserved]**

4.12 **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 ensure that work performed in connection with construction of the Facility will 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 4.12.

4.13 **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 charge or discharge the Facility up to the Delivery Term Expected Energy; (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 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 Delivery Term Expected Energy.

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 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). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy or other Product hereunder is exempt from or not subject to any particular Tax, 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 delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

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"). Seller may perform no more than fifty (50) hours of Scheduled Maintenance that involves a reduction in the Available Capacity of the Facility per Contract Year. Seller shall not conduct 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 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 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 Scheduled Maintenance and that reduces the Available 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 September, or (iii) the Parties agree otherwise in writing.

(c) Seller shall use commercially reasonable efforts to schedule all maintenance outages, including those associated with 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 C 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, 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 (i) 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 (ii) Seller may utilize Energy to serve Station Use.

ARTICLE 7
METERING

7.1 **Metering**. Seller shall measure the amount of Energy produced by the Facility using a CAISO Approved Meter, using a CAISO-approved methodology. Such meter shall be installed on the high side of the Seller's transformer and maintained at Seller's cost. Metering will be consistent with the Metering Diagram set forth in Exhibit A. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event 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(s) 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 meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall 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 sufficient to document and verify the generation of Product by the Facility for any Settlement Period during the preceding month, the amount of Product in MWh produced by the Facility as read by the CAISO Approved Meter, the amount of Replacement RA delivered to Buyer, the calculation of Deemed Delivered Energy and Adjusted Energy Production, and the Contract Price applicable to such Product; and (b) 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.

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 forty-five (45) 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, 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 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 Exhibits B and D, 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 in the amount o [redacted] within twenty (20) 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, in the amount of [redacted] 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, indemnification payments or other damages 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 and is continuing 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 of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after 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 on the Cover Sheet 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 if 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 reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire (including wildfire); smoke from fire, including wildfires, that materially diminishes solar insolation at the Facility; [redacted] volcanic eruption; flood; epidemic and pandemic and Governmental Authority shutdowns or lockdowns resulting directly therefrom affecting Seller or its employees but not its suppliers or other third parties; 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 in Section 10.1(c) below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Energy at a lower price, or Seller's ability to sell Energy at a higher price, than the Contract Price); (ii) Seller's inability

to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility ; (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; 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, for the avoidance of doubt, 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**.

If a Force Majeure Event has occurred 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 (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Articles 14 or 15, 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 Energy that was not generated by the Facility;

[redacted]

(iii) the failure by Seller to timely obtain CEC Final Certification and Verification in accordance with Section 3.10.

(iv) [redacted]

(v) if, [redacted], the Adjusted Energy Production amount is not at least [redacted] in each Contract Year, provided, it will not be an Event of Default under this Section 11.1(b)(v) if (a) the failure to meet the respective standard results from a failure of the Facility's Main Power Transformer, (b) during the one hundred eighty (180) day period after such Main Power Transformer failure Seller diligently pursues a cure to such Main Power Transformer failure and delivers to Buyer a certificate from a Licensed Professional Engineer within thirty (30) days of the Main Power Transformer failure that cure can be made within such one hundred eighty (180) day period, and (c) Seller completes the cure of such Main Power Transformer failure within such one hundred eighty (180) day period;

(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) 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;

(viii) the occurrence of six (6) consecutive months in which a WREGIS Certificate Deficit was caused, or was the result of any action or inaction, by Seller; provided, that if Seller is taking reasonable steps to prevent subsequent WREGIS Certificate Deficits and is reasonably likely to succeed in preventing the occurrence in the seventh (7th) consecutive month, then an Event of Default shall not be deemed to have occurred until the seventh (7th) consecutive month.

(ix) 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 and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller under Section 11.1(b)(ii)) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance, and, if Buyer is the Defaulting Party, Seller may, solely while such Event of Default is continuing with respect to Buyer, sell the Product to any third party or into the CAISO market; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment**. 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; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) 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**. 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 Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the

Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

11.6 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date**. If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 **Rights And Remedies Are Cumulative**. Except where liquidated damages 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.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY, 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.

12.2 **Waiver and Exclusion of Other Damages**. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL

PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX 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) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING THE DAMAGE PAYMENT UNDER SECTION 11.2 AND THE TERMINATION PAYMENT UNDER SECTION 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT D, 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.

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 is located in the State of **California**.

(f) All Energy and associated Green Attributes sold and delivered to Buyer hereunder, qualify as PCC1.

13.2 **Buyer's Representations and Warranties**. As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer will not assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants**. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and 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 allowed 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; or (b) subject to Section 15.1, a Lender as collateral, or [redacted] (unless, after the Effective Date, there is a Change of Control of [redacted] or a material change in its line of business or the line of business of its Affiliates).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, which consent shall not be unreasonably withheld.

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 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 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 described in Sections 11.1 or 11.2 hereof 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. 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. [redacted]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 its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

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*, that, for the avoidance of doubt, 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. If a change to any Law occurs after the Effective Date, including any rule or requirement of WREGIS, that impacts the number or quality of Resource Adequacy Benefits or Green Attributes (including Renewable Energy Credits) available to Buyer from the Facility, then Buyer may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date, it being understood that (i) Buyer is to receive the maximum amount of Resource Adequacy Benefits and Green Attributes available from the Facility and (ii) Seller's ongoing compliance costs associated with the provision of Resource Adequacy Benefits and Green Attributes available from the Facility, among other things, are subject to the Compliance Expenditure Cap. 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: **Dos Palos Clean Power**

Site Name: **Dos Palos Clean Power**

Site Description: [redacted]

Site Address: [redacted]

GPS Coordinates:

Site Map: **[attached hereto]**

APNs: [redacted]

County: **Merced County**

CEQA Lead Agency: **Merced County**

Guaranteed Capacity: **3** MW AC (net, at the Delivery Point)

Generation Technology:

Module: [redacted] **or Tier 1 equivalent**

Inverter: [redacted] **or top tier equivalent**

Single-axis Tracker +/- 50 degree, East/West Facing

P-node/Delivery Point: the PNode designated by the CAISO for the Facility at the **Dos Palos** Substation

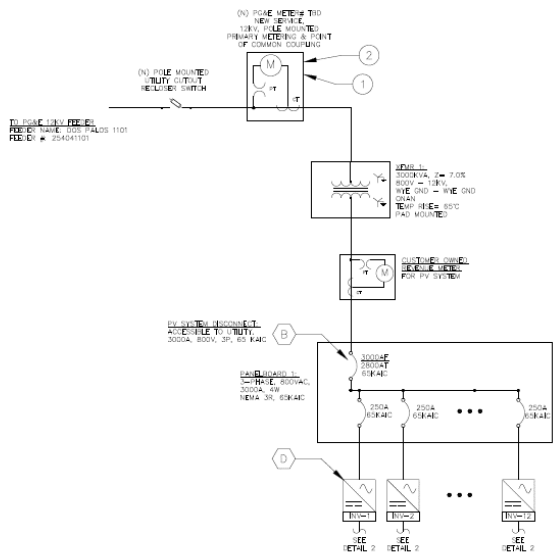
Point of Interconnection: [redacted]

Description of Interconnection Facilities and Metering: The Facility will use the following Interconnection Facilities and metering configuration, as depicted in the attached one-line diagram:

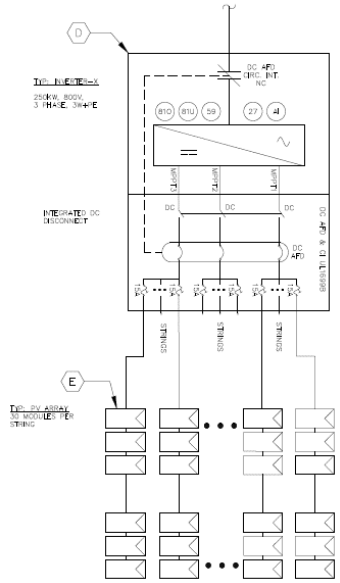
Primary service interconnection to 12kV Dos Palos 1101 on a 3-phase/3-wire distribution circuit

PG&E Wholesale Distribution Queue Number: [redacted]

One-Line Diagram:

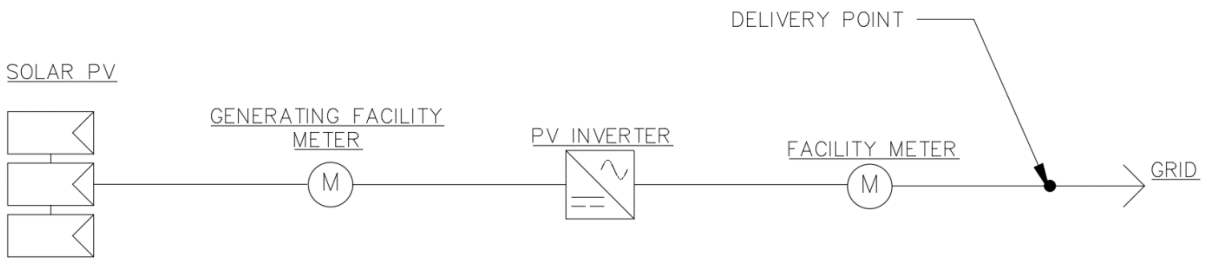


DETAIL 1:
AC SINGLE LINE DIAGRAM



DETAIL 2:
DC SINGLE LINE DIAGRAM

Metering Diagram:



Additional Information:



EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

   a. Seller shall cause construction to begin on the Facility by [redacted], (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 may extend the Guaranteed Construction Start Date for up to [redacted] by paying Daily Delay Damages to Buyer on account of such delay. If Seller elects to extend the Guaranteed Construction Start Date, then on or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller's payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller. The Parties agree that Buyer's receipt of Daily Delay Damages shall be Buyer's sole and exclusive remedy for the first one hundred twenty (120) 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 Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's rights pursuant to Section 11.2.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and (ii) Seller has provided Notice to Buyer that Commercial Operation has been achieved. The "**Commercial Operation Date**" shall be the later of (x) the date that is ninety (90) days before the Expected Commercial Operation Date or (y) the date on which Commercial Operation is achieved.

   a. Seller shall cause Commercial Operation for the Facility to occur by [redacted] 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 [redacted] efore 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 Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Buyer shall retain Daily Delay Damages, and Seller may extend the Guaranteed Commercial Operation Date by up to sixty (60) days by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date. If Seller elects to extend the Guaranteed Commercial Operation Date, then on or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. 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 sixty (60) days of delay 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.

d. Notwithstanding anything herein to the contrary, Seller shall achieve Commercial Operation on or before December 31, 2024 ("**Outside Commercial Operation Date**"). The Outside Commercial Operation Date shall not be extended for any reason, including Force Majeure.

3. **Termination for Failure to Timely Achieve Construction Start or Commercial Operation**. If the Facility has not achieved Construction Start by the Guaranteed Construction Start Date or Commercial Operation by the Guaranteed Commercial Operation Date, or Commercial Operation before the Outside 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. Buyer has not made all necessary arrangements to receive the 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(b) above) shall not exceed 300 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 sixty (60) days of the Guaranteed Delivery Commencement 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 Capacity**. If, at Commercial Operation, the Installed Capacity is at least [redacted] of Guaranteed Capacity, but less than the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity such that the Installed Capacity is increased, but not to exceed the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit G-2 hereto specifying the new Installed Capacity. In the event that the Installed Capacity is still less than the Guaranteed Capacity as of such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [redacted]

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

EMERGENCY CONTACT INFORMATION

BUYER:

Peninsula Clean Energy Authority
2075 Woodside Road
Redwood City, CA 94061
Attn: Director of Power Resources

Phone No.: 650-260-0005
Email: contracts@peninsulacleanenergy.com

SELLER:

Dos Palos Clean Power LLC

[redacted]

[redacted]

Attn: [redacted]

Phone: [redacted]

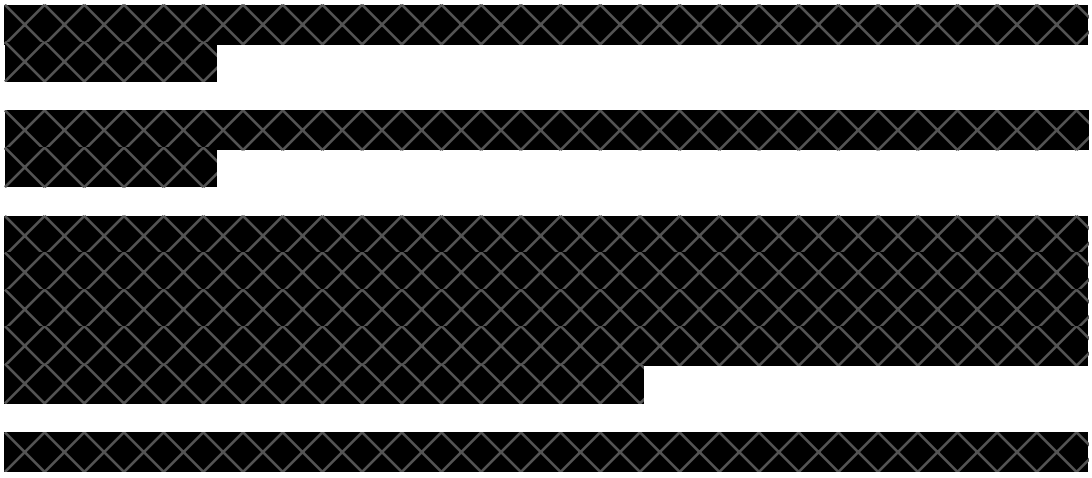
EXHIBIT D

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

[(A – B) * (C – D)]

where:



No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period.

Additional Definitions:

"**Adjusted Energy Production**" shall mean the sum of the following: Metered Energy + Deemed Delivered Energy + Lost Output – Excess MWh.

"**Lost Output**" means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order. The additional MWh shall be calculated using an equation provided by Seller, as approved by Buyer in its reasonable discretion, to reflect the potential generation of the Facility as a function of Available Capacity, solar insolation and panel temperature, and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the period in which the Force Majeure Event, Buyer Default, or Curtailment Order occurred.

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. Any other documentation reasonably requested by Buyer.

EXHIBIT F

BUYOUT OPTION

(1) Buyout Option. No later than ninety (90) days prior to the last day of each of (i) the tenth (10th) Contract Year of the Contract Term, (ii) the fifteenth (15th) Contract Year of the Contract Term and (iii) the twentieth (20th) Contract Year of the Contract Term, Buyer may deliver Notice to Seller indicating whether it elects to purchase the Facility. If Buyer elects to make a purchase, Buyer shall pay to Seller a "**Buyout Payment**" within thirty (30) days prior to the last day of such Contract Year equal to the Fair Market Value of the Facility as of such date, as determined pursuant to clause (2) below.

(2) Calculation of Fair Market Value. If Buyer provides Notice to Seller that it is contemplating exercising its rights under this Exhibit G, the Parties shall mutually agree upon an independent appraiser on or before the date that is sixty (60) days prior to the last day of (i) the tenth (10th) Contract Year of the Contract Term, (ii) the fifteenth (15th) Contract Year of the Contract Term, or (iii) the twentieth (20th) Contract Year of the Contract Term, if applicable. Such appraiser shall determine, at equally shared expense of Buyer and Seller, the fair market value of the Facility as of the date on which the Buyout Payment is to be paid, taking into account such items as deemed appropriate by the appraiser, which may include the resale value of the Facility, and the price of the Product (the "**Fair Market Value**"). In the event that Buyer and Seller cannot agree upon a single independent appraiser, each Party shall contract for an independent appraiser at its own expense, and the Fair Market Value shall be the simple average of the determinations of the two independent appraisers. On or prior to the date that is thirty (30) days prior to the last day of such Contract Year, the appraiser shall deliver its determination of Fair Market Value to each of Buyer and Seller. After the appraiser provides the Parties with its appraisal of Fair Market Value of the Facility, Buyer shall have thirty (30) days to decide whether to consummate its option to purchase the Facility. If Buyer does not provide Notice to Seller that Buyer intends to exercise its option to purchase the Facility within thirty (30) days of receipt of the Fair Market Value appraisal, Buyer shall be deemed to have not exercised its option to purchase the Facility.

(3) Passage of Title. Upon receipt of the Buyout Payment, the Parties shall execute all documents necessary to cause title to the Facility to pass to Buyer on an as-is, where-is, with-all-faults basis; *provided*, *however*, that Seller shall remove any encumbrances held by Seller with respect to the Facility.

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 Power Purchase and Sale 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 equipment with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.

(2) The Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].

(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]_____.

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**

By:_____

Its:_____

Date:_____

EXHIBIT G-2

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [Licensed Professional Engineer] ("**Engineer**") to PENINSULA CLEAN ENERGY AUTHORITY ("**Buyer**") in accordance with the terms of that certain Power Purchase and Sale 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 EPC contract for the Facility demonstrated peak Facility electrical output of __MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**

By:_____

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 Power Purchase and Sale 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

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. **[XXXXXXX]**

Date:
Bank Ref.:
Amount: US$**[XXXXXXX]**
Expiry Date:

Beneficiary:

Peninsula Clean Energy Authority

[Address]

Ladies and Gentlemen:

On behalf of **[XXXXXXX]** ("Applicant"), we, **[insert bank name and address]** ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. **[XXXXXXX]** (the "Letter of Credit") in favor of 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 in person, by courier or by fax at **[insert bank address]**. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds.

The document(s) required may also be presented by fax at facsimile no. (xxx) xxx-xxx on or before the expiry date (as may be extended below) on this Letter of Credit in accordance with the terms and conditions of this Letter of Credit. No mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents without the need of originally signed documents.

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 a one year period 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 **[insert bank address information]**, referring specifically to Issuer's Letter of Credit No. **[XXXXXXX]**. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at **[XXX-XXX-XXXX]** and have this Letter of Credit available.

[Bank Name]

_____

[Insert officer name]
[Insert officer title]

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

   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.

3. 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 commencing with the Construction Start Date and continuing 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 (5) working 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", if any, 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 – Sellers shall provide coverage for industrial injury to their employees (or leased employees as applicable), if any, 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 $2,000,000 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 – Seller shall provide evidence of Professional Liability insurance covering claims that arise from the actual or alleged errors, omissions or acts of the Seller or any entity for which the Seller is legally responsible, for the provision of all professional services necessary or incidental to the fulfillment of all contract obligations hereunder.

Such insurance shall be in an amount of not less than $2,000,000 each claim / $4,000,000 aggregate.

If Seller maintains Professional Liability limits greater than what is required herein, such limits carried become what we require under this Agreement.

The policy shall be effective from the date of commencement of all professional services in connection with the fulfillment of all contract obligations hereunder. The retroactive date in the current and future policies shall be prior to the commencement of all professional services. Coverage shall be maintained for a period not less than 36 months or the period of time Seller may be held legally liable for its work, (whichever is longer) following the completion of the work; or an extended reporting period of 36 months following completion of the work shall be purchased.

Coverages shall not include any exclusion or other limitations related to scopes of services or project type or construction type, or delays in project completion and cost overruns.

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, 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 L - 1

FORM OF ANNUAL ENERGY FORECAST

The following table is provided for informational purposes only.

Please provide the expected metered energy in Pacific Prevailing Time. For the Daylight Savings Day in March, the HE3 volume should be 0 MWh. For the Daylight Savings Day in November, the HE2 volume should represent two hours of generation.Date	Datetime (Hour Beginning)	Hour Ending	MWh
1/1/2022	1/1/2022 0:00	1	
1/1/2022	1/1/2022 1:00	2	
1/1/2022	1/1/2022 2:00	3	
1/1/2022	1/1/2022 3:00	4	
1/1/2022	1/1/2022 4:00	5	
1/1/2022	1/1/2022 5:00	6	
[insert additional rows]	…	…	
12/31/2022	12/31/2022 18:00	19	
12/31/2022	12/31/2022 19:00	20	
12/31/2022	12/31/2022 20:00	21	
12/31/2022	12/31/2022 21:00	22	
12/31/2022	12/31/2022 22:00	23	
12/31/2022	12/31/2022 23:00	24	

EXHIBIT L - 2

FORM OF MONTHLY EXPECTED AVAILABLE 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 Forecast of Available Capacity (MW)

c	0:00	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																									

Exhibit L2 - 1

c	0:00	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
26																									
Day 27																									
Day 28																									
Day 29 *																									
Day 30 *																									
Day 31 *																									

*Include these rows if needed for each month.

Exhibit L2 - 2

EXHIBIT L - 3

FORM OF MONTHLY EXPECTED METERED ENERGY

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 Forecast of Metered Energy (MWh)

	0:00	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																									

	0:00	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
26																									
Day 27																									
Day 28																									
Day 29*																									
Day 30*																									
Day 31*																									

*Include these rows if needed for each month.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: August 12, 2022
BOARD MEETING DATE: August 25, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy Authority
Chelsea Keys, Interim Director of Power Resources

SUBJECT: Amendments to Long-Term Solar and Storage PPAs

RECOMMENDATION:

Approve Resolution Delegating Authority to the Chief Executive Officer to Execute Amendments to the following Power Purchase and Sale Agreements (PPA):

A. Third amendment to Chaparral Solar, LLC, Solar + Storage PPA (Attachment 1)
B. Second amendment to Arica Solar, LLC, Solar + Storage PPA (Attachment 2)

BACKGROUND:

Per Peninsula Clean Energy's Policy 15, Energy Supply Procurement Authority[1], any amendments to power procurement agreements that were previously approved by the Board only require consultation with the General Counsel and the Board Chair for approval. In the interest of transparency, because these power purchase agreements have a term greater than 5 years, staff is bringing both amendments to the Board for your approval.

Developers of renewable resources are facing unprecedented challenges to procure materials to construct new projects and it puts them at risk of meeting their contracted timelines, particularly for resources with online dates between 2022-2024, including:

A. Ongoing supply chain impacts related to the COVID-19 pandemic
B. Rising commodity prices for key components to developing renewable and storage resources – which were further exasperated by the Ukraine War and inflation in the United States

[1] Full policy is available here: https://www.peninsulacleanenergy.com/wp-content/uploads/2020/01/PCE-Policy-15-Revised-01-23-20-Procurement-Authority-FINAL.pdf

C. Uncertainty around solar tariffs – In April 2022, the United States Department of Commerce started an investigation of alleged circumvention of antidumping and countervailing duties by solar manufacturers in Cambodia, Malaysia, Thailand, and Vietnam, where the majority of solar modules constructed in the U.S. arrive from. While President Biden placed a 2-year suspension on enacting new solar tariffs it still begs the question of whether these tariffs could double or possibly triple the current solar tariffs and there's potential for these to be applied retroactively.
D. Transmission interconnection delays – some developers have to stall their interconnection timelines due to uncertainty around costs and if there will be enough transmission deliverability to qualify the resource for Resource Adequacy

The convergence of these challenges has resulted in supply shortages and exasperated costs for the materials to construct renewable and storage resources, which can further cause developers to delay when projects can start construction or achieve operations.

Further adding to these challenges, there is significant competition to contract for resources that qualify in meeting D21-06-035, the California Public Utilities Commission (CPUC) procurement order adopted June 24, 2021, to ensure mid-term reliability ("MTR") in the years 2023 to 2026. Both Chaparral and Arica contribute toward Peninsula Clean Energy's MTR requirements.

Due to these various challenges, Peninsula Clean Energy was approached by the developers for both Chaparral and Arica asking for changes to particular PPA terms. To reduce the risk of either of these contracts being terminated, Peninsula Clean Energy negotiated amendments to the PPAs.

On July 21, 2022, staff updated the Board Procurement Subcommittee on the challenges in the industry and the volatility in the energy market. Staff provided updates on the amendment negotiations with Chaparral and Arica with regard to the developers' requests for changes in certain PPA terms.

A summary of the projects staff is seeking amendments for is detailed below:

Project	Developer	Technology	Location	Expected Start Dates
Chaparral	Leeward Renewable Energy	102 MW solar + 52 MW storage (4hr)	Kern County	12/31/2023
Arica	Clearway Energy Group	100 MW solar + 50 MW storage (4hr)	Riverside County	04/01/2024

The board approved the Chaparral solar plus storage PPA on September 25, 2021 and the Arica solar plus storage PPA on October 26, 2021. Both PPAs were further amended (Arica in March 2022 and Chaparral in April 2022) for administrative language changes. A second amendment with Chaparral was executed in August 2022 to add a few of months

of Resource Adequacy in 2023 after the project achieves commercial operation but before the PPA with Peninsula Clean Energy commences on December 31, 2023.

DISCUSSION:

Staff recommends that the Board approve these two amendments for these two projects. PCE staff has conducted extensive analysis on the impacts of these amendments on our power supply portfolio and has determined that these changes are acceptable. Additionally, these projects are needed for Peninsula Clean Energy to meet the CPUC's mandates for Mid-Term Reliability as well as our commitment to bring online new renewable resources to the grid, despite the current challenges.

FISCAL IMPACT:

A. There is no impact to the prior not to exceed threshold for Chaparral, adopted by the Board on September 25, 2021.
B. There is no impact to the prior not to exceed threshold for Arica, adopted by the Board on October 26, 2021.

STRATEGIC PLAN:

The Solar + Storage projects support the following objectives in Peninsula Clean Energy's strategic plan:

- Priority 1: Design a power portfolio that is sourced by 100% renewable energy by 2025 that aligns supply and consumer demand on a 24/7 basis
- 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

ATTACHMENTS:

A. Third Amendment to Chaparral Solar, LLC Power Purchase and Sale Agreement (redacted)
B. Second Amendment to Arica Solar, LLC Power Purchase and Sale Agreement (redacted)

RESOLUTION NO. _____

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

* * * * * *

RESOLUTION DELEGATING AUTHORITY TO CHIEF EXECUTIVE OFFICER TO EXECUTE A THIRD AMENDMENT TO THE POWER PURCHASE AND SALE AGREEMENT WITH CHAPARRAL SOLAR, LLC FOR A SOLAR PLUS STORAGE PROJECT AND ANY NECESSARY ANCILLARY DOCUMENTS.

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, the Peninsula Clean Energy Board approved the Power Purchase and Sale Agreement (PPA) with Chaparral Solar, LLC (Chaparral) on September 25, 2021 for a solar resource paired with storage capacity; and

WHEREAS, Peninsula Clean Energy seeks to further amend this PPA; and

WHEREAS, unprecedented challenges related to supply chain shortages, rising commodity prices, and uncertainty with solar tariffs and transmission have created unforeseen circumstances for renewable developers; and

WHEREAS, consistent with its mission of reducing greenhouse gas emissions by expanding access to sustainable and affordable energy solutions, Peninsula Clean Energy wishes to execute a third amendment to the Chaparral PPA; and

WHEREAS, this project helps Peninsula Clean Energy meet its mid-term reliability procurement mandate as set forth in D21-06-035 by the California Public Utilities Commission and is critical for grid reliability; and

WHEREAS, staff is presenting to the Board for its review an Amendment to the Power Purchase and Sale Agreement, reference to which should be made for further particulars; and

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute the Amendment and any other ancillary documents required for said purchase of power and storage capacity from Chaparral; and

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to:

Execute the Amendment to the solar plus storage PPA with Chaparral Solar LLC, and any ancillary documents with terms consistent with those presented, in a form approved by the General Counsel.

* * * * * *

AMENDMENT NO. 3

To The

POWER PURCHASE AND SALE AGREEMENT

Between

PENINSULA CLEAN ENERGY AUTHORITY

And

CHAPARRAL SPRINGS, LLC

This Amendment No. 3 ("**Amendment No. 3**") to the Agreement (as that term is defined below) is entered into between Peninsula Clean Energy Authority, a California joint powers authority ("**Buyer**"), and Chaparral Springs, LLC, a Delaware limited liability company ("**Seller**"). Buyer and Seller are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties". Initially-capitalized terms used and not otherwise defined in this Amendment No. 3 shall have the meanings ascribed to such terms in the Agreement.

RECITALS

The Parties enter into this Amendment No. 3 with reference to the following facts:

A. Buyer and Seller (as successor by merger of Chaparral Solar, LLC) are parties to that certain Power Purchase and Sale Agreement, effective as September 27, 2021, as amended by Amendment No. 1, dated as of April 14, 2022 and Amendment No. 2, dated as of August [__], 2022 (collectively, the "**Agreement**") with respect to the Facility.

B. The Parties desire to amend the Agreement to [redacted], and to address the Inflation Reduction Act of 2022, as set forth herein.

AGREEMENT

SECTION 1 AMENDMENTS

In consideration of the promises, mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, as set forth herein, the Parties agree to amend the Agreement as follows:

(a) [redacted]

(b) [redacted]

(c) [redacted]

(d) Section 3.5 shall be amended to add the following as a new paragraph at the end of the section:

If (i) the Inflation Reduction Act is enacted, (ii) as a result of the Inflation Reduction Act, the Facility, Seller or an Affiliate or Lender of Seller will qualify for a federal investment tax credit and/or other tax benefits (including, if applicable, a production tax credit) associated with the construction, ownership or operation of the Facility that has greater financial value as compared to the thirty percent (30%) federal investment tax credit for which the Facility would qualify under Section 48 of the Internal Revenue Code as in effect as of the Effective Date, and (iii) Seller or an Affiliate or Lender of Seller, in the sole discretion of such party, elects to claim or otherwise to monetize such increase in value under the Inflation Reduction Act, then, Seller shall provide written notice to Buyer of such election, [redacted].

(e) Section [redacted] shall be amended to add the following to the end of the first sentence: "and Seller shall [redacted] within ten (10) Business Days of [*date of amendment*]."

(f) The following new definition shall be added to Article 1 in the appropriate alphabetical position:

"**Inflation Reduction Act**" means the Inflation Reduction Act of 2022 and the regulations promulgated thereunder.

SECTION 2 MISCELLANEOUS

(a) Reservation of Rights. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.

(b) Legal Effect. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect.

(c) Governing Law. THIS AMENDMENT NO. 3 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 AMENDMENT NO. 3.

(d) Successors and Assigns. This Amendment No. 3 shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

(e) Authorized Signatures; Notices. Each Party represents and warrants that the person who signs below on behalf of that Party has authority to execute this Amendment No. 3 on behalf of such Party and to bind such Party to this Amendment No. 3. Any written notice required to be given under the terms of this Amendment No. 3 shall be given in accordance with the terms of the Agreement.

(f) Effective Date. This Amendment No. 3 shall be deemed effective as of the date upon which the last Party executes this Amendment No. 3.

(g) Further Agreements. This Amendment No. 3 shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.

(h) Counterparts; Electronic Signatures. This Amendment No. 3 may be executed in one or more counterparts, each of which will be deemed to be an original of this Amendment No. 3 and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Amendment No. 3 and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Amendment No. 3 as to the Parties and may be used in lieu of the original Amendment No. 3 for all purposes.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 3 to be executed by their duly authorized representatives on the dates indicated below their respective signatures.

Chaparral Springs, LLC, a Delaware limited liability company.		Peninsula Clean Energy Authority, a California joint powers authority.
By:		By:
Name: *Title:* Date:		*Name:* Janis C. Pepper *Title:* PCE Executive Officer Date:

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: August 12, 2022
BOARD MEETING DATE: August 25, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy Authority
Chelsea Keys, Interim Director of Power Resources

SUBJECT: Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase and Sale Agreement for Renewable Supply with Buena Vista Energy, LLC, and any necessary ancillary documents with a Power Delivery Term of 5 years starting on January 1, 2023, in an amount not to exceed $37 million.

RECOMMENDATION:
Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase and Sale Agreement for Renewable Supply with Buena Vista Energy, LLC, and any necessary ancillary documents with a Power Delivery Term of 5 years starting on January 1, 2023, in an amount not to exceed $37 million.

BACKGROUND:
The Board set a goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy by 2025. Staff conducted a preliminary analysis of the necessary resources to attain this goal and found that Peninsula Clean Energy will need to procure significant amounts of renewable supply from new and existing wind resources. Wind energy in California is in limited supply and there is strong competition to contract for wind resources.

The Board approved the original Power Purchase and Sale Agreement (PPA) with Buena Vista on March 23, 2017, for a term of 5 years which started in April 2017 and concluded in April 2022. Staff has been negotiating to further extend the PPA with the developer, Leeward Renewable Energy, LLC, for several months. Staff issued a Request for Offers (RFO) in November 2021 in which Peninsula Clean Energy accepted offerings for shorter-term renewable projects and compared those offers against Buena Vista. Buena Vista is an attractive project for Peninsula Clean Energy's portfolio and was offered at a

competitive price that is projected to become a net benefit compared to expected supply costs.

There is strong demand for wind projects in California, therefore staff decided to move forward with this project through the bilateral negotiation process or risk missing the opportunity due to the increasing wind procurement demand from other load serving entities.

Overview of Project

Project Name	Buena Vista Wind Farm
Technology	Wind
Capacity	38 MW
Delivery Start Date	1/1/2023
Developer	Leeward Renewable Energy, LLC.
Location	Contra Costa, CA

The contract term will begin January 1, 2023 and extend 5 years. For the first two years, Peninsula Clean Energy will receive 90% of the capacity because the facility has a prior commitment that expires at the end of 2024. The capacity will increase to 100% starting 2025 and this is when Peninsula Clean Energy will acquire the Scheduling Coordinator responsibility for the remainder of the term. While there is this step-up in the capacity size, Peninsula Clean Energy will receive the Resource Adequacy benefits for 100% of the facility for the entire term. Under the contract, Peninsula Clean Energy will pay for the output of the wind at a fixed-price rate per MWh. Peninsula Clean Energy is entitled to all product attributes from the facility, including energy, renewable Portfolio Content Category (PCC) 1 energy, ancillary services, and resource adequacy.

Developer

Buena Vista is owned by Leeward Renewable Energy (Leeward). Leeward is a U.S.-based renewable energy company that owns and operates a portfolio of 24 utility-scale projects across nine states with a total installed generating capacity of more than 2,500 MW. This portfolio includes the Chaparral project which is a 102 MW solar and 52 MW lithium-ion battery storage project that Peninsula Clean Energy contracted for 15 years starting on or about December 31, 2023. Leeward also has 20 GW of projects under development representing over 100 projects and 880 MW under construction.

Leeward is a portfolio company of Ontario Municipal Employees Retirement System (OMERS) Infrastructure, an investment arm of OMERS, one of Canada's largest defined benefit pension plans with C$121 billion in net assets (as of December 31, 2021).

In April 2021, Leeward completed the acquisition of First Solar's utility-scale project development platform including 10 GW of projects that First Solar was developing. Additionally, 50 employees from First Solar's development team joined Leeward.

DISCUSSION:

The Strategic Plan approved by the Board in 2020 set Peninsula Clean Energy's Priority

One to "design a power portfolio that is sourced by 100% carbon free energy[1] by 2025 that aligns supply and consumer demand on a 24x7 basis". Wind generation will play a key role in meeting Peninsula Clean Energy's renewable energy goals and having existing wind resources with shorter contract lengths adds portfolio diversity, to encompass a portfolio with not only long-term contract lengths but short to mid-term lengths as well.

We recommend that the Board approve the Buena Vista Wind PPA.

FISCAL IMPACT:

The financial impact of adding this project to Peninsula Clean Energy's portfolio is a net benefit compared to expected supply costs. The fiscal impact of the project will not exceed $37 million over the 5-year term of the agreement.

STRATEGIC PLAN:

The Buena Vista project support the following objectives in Peninsula Clean Energy's strategic plan:

- Priority 1: Design a power portfolio that is sourced by 100% renewable energy by 2025 that aligns supply and consumer demand on a 24/7 basis
- 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

ATTACHMENTS:

Buena Vista Power Purchase and Sale Agreement (redacted)

[1] Carbon Free = California RPS-eligible renewable energy, excluding biomass, that can be scheduled by Peninsula Clean Energy on an hourly basis.

RESOLUTION NO. _____

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

* * * * * *

RESOLUTION DELEGATING AUTHORITY TO CHIEF EXECUTIVE OFFICER TO EXECUTE POWER PURCHASE AND SALE AGREEMENT FOR RENEWABLE SUPPLY WITH BUENA VISTA ENERGY, LLC, AND ANY NECESSARY ANCILLARY DOCUMENTS WITH A POWER DELIVERY TERM OF 5 YEARS BEGINNING ON JANUARY 1, 2023, IN AN AMOUNT NOT TO EXCEED $37 MILLION.

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, consistent with its mission of reducing greenhouse gas emissions by expanding access to sustainable and affordable energy solutions, Peninsula Clean Energy seeks to execute its second Power Purchase and Sale Agreement (PPA) with Buena Vista Energy, LLC (Contractor), to procure 38 MW of power generation from the

Buena Vista wind project, based on Contractor's desirable offering of products, pricing, and terms; and

WHEREAS, on March 23, 2017, the Peninsula Clean Energy Board approved the first PPA with Buena Vista for a delivery term of five years which started deliveries in April 2017; and

WHEREAS, the Buena Vista wind project continues to provide benefits by diversifying Peninsula Clean Energy's energy portfolio with projects of various term lengths, such as the instant project which spans five years commencing on January 1, 2023; and

WHEREAS, the project will provide renewable energy to Peninsula Clean Energy customers; and

WHEREAS, staff is presenting to the Board for its review the Power Purchase and Sale Agreement, reference to which should be made for further particulars; 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 power from the Contractor; and

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to:

Execute the Agreement for renewable supply with Buena Vista Energy, LLC, and any ancillary documents with the Contractor with terms consistent with those presented, in a form approved by the General Counsel; and for a power delivery term of up to five years, in an amount not to exceed $37 million.

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Buena Vista Energy, LLC, California Limited Liability Company

Buyer: Peninsula Clean Energy, a California joint powers authority

Description of Facility: A 38 MW wind energy facility located in Contra Costa County, California

Delivery Start Date: January 1, 2023

Delivery Term: 5 Contract Years

Delivery Term Expected Energy: [redacted] MWh

Contract Year	Expected Energy (MWh)
1	[redacted]
2	[redacted]
3	[redacted]
4	[redacted]
5	[redacted]

Monthly Expected Energy (2023 and 2024):

Month	Expected Energy (MWh)
1	[redacted]
2	[redacted]
3	[redacted]
4	[redacted]
5	[redacted]

Month	Expected Energy (MWh)
6	[redacted]
7	[redacted]
8	[redacted]
9	[redacted]
10	[redacted]
11	[redacted]
12	[redacted]

Monthly Expected Energy (2025, 2026 and 2027):

Month	Expected Energy (MWh)
1	[redacted]
2	[redacted]
3	[redacted]
4	[redacted]
5	[redacted]
6	[redacted]
7	[redacted]
8	[redacted]
9	[redacted]
10	[redacted]

Month	Expected Energy (MWh)
11	[redacted]
12	[redacted]

Contract Price:

Contract Year	Contract Price ($/MWh) – Facility Busbar Settlement
1 to 5	*$*[redacted]

Product:

- x Energy
- x Green Attributes:
  - x Portfolio Content Category 1
  - ☐ Portfolio Content Category 2
- x Capacity Attributes

Deliverability:

☐ Energy Only Status

☒ Full Capacity Deliverability Status

Scheduling Coordinator:

During Calendar Years 2023 and 2024: Seller or Seller's Agent

During Calendar Years 2025, 2026 and 2027: Buyer or Buyer's Agent

Performance Security: $[redacted]

Notice Addresses:

Seller: Buena Vista Energy, LLC

Company Name: Buena Vista Energy, LLC
Address: 6688 N. Central Expressway, Suite 500
Dallas, TX 75206
Attn: Legal Department
legal@leewardenergy.com

with copy to:

Leeward Renewable Energy Operations
6688 N. Central Expressway, Suite 500
Dallas, TX 75206
Attn: [redacted]
[redacted]

Scheduling:

Leeward Renewable Energy Operations
6688 N. Central Expressway, Suite 500
Dallas, TX 75206
Attn: [redacted]
[redacted]

Buyer:

Peninsula Clean Energy
2075 Woodside Rd
Redwood City, CA 94061
Attention: Director of Power Resources
Fax No.: TBD
Phone No.: 650-260-0005
Email: contracts@peninsulacleanenergy.com

With a copy to:

Peninsula Clean Energy
400 County Center, 6th Floor
Redwood City, CA 94063
Attention: David Silberman, General Counsel
Fax No.: (650) 363-4034
Phone No.: (650) 363-4749
Email: dsilberman@smcgov.org

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

SELLER	BUYER
Buena Vista Energy, LLC	Peninsula Clean Energy Authority
By: Wind Portfolio Holdings 1 LLC, its sole member	
By: Wind Portfolio 1 Member LLC, its managing member	
By: _____	By: _____
	PCE Executive Officer
Name: _____	
Title: _____	

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POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale 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 owns and operates an existing wind-powered electric generating facility as described in Exhibit A (the "**Facility**"); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, Buyer's Share of the Energy generated by the Facility, and all associated Green Attributes and Capacity Attributes;

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
DEFINITION

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 3.11.

"**Adjusted Energy Production**" has the meaning set forth in Exhibit D.

"**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 any exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

"**Ancillary Services**" has the meaning set forth in the CAISO Tariff.

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

"**Available Capacity**" means the capacity from the Facility, expressed in whole MWs, that is available at a particular time to generate Product.

"**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.

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

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

"**Buyer**" has the meaning set forth on the Cover Sheet.

"**Buyer Bid Curtailment**" means the occurrence of all of the following:

(a) the CAISO provides notice to Seller or the Scheduling Coordinator for the Facility, requiring Seller to produce less Energy from Buyer's Share of the Facility than is reflected in the VER Forecast for Buyer's Share of the Facility for a period of time; and

(b) for the same time period as referenced in (a), (i) in compliance with Buyer's instructions to Seller (when Seller or its representative is the SC for the Facility) or (ii) when Buyer or its representative is the SC for the Facility, the SC for the Facility:

(i) submitted an Economic Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Economic Bid; or

(ii) submitted a Self-Schedule for less than the full amount of Energy forecasted to be produced from Buyer's Share of the Facility;

Provided, however, such occurrence shall not be considered a Buyer Bid Curtailment to the extent Scheduled Maintenance, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period occurs during the same time period as referenced in (a).

"**Buyer Curtailment Order**" means the instruction from Buyer to Seller to reduce generation from the Facility by the amount, and for the period of time set forth in such order, for reasons unrelated to a Scheduled Maintenance, Forced Facility Outage, Force Majeure Event and/or Curtailment Order, which instruction may be communicated to Seller in writing by electronic notice or other commercially reasonable means.

"**Buyer Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to (i) Buyer Bid Curtailment or (ii) a Buyer Curtailment Order. The duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up; provided that such time periods to ramp down and ramp up shall be consistent with the Ramp Rate designated in Exhibit F.

"**Buyer Default**" means a failure by Buyer to perform its obligations hereunder.

"**Buyer's Share**" means (i) during calendar years 2023 and 2024, ninety percent (90%), subject to Section 3.10 and (ii) during calendar years 2025, 2026 and 2027, one hundred percent (100%).

"**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 produced by the Facility less 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 Grid**" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

"CAISO Operating Order" means the "operating order" defined in Section 37.2.1.1 of the CAISO Tariff.

"**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, as approved by FERC, as well as the CAISO 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.

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

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the 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, subject to Section 3.11, reactive power.

"**CEC**" means the California Energy Resources Conservation and Development Commission or its successor agency.

"**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) shall be excluded from the total outstanding equity interests in Seller.

A Change of Control will not include any transfer of the direct or indirect interests in the Facility by the Lender following the exercise of remedies by Lender provided such subsequent transferee is a Qualified Transferee.

"**Compliance Actions**" has the meaning set forth in Section 3.11.

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.11.

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

"**Contract Price**" has the meaning set forth in the Cover Sheet.

"**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 Delivery Start Date, and each subsequent Contract Year shall commence on the anniversary of the Delivery Start 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 the Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

"**Cover Sheet**" means the cover sheet to this Agreement.

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

"**Credit Rating**" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements), or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating, 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 Cap**" means, for each Contract Year, the product of (i) the Nameplate Capacity, (ii) 0.90 (for 2023 and 2024) or 1.0 (for 2025, 2026 and 2027), and (iii) fifty (50) hours.

"**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 for any reason other than a Buyer Bid Curtailment;

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.

Provided, however, that Curtailment Order shall not include any Buyer Bid Curtailment or Buyer Curtailment Order. For the avoidance of doubt, if (i) when Seller or its representative is the SC for the Facility, Seller or Seller's SC submitted, at Buyer's instruction, or (ii) when Buyer or its representative is the SC for the Facility, Buyer or its representative 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 from the Facility for such time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, not a Buyer Bid Curtailment.

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

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

"**Day-Ahead Forecast**" has the meaning set forth in Section 4.5(c).

"**Day-Ahead LMP**" has the meaning set forth in the CAISO Tariff and as determined at the Facility's PNode.

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

"**Day-Ahead Payment Amount**" has the meaning set forth in Section 3.3.

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

"**Deemed Delivered Energy**" means the amount of Buyer's Share of the Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the VER Forecast expressed in MWh, applicable to the Buyer Curtailment Period, or (b) if there is no VER Forecast available or Seller demonstrates to Buyer's reasonable satisfaction that the VER Forecast does not represent an accurate forecast of generation from the Facility, the result of the equation reasonably calculated and provided by Seller to reflect the potential generation of the Facility as a function of Available Capacity, and wind speed**,** and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period, in either case less the amount of Metered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

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

"**Deficient Month**" has the meaning set forth in Section 4.9(d).

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

"**Delivery Start Date**" means January 1, 2023.

"**Delivery Term**" shall mean the period of Contract Years specified on the Cover Sheet, beginning on the Delivery Start Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

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

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

"**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.

"**Eligible Intermittent Resources Protocol**" or "EIRP" has the meaning set forth in the CAISO Tariff.

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

"**Energy**" means the metered electrical energy, measured in MWh, that is produced by the Facility.

"**Energy Payment Amount**" means the amount paid by Buyer to Seller, or by vice versa, pursuant to Section 3.3."**Energy Supply Bid**" has the meaning set forth in the CAISO Tariff.

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

"**Excess MWh**" means Excess MWh 23-24 or Excess MWh 25-27, as applicable.

"**Excess MWh 23-24**" has the meaning set forth in Section 3.3(f).

"**Excess MWh 25-27**" has the meaning set forth in Section 3.4(c)

"**Expected Energy**" has the meaning set forth in Section 4.8.

"**Facility**" means the facility described more fully in Exhibit A attached hereto.

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

"**FMM**" means the CAISO's Fifteen Minute Market, as defined in the CAISO Tariff.

"**FMM Payment Amount**" has the meaning set forth in Section 3.3.

"**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 generating or making available at the Delivery Point some or all of the electricity that otherwise could been generated or made available and that is not the result of a Force Majeure Event.

"**Full Capacity Deliverability Status**" has the meaning set forth in the CAISO Tariff.

"**Future Environmental Attributes**" shall mean any and all emissions, air quality or other environmental attributes (other than Green Attributes) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of Buyer's Share of the electrical energy by the Facility. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits

associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating 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 Green Attributes and Capacity Attributes.

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

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to Buyer's Share of the generation from the Facility, and its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the

greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

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

"**Guaranteed Energy Production**" has the meaning set forth in Section 4.8.

"**Guarantor**" means, with respect to Seller, any Person proposed by Seller and acceptable to Buyer in Buyer's sole discretion.

"**Guaranty**" means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit C.

"**Imbalance Energy**" means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Metered Energy deviates from the amount of Scheduled Energy.

"**Indemnified Party**" has the meaning set forth in Section 17.1.

"**Indemnifying Party**" has the meaning set forth in Section 17.1.

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

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller pursuant to which the Facility is interconnected with the Transmission System, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities were constructed and will be 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 in accordance with the Interconnection Agreement.

"**Interest Rate**" has the meaning set forth in Section 8.2.

"**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.

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

"**Lender**" means, collectively, in the case of Seller (a) any Person (i) providing senior or subordinated construction, interim or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, 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, (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 E.

"**Local Capacity Area Resources**" has the meaning set forth in the CAISO Tariff.

"**Locational Marginal Price**" or "**LMP**" has the meaning set forth in the CAISO Tariff and as determined at the Facility's PNode. "**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., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes and Capacity Attributes.

"**Lost Output**" has the meaning set forth in Exhibit D.

"**Metered Energy**" means the product of (a) electric energy generated by the Facility, expressed in MWh, as recorded by the CAISO Approved Meter(s) and net of all Electrical Losses and Station Use, multiplied by (b) Buyer's Share.

"**Moody's**" means Moody's Investors Service, Inc., or its successor.

"**MW**" means megawatts measured in alternating current.

"**MWh**" means megawatt-hour measured in AC.

"**Nameplate Capacity**" has the meaning provided in Exhibit A to this Agreement.

"**Negative LMP**" means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP is less than zero dollars ($0).

"**Negative LMP Costs**" has the meaning set forth in Section 3.4(c).

"**Net Qualifying Capacity**" or "**NQC**" 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 the 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).

"**Other Buyer**" means the Person that, as of the Effective Date, has entered into a written contract with Seller to purchase that portion of the Energy generated by the Facility that is not purchased by Buyer under this Agreement.

"**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 Pacific Gas and Electric Company.

"**Party**" has the meaning set forth in the Preamble.

"**Performance Measurement Period**" has the meaning set forth in Section 4.88.

"**Performance Security**" means (i) cash, (ii) a Letter of Credit, or (iii) a Guaranty, in the amount specified on the Cover Sheet, deposited with Buyer in conformance with Section 8.7.

"**PNode**" has the meaning set forth in the CAISO Tariff.

"**Portfolio Content Category**" means PCC1, PCC2 or PCC3, as applicable.

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

"**Portfolio Content Category 2**" or "**PCC2**" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

"**Portfolio Content Category 3**" or "**PCC3**" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

"**Product**" means (i) Metered Energy, (ii) Green Attributes, (iii) Capacity Attributes, and (iv) any Future Environmental Attributes as applicable in accordance with Section 3.5.

"**Project**" has the same meaning as "Facility".

"**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.

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

"**Qualified Operator**" means (a) a Person that has at least three (3) years of operating experience with at least two (2) utility-scale wind-powered electricity generating projects of 20 MW or higher, or (b) any other Person reasonably acceptable to Buyer.

"**Qualified Transferee**" means a Person that (a) has [redacted] (iii) equivalent ratings by any other credit rating agency of recognized national standing and retains, and is a Qualified Operator or retains, a Qualified Operator to operate the Facility (or otherwise agrees not to interfere with the existing Qualified Operator for the Facility), or (b) is reasonably acceptable to Buyer.

"**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 3.7(b).

"**RA Guarantee Date**" means the Delivery Start Date.

"**RA Shortfall Month**" means the applicable calendar month following the RA Guarantee Date during which Seller fails to provide Resource Adequacy Benefits as required hereunder for purposes of calculating an RA Deficiency Amount under Section 3.7(b).

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

"**RA Supply Plan**" means the Supply Plan (as defined in the CAISO Tariff).

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**Renewable Energy Credit**" has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"**Replacement Green Attribute Price**" has the meaning given in Exhibit D.

"**Replacement RA**" means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within the Northern Area TAC Area (as described in the CAISO Tariff) and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource. 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 any local, zonal or otherwise locational attributes associated with the Facility.

"**RTD Instructed Imbalance Energy**" 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 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.

"**Scheduling Coordinator**" or "**SC**" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the

functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.

"**Security Interest**" has the meaning set forth in Section 8.8.

"**Self-Schedule**" has the meaning set forth in the CAISO Tariff.

"**Seller**" has the meaning set forth on the Cover Sheet.

"**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.

"**Showing Deadline**" means the initial deadline that a Scheduling Coordinator must meet to submit its RA Supply Plan, as established by CAISO, CPUC, or any other Governmental Authority. For illustrative purposes only, as of the Effective Date, the CPUC monthly Showing Deadline is forty-five (45) days prior to the compliance month.

"**Site**" means the real property on which the Facility is or will be located, as further described in Exhibit A.

"**Site Control**" means that Seller: (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

"**Station Use**" means:

(a) The electric energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The electric energy produced by the Facility that is consumed within the Facility's electric energy distribution system as losses.

"**System Emergency**" means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

"**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.

"**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.

"**Variable Energy Resource**" or "**VER**" has the meaning set forth in the CAISO Tariff.

"**Variable Energy Resource Forecast**" or "**VER Forecast**" means, for a given Settlement Interval, the final forecast of the Energy to be produced by the Facility prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol.

"**WECC**" means the Western Electricity Coordinating Council or its successor.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.9(d).

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

"**WREGIS Operating Rules**" means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that 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 term "including" means "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;

(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.

1.3 **Service Contract**. The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease, and that the Parties

intend that this Agreement will qualify as a "service contract" as such term is used in Section 7701(e) of the Internal Revenue Code of 1986.

1.4 **Forward Contract**. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

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) 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 two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

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 at the Energy Payment Amount, all of the Product produced by the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that such resale or use for another purpose will not relieve Buyer of any of its obligations under this Agreement.

Except for Deemed Delivered Energy in excess of the Curtailment Cap, Buyer has no obligation to pay Seller for any Product that is not delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order. 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 **Sale of Green Attributes**. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all of the Green Attributes produced by the Facility.

3.3 **Compensation During Calendar Years 2023 and 2024**. With respect to each Settlement Period or Settlement Interval, as applicable, during calendar years 2023 and 2024, Buyer shall compensate Seller for the Product in accordance with this Section 3.3. This Section 3.3 shall cease to apply beginning in calendar year 2025.

(a) If, pursuant to Section 4.3, Buyer has caused the Seller to submit a Day-Ahead Schedule, then the Day-Ahead Payment Amount shall be calculated as follows:

Day-Ahead Payment Amount = (Metered Energy up to the amount of Scheduled Energy that clears in the Day-Ahead Market and is included within the Day-Ahead Schedule) x (Contract Price - Day-Ahead LMP)

(b) For all Metered Energy in excess of the amount of Scheduled Energy that clears in the Day-Ahead Market and is included within the Day-Ahead Schedule, including if no Day-Ahead Schedule is submitted, the FMM Payment Amount shall be calculated as follows:

FMM Payment Amount = (Metered Energy in excess of Day-Ahead Schedule) x (Contract Price - FMM LMP)

(c) The monthly Energy Payment Amount shall be calculated as follows:

Energy Payment Amount = Day-Ahead Payment Amount + FMM Payment Amount.

If the Energy Payment Amount is so determined to be positive during any month, then Buyer shall pay Seller such amount pursuant to Article 8; if the Energy Payment Amount is determined to be negative, the Seller shall pay Buyer the absolute value of such negative amount pursuant to Article 8.

(d) Buyer shall pay Seller the Day-Ahead Payment Amount or the FMM Payment Amount, as applicable, for each MWh of Product, as measured by the amount of Metered Energy plus Deemed Delivered Energy in excess of the Curtailment Cap, if any, [redacted] of the Expected Energy for such Contract Year.

(e) If, at any point in any Contract Year, the amount of Metered Energy plus the amount of Deemed Delivered Energy in excess of the Curtailment Cap [redacted] of the Expected Energy for such Contract Year, for each additional MWh of Product, as measured by the amount of Metered Energy plus Deemed Delivered Energy in excess of the Curtailment Cap, if any, delivered to Buyer in such Contract Year, [redacted]

(f) Notwithstanding Section 3.3(a), if during any Settlement Interval, Seller delivers Product in amounts, as measured by the amount of Metered Energy, in excess of the product of the Nameplate Capacity, Buyer's Share, and the duration of the Settlement Interval, expressed in hours ("**Excess MWh 23-24**"), then the payment from Seller to Buyer applicable to all such Excess MWh 23-24 in such Settlement Interval shall be zero dollars ($0).

3.4 **Compensation During Calendar Years 2025, 2026 and 2027**. With respect to each Settlement Period or Settlement Interval, as applicable, during calendar years 2025, 2026 and 2027, Buyer shall compensate Seller for the Product in accordance with this Section 3.4.

(a) Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Metered Energy, plus Deemed Delivered Energy in excess of the Curtailment Cap, if any, [redacted] of the Expected Energy for such Contract Year.

(b) If, at any point in any Contract Year, the amount of Metered Energy plus the amount of Deemed Delivered Energy in excess of the Curtailment Cap [redacted] of the Expected Energy for such Contract Year, for each additional MWh of Product, as measured by the amount of Metered Energy plus Deemed Delivered Energy in excess of the Curtailment Cap, if any, delivered to Buyer in such Contract Year, [redacted]

(c) If during any Settlement Interval, Seller delivers Product in amounts, as measured by the amount of Metered Energy, in excess of the product of the Installed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh 25-27**"), then the price applicable to all such Excess MWh 25-27 in such Settlement Interval shall be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times the number of such Excess MWh 25-27 ("**Negative LMP Costs**").

3.5 **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 at no additional cost. Subject to Section 3.11, 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.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to 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.

3.6 **Capacity Attributes**.

(a) Throughout the Delivery Term, subject to Section 3.11, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, subject to Section 3.11, 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, subject to Section 3.11, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, subject to Section 3.11, 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) This Section 3.6(d) shall only apply during calendar years 2025, 2026 and 2027. If, as a result of Scheduled Maintenance or other reduction in the availability of the Facility not caused by Buyer's failure to perform its obligations under this Agreement, 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. Buyer, as SC for the Facility, shall notify Seller within three (3) Business Days after becoming aware of an obligation by Seller to provide RA Substitute Capacity. 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**.**

3.7 **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 indicated that the Facility will have Full Capacity Deliverability Status on the Cover Sheet, but has failed to provide Resource Adequacy Benefits as required 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 [redacted]; *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is communicated to Buyer at least sixty (60) calendar days before the CPUC operating month for the purpose of monthly RA reporting.

3.8 **Eligibility**. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

3.9 **California Renewables Portfolio Standard**. Subject to Section 3.11, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by California statute or by the CPUC or CEC from time to time.

3.10 **Changes to Buyer's Share**. Upon the mutual agreement of the Parties from time to time during calendar years 2023 and 2024, Seller shall modify Buyer's Share in respect of specified periods so long as, on an annual basis in respect of each Contract Year, Buyer purchases ninety percent (90%) of the Energy and associated Green Attributes from the Facility.

3.11 **Compliance Expenditure Cap**. If Seller establishes to Buyer's reasonable satisfaction that a change in Laws occurring after the Effective Date has increased or would increase Seller's cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller's obligations under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed in Sections 3.11(a), (b), (c), and (d), then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped at [redacted] ("**Compliance Expenditure Cap**"):

(a) CEC Certification;

(b) Green Attributes;

(c) Future Environmental Attributes; and,

(d) Capacity Attributes.

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**."

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.

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure

Cap (such Buyer-agreed upon costs, 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 3.11 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, these Compliance Actions for the remainder of the Term.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and reasonable documentation of such costs from Seller.

The term "commercially reasonable efforts" as used in Section 3.8 means efforts consistent with and subject to this Section 3.11.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Metered Energy on an as-generated, instantaneous basis. Each Party shall perform all generation, scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Metered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes associated with the Metered Energy to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss**.

(a) Energy. Title to and risk of loss related to the Metered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS Operating Rules.

4.3 **Scheduling Coordinator Responsibilities During Calendar Years 2023 and 2024**. The provisions of this Section 4.3 shall apply during calendar years 2023 and 2024; they will have no force and effect beginning in calendar year 2025.

(a) Seller as Scheduling Coordinator for the Facility. Throughout calendar years 2023 and 2024, Seller shall be the Scheduling Coordinator or designate a qualified third

party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point. Buyer shall notify Seller as to Buyer's election of whether Seller is to submit Bids in the Day-Ahead Market, the FMM or both for Energy purchased hereunder by Buyer. For Day-Ahead Schedules, Buyer shall provide Bid quantities (which may be either for an Economic Bid or a Self Schedule) and Bid price (only for Economic Bids) by 9:00 am (PPT) on the respective WECC pre-schedule calendar day. For FMM Schedules, Buyer shall provide Bid quantities (which may be for either an Economic Bid or a Self Schedule) and Bid price (only for Economic Bids) no later than thirty (30) minutes before the CAISO deadline for RTM Bids. Buyer shall provide its Bids in the form reasonably required by the Facility Scheduling Coordinator, and all Bids shall be consistent with the CAISO Tariff. Under no circumstances shall Seller be (x) required to submit a Bid to the CAISO for quantities in excess of ten percent (10%) more than the full amount of the VER Forecast for Buyer's Share of the Facility; provided, however, that Seller shall not be obligated to submit a Bid above Buyer's Share of the Nameplate Capacity or that is inconsistent with the CAISO Tariff, or (y) obligated to submit Bids in the Day-Ahead Market to the extent that Seller's total financial exposure to the CAISO on a rolling daily basis not the result of Excess MWh exceeds twenty-five thousand dollars ($25,000) as a result of Buyer's Bids, net of any payment by Buyer to reduce such exposure. Seller shall submit Bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and scheduling practices for Product according to Buyer's instructions. If Buyer does not provide Bid instructions to Seller in respect of a given Settlement Interval, Seller shall submit a Self Schedule in the FMM in the amount of the VER Forecast for the Facility in respect of such Settlement Interval. Buyer will indemnify and hold Seller harmless against any sanction or penalty assessed to Seller solely as a result of Buyer's Bidding instructions.

(b) Notices. Seller shall provide Buyer with access to 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. Seller shall promptly submit such information to the CAISO and Buyer (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 in Section 4.3(c), Seller shall be responsible for CAISO costs (including penalties, scheduling and forecasting fees, Imbalance Energy costs or revenues and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, or other credits in respect of the Product Scheduled or delivered from the Facility. If Buyer elects that Seller submit a Bid in the Day Ahead Market, Buyer shall be responsible for any net CAISO exposure and receive any net CAISO benefit associated with deviations between the Day-Ahead Schedule and the Schedule for the FMM, other than that resulting from Excess MWh. If Buyer elects that Seller submit (i) an Economic Bid in the FMM and an amount of Energy less than Buyer's Share of the VER Forecast for the Facility clears the FMM, or (ii) a Self Schedule in the FMM for less than Buyer's Share of the VER Forecast for the Facility, Buyer shall be responsible for any net CAISO exposure associated with RTD Instructed Imbalance Energy and receive any net CAISO benefit associated with RTD Instructed Imbalance Energy between the FMM Schedule and the succeeding CAISO forecasting interval for the Facility, other than that resulting from a Forced Facility Outage or

Excess MWh. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or this Agreement. 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. 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 due to the actions or inactions of Seller and such actions or inactions are not consistent with the CAISO requirements, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Seller shall be responsible for all settlement functions with the CAISO related to the Facility. In calculating the Energy Payment Amount, Seller shall net CAISO revenues owed to Buyer and CAISO costs for which Buyer is responsible under this Agreement on each monthly invoice and provide supporting information from CAISO for such costs and revenues. Seller shall provide to Buyer CAISO settlement information when it becomes available from CAISO. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Seller will review, validate, and if requested by Buyer, dispute any charges that are the responsibility of Buyer in a timely manner and consistent with Seller's existing settlement processes for charges that are Seller's responsibilities.

(e) No later than sixty (60) days before the end of calendar year 2024, Seller and Buyer shall take all actions, and cause any relevant third parties to take all actions, necessary for Buyer, or its representative, to become the SC for the Facility effective as of January 1, 2025. The Parties shall cooperate in good faith on an ongoing basis to ensure that Buyer or its representative becomes SC for the Facility effective as of January 1, 2025.

(f) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement and shall update such data as appropriate.

(g) NERC Reliability Standards. Buyer 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.

4.4 **Scheduling Coordinator Responsibilities During Calendar Years 2025, 2026 and 2027**. The provisions of this Section 4.4 shall apply during calendar years 2025, 2026 and 2027.

(a) Buyer as Scheduling Coordinator for the Facility. During calendar years 2025, 2026 and 2027, 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. Seller shall not authorize or designate any other party to act as Seller'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 Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller'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 Seller'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, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties or fees resulting from any failure by Seller to abide by 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, including failure to comply with the CAISO Tariff or this Agreement). 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. 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, the cost of the sanctions or penalties shall be the Seller's responsibility (except to the extent such Seller actions are caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility, including failure to comply with the CAISO Tariff or this Agreement).

(d) CAISO Settlements. Buyer (as Seller'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. 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 4.4(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 4.4 with respect to payment of CAISO Charges

Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as Seller's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's documented, third party 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 or termination date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for 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, conditioned, or delayed.

(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.

(i) Buyer and Seller recognize that from time to time the amount of Metered Energy will deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent practicable. If Seller is not in compliance with EIRP or any applicable provisions of this Agreement, including Section 4.5(d), or if Imbalance Energy results from any outage or reduction in the availability of the Facility that is not communicated to Buyer at least one hour prior to the deadline to submit Schedules to CAISO, then Seller will be responsible for and shall pay directly or promptly reimburse Buyer (and Buyer may offset amounts owed to Seller) for the aggregate Imbalance Energy charges assessed, net of the aggregate Imbalance Energy revenues earned, during such period of noncompliance and reasonably attributable to such noncompliance within the applicable Contract Year. At Buyer's request, Seller will cooperate with Buyer to develop a written administrative protocol to effectuate the Parties' agreement with respect to Imbalance Energy and scheduling.

4.5 **Forecasting**. Seller shall provide the forecasts described below. Seller's Available Capacity forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity and expected Metered Energy of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Expected Metered Energy. Prior to the Delivery Start Date and no less than ninety (90) days before the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Metered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Available Capacity. No less than ten (10) days before the Delivery Start Date, 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 Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(c) Daily Forecast of Available 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 Facility's Available Capacity (or if requested by Buyer, the expected Metered Energy) for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the 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 Facility's Available Capacity (or if requested by Buyer, the expected Metered Energy).

(d) Real-Time Available Capacity. During the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of one (1) MW or more, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must likewise notify Buyer 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 Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will 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 Capacity shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.5(d), then Seller shall send such communications by telephone to Buyer and shall be sent to Buyer's web based system.

4.6 **Dispatch Down/Curtailment**.

(a) General. Seller agrees to reduce Buyer's Share of the Facility's generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order or notice received from CAISO in respect of a Buyer Bid Curtailment; provided that reductions in generation in accordance with either a Buyer Curtailment Order or Buyer Bid Curtailment will be

subject to the ramp rate limitations set forth in Exhibit F. Buyer has no obligation to purchase or pay for any Product delivered in violation of any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment for any Product that could not be delivered to the Delivery Point due to a Force Majeure Event.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders for the amount and for the period set forth in a Buyer Curtailment Order or Buyer Bid Curtailment; provided that reductions in generation in accordance with either a Buyer Curtailment Order or Buyer Bid Curtailment will be subject to the limitations set forth in Exhibit F, and further, provided that, notwithstanding anything herein to the contrary: (i) Buyer shall pay Seller for all Deemed Delivered Energy in excess of the Curtailment Cap at the applicable Contract Price, and (ii) during calendar years 2023 and 2024, Seller shall pass through to Buyer all CAISO costs and revenues associated with the Scheduling and generation of Energy during the Buyer Curtailment Periods.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Metered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is an amount equal to the absolute value of the Negative LMP, if any, for the Buyer Curtailment Period or Curtailment Period, times the amount of MWh of Metered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, and (C) is any penalties or other charges incurred by Buyer as the result of Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) 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 the Facility's SC (including when Buyer or its representative becomes the Facility's SC), including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Facility's SC (including when Buyer or its representative becomes the Facility's SC) from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility and directed by Buyer, 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 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 4.6(c) for

failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. Buyer acknowledges that it is not aware of any currently needed upgrades to the Facility for Seller to be in compliance with this Section 4.6(d).

4.7 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit D:

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of Scheduled Maintenance on the Facility previously agreed to between Buyer and Seller.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Buyer Curtailment Period, or upon Notice of a Curtailment Order, or pursuant to the terms of the Interconnection Agreement or applicable tariff. In the event of Seller being notified of a System Emergency, anticipated System Emergency or any other event or circumstance in which CAISO determines that there is or may be an imminent need for Energy on the CAISO Grid (which Energy may be supplied by the Facility), Seller shall use reasonable efforts to make the Product fully available, including by cancelling or deferring any Facility maintenance other than maintenance that is itself of an emergency nature or the lack of which would pose a risk of substantial damage to the Facility.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.8 **Expected Energy and Guaranteed Energy Production**. The quantity of Product, as measured by Metered Energy, that Seller expects to be able to deliver to Buyer during each Contract Year is set forth on the Cover Sheet ("**Expected Energy**"). Seller shall be required to deliver to Buyer an amount of Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below) in any period of two (2) consecutive Contract Years during the Delivery Term ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" [redacted] Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent that Seller was unable to deliver energy as a result of any Force Majeure Events, Buyer Default, Buyer's failure to

receive, Curtailment Periods and Buyer Curtailment Periods; to effectuate the foregoing excuse, Seller shall be deemed to have generated (1) the Deemed Delivered Energy in respect of Buyer Curtailment Periods, and (2) an amount of Energy determined in accordance with Exhibit D in respect of Lost Output. In addition, for purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer, in the first Contract Year of each Performance Measurement Period following a Performance Measurement Period as to which Seller has paid damages calculated in accordance with Exhibit D, the Product in the amount equal to the greater of the amount of Metered Energy actually delivered in such Contract Year, less Excess MWh, or [redacted] of the Expected Energy for such Contract Year. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit D.

4.9 **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.11, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Metered Energy are issued and tracked, and transferred to Buyer, for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer's sole benefit. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and issuance, and transfer, of such WREGIS Certificates to Buyer, and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

(a) Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, and paying WREGIS Certificate issuance and transfer fees. Buyer shall be responsible for all expenses associated with establishing and maintaining Buyer's WREGIS account.

Seller shall cause itself or its agent to be designated as the "Qualified Reporting Entity" (as that term is defined by WREGIS) for the Facility.

(b) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Metered Energy for such calendar month as evidenced by the Facility's metered data.

(c) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally issued to Buyer in accordance with the WREGIS Operating Rules and this Section 4.9. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(d) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates issued to Buyer for a calendar month as compared to the Metered Energy for the same calendar month ("**Deficient Month**"). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller or its agent, then the amount of Metered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy

Production for the applicable Performance Measurement Period. Buyer shall pay Seller for any Metered Energy that is Delivered by Buyer without corresponding WREGIS Certificates at a price equal to the lesser of (i) the Contract Price, or (ii) the Day-Ahead LMP. Without limiting Seller's obligations under this Section 4.9, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission. Seller shall use commercially reasonable efforts to rectify any WREGIS Certificate Deficit as expeditiously as possible.

(e) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.9 after the Effective Date, the Parties promptly shall modify this Section 4.9. as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Metered Energy in the same calendar month.

(f) STC REC-2. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(g) STC REC-1. Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(h) (h) The term "commercially reasonable efforts" as used in Section 4.9(g) means efforts consistent with and subject to Section 3.11.

4.10 **Financial Statements**. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, 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 Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

4.11 **Access to Data and Installation and Maintenance of Weather Station**.

(a) Commencing on the Delivery Start Date, and continuing throughout the Delivery Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the data set forth below ; provided that Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below that, throughout the Delivery Term, are requested by Buyer and necessary to accurately or timely forecast output (subject to a total cost cap to Seller of ten thousand dollars ($10,000)) or comply with Law.

(i) real time, read-only access to meteorological measurements, transformer availability, any other facility availability information, and, if applicable, all parameters necessary for use in the equation under item (vii) of this list;

(ii) real time, read-only access to energy output 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 energy output information and meteorological measurements 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) real time, read-only access to the Facility's CAISO revenue meter and all Facility meter data at the Site to that extent Seller is capable of providing such access as of the Delivery Start Date or Buyer reimburses Seller for the cost to make such access available to Buyer, as applicable;

(iv) full, real time access to the Facility's Scheduling and Logging for the CAISO (OMS) client application, or its successor system to that extent Seller is capable of providing such access as of the Delivery Start Date or Buyer reimburses Seller for the cost to make such access available to Buyer, as applicable;

(v) net plant electrical output at the CAISO revenue meter as soon after generation as reasonably possible;

(vi) instantaneous data measurements at sixty (60) second or increased frequency for the following parameters, which measurements shall be provided by Seller to Buyer in a consolidated data report at least once every five minutes via flat file through a secure file transport protocol (FTP) system with an e-mail backup: (i) wind speed (measured at thirty (30) meters), (ii) peak wind speed (within one minute, measured at thirty (30) meters), (iii) wind direction (measured at thirty (30) meters), (iv) wind speed standard deviation, (v) wind direction standard deviation, (vi) ambient air temperature (measured at thirty (30) meters), and (vii) barometric pressure (measured at thirty (30) meters); and

(vii) an equation, updated on an ongoing basis to reflect the potential generation of the Facility as a function of wind speed (and, if applicable, other weather factors). Such equation shall take into account the expected availability of the Facility. Seller shall reasonably cooperate with any request from Buyer to adjust the equation due to results that are inconsistent with the observed Facility output.

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 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 4.11(a), which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10)

minute 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 at least one (1) stand-alone meteorological station at the Site to monitor and report the meteorological data required in Section 4.11(a) of this Agreement. 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 4.11(a) of this Agreement.

(ii) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Buyer's designee, among other things, to enable Buyer, when it or its designee is SC for the Facility to meet current CAISO scheduling requirements. Seller shall within a commercially reasonable timeframe repair and replace as necessary such meteorological stations, 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 that the Facility's meteorological stations, telecommunications path, hardware or software are not functioning sufficient for Buyer's performance of its obligations as SC or Buyer's maximization of value from the Facility, 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 Imbalance Energy costs incurred under Section 4.4(i) 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 quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer, in commercially reasonable intervals, through any alternate means of verbal or written communication, including cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail, or other method mutually agreed upon by the Parties, until the telecommunications link is re-established.

(d) When Buyer or its designee is SC for the Facility, Seller agrees and acknowledges that Buyer may seek and obtain from third parties any information relevant to its duties as Scheduling Coordinator for Seller, 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.

(e) No later than ten (10) days before the Delivery Start Date, Seller shall provide one (1) year, if available, but no less than six (6) months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (i) the parameters identified

in Section 4.11(a)(vi) above (all data, except peak values, should be 3-second samples averaged into 10-minute periods); (ii) elevation, latitude and longitude of the weather station; and (iii) any other data reasonably requested by Buyer.

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 Energy to Buyer, that are imposed on 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 Energy that are imposed on Energy at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy hereunder is exempt from or not subject to any particular Tax, 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 delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

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 Delivery Start Date, 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"). Buyer acknowledges that each wind turbine generator comprising the Facility requires approximately twenty-four (24) hours of scheduled maintenance per year. Seller shall use commercially reasonable efforts to schedule and conduct such maintenance in a manner that minimizes any reduction in the Available Capacity of the Facility. Seller shall not conduct Scheduled Maintenance between August 1 and October 31 of each year, unless the failure to do so would be inconsistent with Prudent Operating Practice (and in that case, such Scheduled Maintenance must occur either (i) during a period when the wind resource is below the applicable wind turbine generator's rated production thresholds and (ii) on

no more than [redacted] wind turbine generators at a time). 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 Scheduled Maintenance upon reasonable advance notice to Buyer, subject to reasonable requests of Buyer and consistent with Section 4.5 and this Section 6.1.

(b) Seller shall use commercially reasonable efforts to perform during periods of 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 Scheduled Maintenance and that reduces the Available Capacity of the Facility by more than [redacted] 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 September, or (iii) the Parties agree otherwise in writing.

(c) Seller shall use commercially reasonable efforts to schedule all maintenance outages, including those associated with 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 B 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.

ARTICLE 7
METERING

7.1 **Metering**. Seller shall measure the amount of Energy produced by the Facility using a CAISO Approved Meter, using a CAISO-approved methodology. Such meter shall be installed on the high side of the Seller's transformer and maintained at Seller's cost. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event 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(s) at the Facility.

7.2 **Meter Verification**. To the extent permitted pursuant to the CAISO Tariff and the Interconnection Agreement, annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than fifteen (15) Business Days after the that last day of each month of the Delivery Term. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh produced by the Facility as read by the CAISO Approved Meter, the amount and cost and revenues of Imbalance Energy that Buyer is responsible for pursuant to Section 4.3(c) (if any) the amount of Replacement RA delivered to Buyer, the calculation of Deemed Delivered Energy and Adjusted Energy Production, and the Energy Payment Amount applicable to such Product; and (b) 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. Seller, when it or its designee is Scheduling Coordinator for the Facility, shall provide Buyer with all necessary CAISO settlement data and the CAISO Charges Invoice no later than five (5) Business Days following receipt of the T+12 settlement statements from CAISO in a form mutually agreed upon by Buyer and Seller.

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 thirty (30) 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, 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 D, 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 Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer no later than five (5) Business Days after the

Effective Date, in the amount of [redacted]. If the Performance Security is provided in the form of a Guaranty, it shall be substantially in the form set forth in Exhibit C. 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 other than to satisfy a Termination Payment. Seller shall maintain the Performance Security in full force and effect until date on which the following have occurred: (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, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

8.8 **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 Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Section 8.7 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, provided, however, that no lien or Security Interest shall attach to the Facility or the Seller.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.8):

(a) Exercise any of its rights and remedies with respect to the 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 Performance Security; and

(c) Liquidate all Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

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 on the Cover Sheet 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) on the Business Day on which such communication was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m. or if transmitted on a non-Business Day, on the next Business Day); or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; [redacted] landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the

Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy Energy at a lower price than the Contract Price, Buyer's inability economically to use or resell the Product or any portion thereof purchased hereunder, or Seller's ability to sell Energy at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility; (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; or (viii) a Buyer Curtailment 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**. If a Force Majeure Event has occurred 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 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;

(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 and except for Seller's failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, the exclusive remedy for which is provided in Section 4.6) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or Section 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 Energy that was not generated by the Facility;

(ii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least [redacted] of the Expected Energy amount for the current Contract Year, and Seller fails to demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the [redacted] minimum;

(iii) failure by Seller to satisfy the collateral requirements pursuant to Section 8.7, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a

Termination Payment, if such failure is not remedied within five (5) Business Days after Notice thereof;

(iv) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(v) 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, or (iii) a Guaranty, 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, or fails to provide a replacement Letter of Credit, and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance;

(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; and/or

(f) if the Defaulting Party is Buyer, sell Product, free and clear of any claims by Buyer, to any third party;

provided, that payment by the Defaulting Party of the Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment**. The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the 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; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) 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**. 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 Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

11.6 **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.

11.7 **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.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY, 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.

12.2 **Waiver and Exclusion of Other Damages**. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING THE TERMINATION PAYMENT UNDER SECTION 11.3, AND AS PROVIDED IN EXHIBIT D, 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.

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 California limited liability company, duly organized, validly existing and in good standing under the laws of the State of California, 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 is located in the State of California.

(f) All Energy and associated Green Attributes sold and delivered to Buyer hereunder, qualify as PCC1.

(g) Prior to the Effective Date, Seller has delivered a written notice to Buyer identifying the Other Buyers, which notice is true and correct as of the Effective Date. Seller has a reasonable belief that its contracts with the Other Buyer's, and its implementation thereof, will not place a material adverse burden on Buyer's rights and benefits under this Agreement.

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 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 allowed 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; or (b) 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, which consent shall not be unreasonably withheld; [redacted]

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 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 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.

(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 described in Section 11.1 or 11.2 hereof 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. 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**. If any legal action is brought to enforce this Agreement or because of the alleged dispute, default, misrepresentation, or 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 Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [redacted]) per occurrence, and an annual aggregate of not less than [redacted]), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of [redacted] Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Seller, if it has employees, shall maintain Employers' Liability insurance at an amount not be less than [redacted] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [redacted] policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [redacted] per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance; (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, with limits determined to be appropriate by Seller. 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(e).

(f) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. 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.

(g) 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 12.1, 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 its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

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*, that, for the avoidance of doubt, 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.

20.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, 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. If a change to any Law occurs after the Effective Date, including any rule or requirement of WREGIS, that impacts the number or quality of Resource Adequacy Benefits or Green Attributes (including Renewable Energy Credits) available to Buyer from the Facility, then Buyer may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date, it being understood that (i) Buyer is to receive the maximum amount of Resource Adequacy Benefits and Green Attributes available from the Facility (ii) Seller's ongoing compliance costs associated with the provision of Resource Adequacy Benefits and Green Attributes available from the Facility, among other things, are subject to the Compliance Expenditure Cap. 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

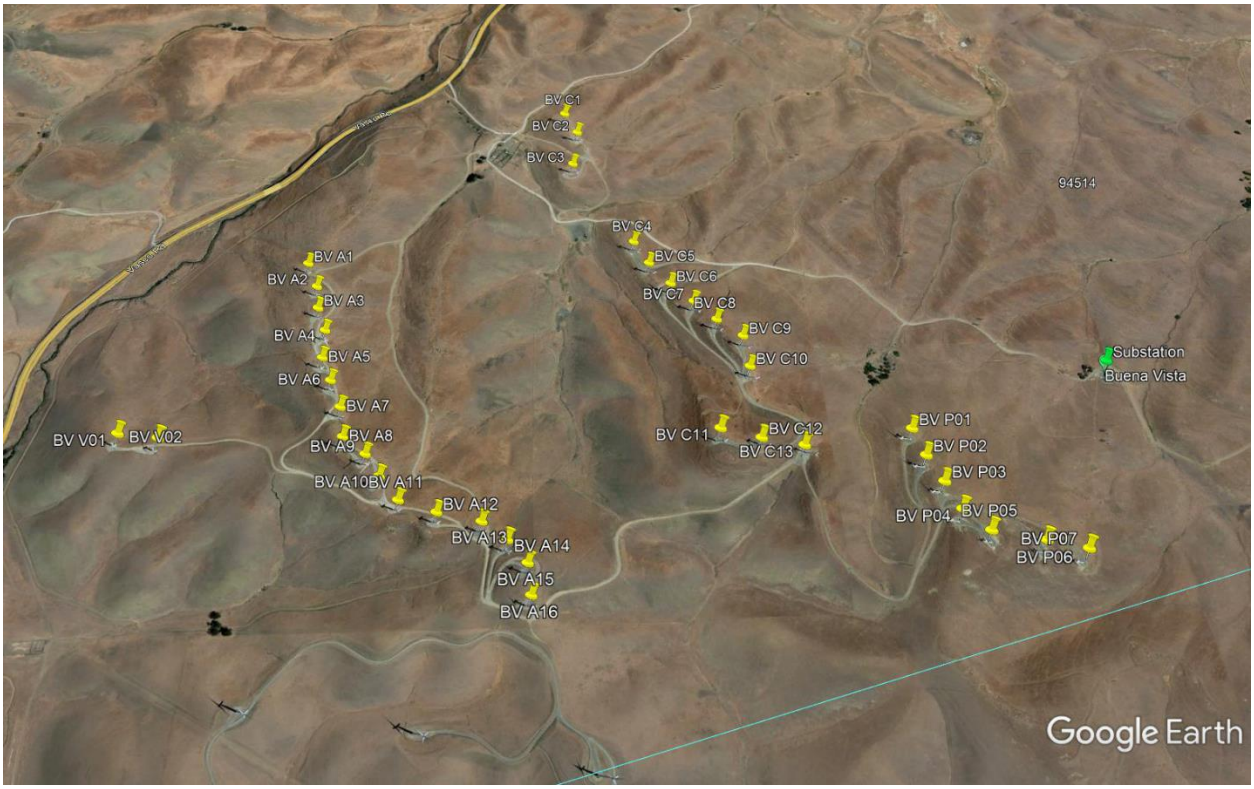
DESCRIPTION OF THE FACILITY

Site Name: Buena Vista Wind Farm

Site Address: 7601 Byron Hot Springs Rd, Byron, CA 94514

GPS Coordinates: Latitude 37°48'4.68"N; Longitude 121°38'30.12"W

Site Map:



APNs:

APN 001-021-020
APN 001-021-013
APN 099B-6150-001-02
APN 099B-6150-005
APN 099B-6130-001
APN 001-021-012
APN 001-021-007
APN 001-021-001
APN 005-160-006
APN 005-170-009
APN 001-021-008
APN 001-021-009

County:	Contra Costa County
Nameplate Capacity:	38 MW AC (net, at the Delivery Point)
P-node/Delivery Point:	the PNode designated by the CAISO for the Facility at the Buena Vista Substation
Additional Information:	N/A

EXHIBIT B

EMERGENCY CONTACT INFORMATION

BUYER:

Peninsula Clean Energy2075 Woodside Road
Redwood City, CA 94061
Attn: Director of Power Resources

Phone No.: 650-260-0005
Email: contracts@peninsulacleanenergy.com

SELLER:

Buena Vista Energy, LLC
c/o Leeward Renewable Energy, LLC
6688 N. Central Expressway, Suite 500
Dallas, TX 75206
Attn: [redacted]
[redacted]

with copy to:

Leeward Renewable Energy Operations
6688 N. Central Expressway, Suite 500
Dallas, TX 75206
Attn: [redacted]
[redacted]

EXHIBIT C

FORM OF GUARANTY

This Guaranty (this "Guaranty") is entered into as of **[_____]** (the "Effective Date") by and between **[_____]**, a **[_____]** ("Guarantor"), and Peninsula Clean Energy, a California joint powers authority (together with its successors and permitted assigns, "Buyer").

Recitals

A. Buyer and **[_____]**, a **[_____]** ("Seller"), entered into that certain Power Purchase and Sale Agreement (as amended, restated or otherwise modified from time to time, the "PPA") dated as of **[____]**, 2016.

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the PPA, as required by Section 8.7 of the PPA.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA in an aggregate liability not to exceed **[_____]** (the "Guaranteed Amount"). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly, after giving effect to all applicable notice and grace, pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the PPA. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "Demand Notice"), then Buyer may elect to exercise its rights under this Guaranty and may

make a demand upon Guarantor (a "Payment Demand") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller). Notwithstanding the foregoing, this Guaranty shall automatically terminate and be of no further force or effect if Seller replaces this Guaranty with an alternative form of Performance Security acceptable to Buyer. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or

(ii) any amendment, modification or other alteration of the PPA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction.

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any person.

Notwithstanding any other provision of this Guaranty to the contrary, Guarantor hereby reserves all rights and remedies accorded by applicable laws to sureties or guarantors based on the defense of the statute of limitations related to the enforceability of this Guaranty in any action or proceeding for the payment of any Guaranteed Amount.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate corporate powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational

documents, any applicable law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four business days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at	Peninsula Clean Energy Attn: Director of Power Resources Fax:
If delivered to Guarantor, to it at	[____] Attn: [____] Fax: [____]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Francisco, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty

may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

(ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

(iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[*Signatures on next page*]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By:_____

Printed Name:_____

Title:_____

BUYER:

PENINSULA CLEAN ENERGY

By:_____

Printed Name:_____

Title:_____

By:_____

Printed Name:_____

Title:_____

EXHIBIT D

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.8, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

[(A – B) * (C – D)]

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) [redacted]

D = the Contract Price for the Performance Measurement Period, in $/MWh

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number; the difference between (C) and (D) [redacted]

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period.

Additional Definitions:

"**Adjusted Energy Production**" shall mean the sum of the following: Metered Energy + Deemed Delivered Energy + Lost Output– Excess MWh.

"**Lost Output**" means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order. The additional MWh shall be calculated using an equation provided by Seller, as approved by Buyer in its reasonable discretion, to reflect the potential generation of the Facility as a function of Available Capacity and wind speed, and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the period in which the Force Majeure Event, Buyer Default, or Curtailment Order occurred.

"**Replacement Green Attribute Price**" means the value of Renewable Energy Credits of the same Portfolio Content Category (e.g., PCC1) as the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the relevant Performance Measurement Period determined based on a Renewable Energy Credit pricing index that has been mutually agreed upon by Seller and Buyer or, if such index is not available, as determined by the [redacted].

EXHIBIT E

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. **[XXXXXXX]**

Date:
Bank Ref.:
Amount: US$**[XXXXXXX]**
Expiry Date:

Beneficiary:

Peninsula Clean Energy

[Address]

Ladies and Gentlemen:

On behalf of **[XXXXXXX]** ("Applicant"), we, **[insert bank name and address]** ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. **[XXXXXXX]** (the "Letter of Credit") in favor of Peninsula Clean Energy, 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 in person, by courier or by fax at **[insert bank address]**. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds.

The document(s) required may also be presented by fax at facsimile no. (xxx) xxx-xxx on or before the expiry date (as may be extended below) on this Letter of Credit in accordance with the terms and conditions of this Letter of Credit. No mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents without the need of originally signed

documents.

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 a one year period 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 **[insert bank address information]**, referring specifically to Issuer's Letter of Credit No. **[XXXXXXX]**. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at **[XXX-XXX-XXXX]** and have this Letter of Credit available.

[Bank Name]

_____

[Insert officer name]
[Insert officer title]

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, 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

   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.

3. 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 by wire transfer in immediately available funds to the following account:

[Specify account information]

Peninsula Clean Energy

_____
Name and Title of Authorized Representative
Date_____

Exhibit F - Ramp Rates

The current Ramp Rates for the Facility are as follows:

Ramp Down: [redacted]
Ramp Up: [redacted]

The above Ramp Rates are based upon current settings in the Facility's control equipment. Prior to the Delivery Start Date, the Parties shall confer and determine whether these Ramp Rates may be increased, consistent with Prudent Operating Practice, so as to provide more flexibility to Buyer without imposing incremental unreimbursed capital cost burdens on Seller. Seller shall provide to Buyer reasonable information concerning the Facility in connection with this process. If these Ramp Rates may be increased, consistent with Prudent Operating Practice, so as to provide more flexibility to Buyer without imposing incremental unreimbursed capital cost burdens on Seller, the Parties shall amend this Exhibit F accordingly.

PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: Aug. 09, 2022
BOARD MEETING DATE: Aug. 25, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy
Rafael Reyes, Director of Energy Programs

SUBJECT: Approval of Increased Budget Flexibility in Programs (Action)

RECOMMENDATION

Board approval of increased flexibility for use of funds within the approved Community Energy Programs departmental budget.

BACKGROUND

To date, the Peninsula Clean Energy Board has taken budget-related actions related to programs at three levels:

1. **Organization and Departmental budget**: Each year, the Board approves PCE's organizational budget which includes a specific Community Energy Programs department allocation that covers expenses for our various programs.

2. **"Programmatic" budgets**: Periodically, staff have brought forward requests for approvals of multi-year budgets for distinct programs such as "Existing Buildings" or "E-Bikes". These approvals typically allocate funds for incentives and contracts.

3. **Contracts**: Specific program-related contracts with expenditures of $100,000 or more within a fiscal year are brought to the Board for consideration as required under the Joint Powers Agreement.

DISCUSSION

Intradepartmental budget challenges have arisen in cases where there have been opportunities to support certain programs experiencing faster uptake than anticipated. A

recent example occurred with our popular e-bikes program that quickly reached budget capacity and resulted in a significant number of customers that we could not serve without an additional funding allocation from within our existing department budget. This required us to return to the Board for budget authorization which delayed our ability to provide additional incentives, meet customer demand and advance our objectives for GHG reductions. It also added a layer of administrative burden and opportunity costs.

To date, the "programmatic" budgets have been set with best available information to accommodate current and future demand. Excess budget capacity occurs when some programs experience lower uptake than planned, and sometimes the opposite happens with higher-than-expected demand as in the e-bike example. These conditions arise fairly regularly as projecting actual customer uptake is highly inexact and some programs move more slowly while others move more quickly than anticipated.

In order to be more responsive to programmatic developments and customer demand, staff requests that the Board increase program budget flexibility by allowing staff to shift funds between programs within the overall Board-approved Community Energy Programs department budget. If approved, Board authorization would no longer be requested at the programmatic level. Rather, staff will continue to manage discrete program budgets and will inform the board about any re-allocations of funding between programs.

And of course, staff will continue to seek Board approval for the overall annual Department budget as well as specific contracts that exceed the $100,000 approval threshold.

Finally, this request is proposed to apply going forward to programs that have been approved by the Board and that may benefit from budget modifications within our overall Department budget. Affected programs are:

- EV Ready – EV charging incentive program
- Existing Buildings – including Appliance Incentives and Home Upgrade
- Used EV – Electric vehicle incentives
- E-Bikes – Electric bike incentives

FISCAL IMPACT:
None

RESOLUTION NO. _____

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

* * * * * *

RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO MAKE INTRADEPARTMENTAL COMMUNITY ENERGY PROGRAM BUDGET ADJUSTMENTS WITHIN BOARD APPROVED COMMUNITY ENERGY DEPARTMENT BUDGETS

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

WHEREAS, Peninsula Clean Energy was formed on February 29, 2016; and

WHEREAS, Peninsula Clean Energy has as a strategic objective supporting the decarbonization of its service territory; and

WHEREAS, Peninsula Clean Energy administers a range of decarbonization program; and

WHEREAS, the Peninsula Clean Energy Board annually approves an organizational budget which includes specific allocation to the Community Energy Programs department; and

WHEREAS, the Peninsula Clean Energy Board has approved multi-year budgets for specific programs; and

WHEREAS, greater flexibility within the departmental Community Energy Programs budget to shift funds between programs would allow Peninsula Clean Energy to respond more quickly to programs with rapid uptake to increase its impact.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to adjust budget allocations between programs as needed to maximize Peninsula Clean Energy's objectives as long as total expenditures are within the Community Energy Programs departmental budget as approved by the Board.

* * * * * *

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: August 12, 2022
BOARD MEETING DATE: August 25, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: KJ Janowski, Director of Marketing and Community Relations &
Leslie Brown, Director of Account Services

SUBJECT: Update on Marketing, Outreach Activities, and Account Services

BACKGROUND

The Marketing, Community Relations, and Account Services Teams are responsible for enhancing Peninsula Clean Energy's brand reputation, educating and engaging customers, driving participation in programs, and ensuring customer satisfaction and retention. Tactics include community outreach, content creation and storytelling through owned (e.g. online, social media), earned (e.g. public relations), and paid media (advertising), school engagement programs, and customer care.

DISCUSSION

The following is an update of activities that are currently underway. See "Strategic Plan" section below for how these activities support Peninsula Clean Energy's strategic plan objectives.

Social Media Policy
We are proposing a resolution for a Peninsula Clean Energy Social Media policy. It is a good practice to put in place a clear policy, post this policy on our website, and link to it in the profile or description of Peninsula Clean Energy in each of our social media channels. Once approved by the Board, we will take these steps to make this policy known to the public.

Heat Pump Water Heater (HPWH) Incentive Program
Marketing is supporting the program goal to install 200 heat pump water heaters in the first two years. Marketing efforts have been measured based upon visits to our HPWH incentive pages. In the last 30 days, 489 users visited the page.

Electrification Messaging and Campaign Support of Decarbonization
Marketing is developing new messaging centered on encouraging electrification. Message testing research has been completed. Topline results of this research were presented in the July 28 board meeting. Messaging is being developed for a campaign that is planned to start this summer. The campaign will support our organizational priority to contribute to our community reaching a goal of 100% greenhouse gas-free for buildings and transportation by 2035.

Electric Vehicle (EV) Campaign
A search advertising campaign addressing barriers and benefits of electric vehicles has been underway since November 2021. Ad performance has continued to improve during this time. In July, the campaign achieved about 53,000 impressions and brought about 2,480 visits to our EV web pages. Results in August so far are showing an average cost-per-click of $2.13.

Los Banos Update
Our local Los Banos representative Sandra Benetti has been very active providing additional information and answering questions as Los Banos customers began receiving service from Peninsula Clean Energy. This includes tabling twice monthly on bill pay dates at Los Banos City Hall, as well as at community events

We are reaching out to additional community groups to arrange presentations. Sandra is also active in local social media forums addressing questions and providing correct information.

Peninsula Clean Energy ran an ad campaign in each of the two new newspapers now serving Los Banos, *Los Banos Enterprise* and *The Westside Express.* We will be working with both news outlets on future paid and earned media opportunities. We are also currently running 30 second audio ads in Spanish on a local commercial Spanish-language radio station, Radio Lobo.

News & Media
On August 2, we announced *State Legislature Resolution Honors Peninsula Clean Energy Anniversary.* Full coverage of Peninsula Clean Energy in the news can be found on our News & Media webpage.

Outreach Grants

Peninsula Clean Energy awarded 12 one-year grants to local CBOs in January 2022 to collaborate with us on community outreach. Grantees recently submitted their six-month progress reports. All the grants are on target to achieve their workplans and were paid the second installment of their grants. Highlights of grantee efforts include organizing in-person and online workshops to educate our customers on EVs, building electrification, and energy discounts for income-qualifying residents, as well as promoting our programs through newsletters, social media, distributing fliers, tabling at community events, and radio ads. Grantees communicate our messages in English, Spanish, Mandarin, Cantonese, Tongan, Samoan, Arabic, and other languages.

ENROLLMENT UPDATE

ECO100 Statistics (since June report)

Total ECO100 accounts at end of July:	6,307
ECO100 accounts added in July:	34
ECO100 accounts dropped in July:	117
Total ECO100 accounts at the end of June:	6,390

Enrollment Statistics

Opt-outs during the month of July were 163, which is 18 more than the previous month of June (145). This includes 111 opt outs in our new service territory of Los Banos during the month of July and 52 from San Mateo County during this month. In August, there have been an additional 54 opt outs from Los Banos and 13 opt outs from San Mateo County as of August 11th, 2022. Total participation rate across all of San Mateo County as of August 11th was 96.92%.

In addition to the County of San Mateo, there are a total of 15 ECO100 cities. The ECO100 towns and cities as of August 11th, 2022, include: Atherton, Belmont, Brisbane, Burlingame, Colma, Foster City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Portola Valley, Redwood City, San Carlos, San Mateo, and Woodside.

The opt-up rates below include municipal accounts, which may noticeably increase the rate in smaller jurisdictions.

Active Accounts as of August 11th							
TOT	RES Count	COM Count	Active Coun	Eligible Coun	Participation Percen	ECO100 Count	ECO100 Percent
ATHERTON INC	2401	231	2632	2717	97%	59	2%
BELMONT INC	10690	962	11652	11987	97%	171	1%
BRISBANE INC	1968	500	2468	2536	97%	89	4%
BURLINGAME INC	13218	2121	15339	15697	98%	346	2%
COLMA INC	567	301	868	886	98%	32	4%
DALY CITY INC	30824	2147	32971	34130	97%	108	0%
EAST PALO ALTO INC	7091	475	7566	7945	95%	26	0%
FOSTER CITY INC	13563	959	14522	14827	98%	332	2%
HALF MOON BAY INC	4184	645	4829	4979	97%	114	2%
HILLSBOROUGH INC	3794	154	3948	4066	97%	71	2%
LOS BANOS INC	11870	1613	13483	15316	88%	2	0%
MENLO PARK INC	13730	1929	15659	16058	98%	516	3%
MILLBRAE INC	8435	677	9112	9417	97%	112	1%
PACIFICA INC	13938	918	14856	15443	96%	176	1%
PORTOLA VALLEY INC	1466	132	1598	1697	94%	1499	94%
REDWOOD CITY INC	31125	3562	34687	35585	97%	712	2%
SAN BRUNO INC	14703	1145	15848	16527	96%	91	1%
SAN CARLOS INC	12159	2126	14285	14684	97%	333	2%
SAN MATEO INC	39486	4138	43624	44840	97%	685	2%
SO SAN FRANCISCO INC	21259	3208	24467	25464	96%	117	0%
UNINC SAN MATEO CO	20782	3073	23855	24685	97%	643	3%
WOODSIDE INC	2004	226	2230	2281	98%	65	3%

Table reflects data as of August 11th, 2022

In the above table, the participation rate for the City of Los Banos is at 88%. This number is artificially low due to us conducting a rolling enrollment for our NEM customers in Los Banos. Approximately 1176 Los Banos NEM customers have yet to be enrolled in Peninsula Clean Energy service. They will be enrolled monthly on their true-up month with PG&E from August through December. These accounts are included in the "Eligible Count column but are not currently active Peninsula Clean Energy customers, and are therefore not included in the Active Count column. The opt-out rate from Los Banos customers who received enrollment notices is currently at 3.9%.

Los Banos Enrollment Notices
The first set of Los Banos enrollment notices was mailed to customers February 14th, 2022, and the second set of enrollment notices was mailed March 8th, 2022. Four sets of enrollment notices are required to be mailed to our future customers in the City of Los Banos; two must be sent pre-enrollment (60 days before and 30 days before), and the other two must be sent post-enrollment (30 days after and 60 days after). Peninsula Clean Energy staff created separate pre-enrollment notices for standard customers, NEM customers, and DAC-GT customers in the City of Los Banos. Our standard welcome postcard will be used as the two required post-enrollment notices.

STRATEGIC PLAN

This section describes how the above Marketing and Community Care activities and enrollment statistics relate to the overall goal and objectives laid out in the strategic plan. The table indicates which objectives and particular Key Tactics are supported by each of the Items/Projects discussed in this memo. The strategic goal for Marketing and Customer Care is: Develop a strong brand reputation that drives participation in Peninsula Clean Energy's programs and ensures customer satisfaction and retention.

Item/Project	**Objective A**: Elevate Peninsula Clean Energy's brand reputation as a trusted leader in the community and the industry	**Objective B**: Educate and engage stakeholders in order to gather input, inspire action and drive program participation	**Objective C**: Ensure high customer satisfaction and retention
Social Media Policy	KT3 Tell the story of Peninsula Clean Energy through diverse channels		
HPWH Incentive		KT6: Promote programs and services, including community energy	

		programs and premium energy services	
Electrification Messaging Project		KT5: Provide inspirational, informative content that spurs action to reduce emissions.	
EV Campaign		KT6 (see above)	
Building Electrification Awareness Program		KT6 (see above)	
Los Banos UpdateE-bikes for Everyone	KT4: Engage community through participation in local events	KT6 (see above)	
CAC RecruitmentLos Banos Update	KT4: Engage community through participation in local events	KT4: Support the Citizens Advisory Committee	
News and Media AnnouncementsCAC Recruitment	KT1: Position leadership as experts on CCAs and the industry KT2: Cultivate relationships with industry media and influencers KT3 (see above)		
ECO100 and Enrollment StatisticsNews and Media Announcements	KT1: Position leadership as experts on CCAs and the industry KT2: Cultivate relationships with industry media and influencers KT3 (see above)		Reports on main objective C
ECO100 and Enrollment Statistics			Reports on main objective C

* “KT” refers to Key Tactic

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: August 15, 2022
BOARD MEETING DATE: August 25, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority (PCE) Board of Directors

FROM: Jeremy Waen, Director of Regulatory Policy
Doug Karpa, Senior Regulatory Analyst
Matthew Rutherford, Senior Regulatory Analyst

SUBJECT: Update Regarding Regulatory Policy Activities

SUMMARY

Over the last month the Regulatory Policy team continues to be busy. Jeremy has focused his time across supporting organizational needs and hiring for his department's new Regulatory Compliance Analyst position. Doug has been particularly heavily focused on work to reform the California Public Utilities Commission's (CPUC) Resource Adequacy construct. Matthew has continued his work in supporting PCE's programmatic efforts through Transportation Electrification, Building Decarbonization, Resiliency, Supplier Diversity, and DAC-Green Tariff matters.

DEEPER DIVE

Welcome to Zsuzsanna Klara, PCE's new Regulatory Compliance Analyst!

Over the last month or so Jeremy has been reviewing applications for our Regulatory Compliance Analyst opening. This is a new position within the team that will help to consolidate the internal oversight and management of PCE's numerous regulatory compliance matters. After numerous interviews with a supporting panel of PCE staff, we selected a finalist and extended an offer to Zsuzsanna Klara. She has graciously accepted the offer and will be starting the position on September 12, 2022. Zsuzsanna comes to us by way of Meta (formerly known as Facebook), and prior to that position she served as legal counsel for the Hungarian Energy and Public Utilities Regulatory Authority (the Hungarian analog to the CPUC). She also recently completed her master's in law in global business law at University of Washington.

DAC-GT/CSGT Programs

On May 31, PG&E, SDG&E, and SCE each filed Applications for Program Review (AFRs) to propose revisions to their DAC-GT and CSGT programs ("Programs") as required by the Commission. Generally, the issues highlighted in the IOUs' AFRs are aligned with the concerns of the CCAs. In broad terms, the AFRs identify ways the Programs' designs could be modified to ensure that they more successfully lead to greater development of new solar resources in state-identified Disadvantaged Communities (DACs) as well as better deliver that solar energy and bill discounts to low-income customers that live within DACs.

The CCAs that offer their own Programs filed a joint response to the AFRs on July 6. The CCAs generally agreed with many of the IOU suggestions to modify the program, such as allowing other technologies such as battery storage to be eligible. However, the CCAs disagreed with a few suggestions that unprocured program capacity should remain with the IOUs and instead argued that it should be transferred to the CCAs to serve their own Programs. The CCAs also disagreed with certain suggestions that would likely make the programs more administratively costly to deliver.

The IOUs all filed replies to stakeholder responses on July 18, 2022. They largely agreed with the CCAs that the issue areas raised should be included in the final scope of the proceeding, to be determined by the CPUC Administrative Law Judge (ALJ). The parties are now waiting for the ALJ to issue a notice for a Prehearing Conference where parties can make brief statements on the issues that should be addressed in the proceeding. That will be filed by a final scoping memo.

(Public Policy Objective A, Key Tactic 1, Key Tactic 2, and Key Tactic 3)

Integrated Resource Planning & Resource Adequacy

The resource adequacy proceeding is moving to a phase of development of the details of the 24-hour resource adequacy construct, including resource counting rules, compliance templates and CAISO processes. To date, the Working Group has taken up resource counting, compliance methodologies (such as master databases of generators and load forecasting data templates) and counting of hybrid resources. A final proposal should be developed by Q4 2022. Also, the CPUC approved new regional wind ELCCs to apply in 2023. Finally, the Central Procurement Entity, operated by PG&E, appears to be continuing to struggle to meet its obligations with uncertain consequences for CCA procurement and ratepayer costs. Dr. Karpa remains engaged in seeking favorable resolutions of these questions.

The Integrated Resources Planning process continues to be focused on filings and new modeling for the 2022 cycle, including with new templates and requirements being released this month ahead of our filing this fall.

In a related effort, Doug and Matthew developed a comment letter jointly with several other CCAs to the California Air Resources Board (CARB) urging stricter carbon targets

for the energy sector and criticizing the proposed heavy reliance on carbon sequestration, among other issues. The carbon targets of the Draft Scoping Plan are used to set the targets in the Integrated Resources Planning process, so high targets could undermine efforts to decarbonize the electricity sector. The joint letter also encouraged CARB to consider setting more aggressive targets for decarbonizing California's transportation and building sectors while also ensuring that communities which have been historically underserved or face higher pollution and energy cost burdens are able to participate in these technology transitions.

(Public Policy Objective A, Key Tactic 1, and Key Tactic 2; Public Policy Objective C, Key Tactic 3)

Stakeholder Outreach

Dr. Karpa hosted the regular monthly call with staff from CCAs and environmental and environmental justice stakeholders on July 20. Discussion focused on state legislative topics as well as the ongoing efforts of Peninsula Clean Energy to promote building and transportation electrification. This group reconvened on August 5 to discuss approaches to IRP implementation and additional electrification policy issues.

(Public Policy Objective A, Key Tactic 2)

FISCAL IMPACT

Not applicable.

PENINSULA CLEAN ENERGY AUTHORITY
Board Correspondence

DATE: August 18, 2022
BOARD MEETING DATE: August 25, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Marc Hershman, Director of Government Affairs

SUBJECT: Update on Peninsula Clean Energy's Legislative Activities

SACRAMENTO and WASHINGTON SUMMARY:

The weeks between late July and early August are typically the lull before the final legislative push of the year. The Assembly and Senate recessed on July 1 and did not reconvene until August 1. The 2021-22 Legislative Session will adjourn for the year on August 31.

Before the Legislature recessed on July 1, they sent the governor a $300 billion fiscal 2022-23 budget package. The Budget Act was signed by the governor on June 30.

Of particular interest to Peninsula Clean Energy are the items in the budget that will accelerate the build out of clean energy and storage projects by providing a new streamlined permitting option at the California Energy Commission for qualifying projects.

The governor submitted several controversial, last-minute additions to the budget including a Strategic Electricity Reliability Reserve, which includes existing generation capacity that was scheduled to retire, new generation, and new storage projects, as well as clean backup generation projects, diesel and natural gas backup generation projects with emission controls and all required permits, and customer side load reduction capacity.

Notably, there is $970 million in the budget for the Public Utilities Commission to provide residential solar and storage system incentives, with $670 million available for solar and storage systems for low-income households. And there is $250 million to leverage additional state financing tools dedicated to supporting the development of strategic clean energy projects, with the initial priority to support the development of new transmission to deliver to the CAISO system, clean, firm electricity from new resources located in the Salton Sea region.

In addition, there's $957.6 million for ratepayer assistance to pay past due IOU/CCA residential customer's electricity bills. Peninsula Clean Energy had sent a letter to the governor and legislative leaders in support of this funding.

However, as we saw in 2021, supplemental budget bills and additional measures providing policy guidance to the budget act – known as trailer bills - will continue to be negotiated by the Legislature and the Administration well into the final days of the 2022 session.

With the legislature back in session, Peninsula Clean Energy has sent correspondences to our state legislators in support of funding for building decarbonization programs. Copies of those letters are included with this report.

One letter was in support of the governor's proposal to allocate $922.4 million to the California Energy Commission for an Equitable Building Decarbonization program and sought language in any legislative proposal that would define the implementers of those funds to specifically include CCAs.

Another letter was sent in support of funding for the Technology and Equipment for Clean Heating (TECH) program. Funding for TECH focuses on transitioning low-income and households in disadvantaged communities to zero-emission appliances. This program has been very successful, with 900 contractors enrolled and all the currently available funding reserved.

In early August, notably with only weeks remaining in the 2022 session, the governor set forth what he called his 2022 climate legislative proposals. These proposals include legislation to codify the goal of achieving statewide carbon neutrality no later than 2045, increase ambition of 2030 greenhouse gas emissions reduction from 40% to 55% below 1990 levels, establish a pathway to 100% clean electricity retail sales by 2045, establish a setback distance of 3,200 feet between any new oil wells from schools and homes, ensure comprehensive pollution controls for existing oil wells, and establish a clear regulatory framework for carbon removal and carbon capture, utilization, and sequestration.

LEGISLATIVE ADVOCACY AND OUTREACH:

The summer of 2022 may well turn out to be a most consequential time in our nation and the world's efforts to stem climate change. On August 7 the U.S. Senate, by the narrowest of margins, passed the Inflation Reduction Act (IRA). The legislation cleared the Congress on August 12 when the House of Representatives voted its support for the bill. It was signed into law by President Biden on August 16.

Peninsula Clean Energy joined several other CCAs in a letter to our federal legislators in support of the Inflation Reduction Act. A copy of the letter is included with this report.

The IRA has $369 billion in clean energy and climate-related provisions. Its focus is on incentives that make the use of cleaner energy less expensive than fossil fuels. Consumers could see benefits from subsidies to help with the purchase of electric

vehicles, solar panels, heat pumps and other household items. Businesses could also benefit from purchase credits that will extend for at least 10 years.

Of direct benefit to Peninsula Clean Energy, many of the business credits will, for the first time, be applied to publicly owned utilities and nonprofits. This could improve Peninsula Clean Energy's ability to advance solar projects by providing financial incentives and making transactions less complex.

The IRA also includes language and a significant amount of funding to support the extension of the life of nuclear plants that are scheduled to go offline. This would include the Diablo Canyon nuclear power plant. As noted above, Governor Newsom has indicated his interest in authorizing the extension of existing generation capacity scheduled to retire and there has been discussion by the administration of providing PG&E with $1.4 billion in the form of a forgivable loan to extend the life of Diablo Canyon. Such a plan would require legislative language and funding through a legislative mechanism, all of which could happen before the end of the current legislative session.

Of significance in Sacramento, on the August 11 "suspense calendar" hearings were held in the respective Appropriation Committee of each house of the Legislature. This is the last stop for bills with a fiscal component before they can move on to the floor of the second house and, if successful there, to the governor's desk. About 25% of 2022 bills before the Appropriations Committees failed to pass off the suspense calendar and those legislative efforts will not move forward this year.

A bill of great interest to Peninsula Clean Energy is **SB 1158 (Becker).** Similar in some respects to Senator Becker's **SB 67** from 2021, **SB 1158** would mandate the hourly reporting of GHG intensity of load serving entities like Peninsula Clean Energy. It would also require the LSE to report the GHG profile of its Resource Adequacy portfolios.

Peninsula Clean Energy supports **SB 1158** and the bill's goal of improving transparency of LSE progress in meeting its GHG reduction goals, noting that it reflects our organizations 24/7 goals. We have been working closely with Senator Becker to clarify and address some of the issues raised in the legislation.

Peninsula Clean Energy weighed in with support for **SB 1158** when it was heard and passed in the Senate Committee on Energy, Utilities and Communications. The bill was passed by the Senate Committee on Appropriations and by the full Senate. Peninsula Clean Energy provided lead testimony at hearings before the Assembly Committee on Utilities and Energy and again when the bill was heard by the Assembly Committee on Natural Resources. SB 1158 easily passed both committees and on August 11 was passed off the Assembly Committee on Appropriations suspense calendar. It will now go to the floor of the Assembly for consideration.

AB 1944 (Lee, Christina Garcia) would amend the Brown Act to specify that if a member of a legislative body elects to teleconference from a location that is not public, the address of that location need not be identified in the meeting notice and agenda, or be accessible to the public, when the legislative body has elected to allow members to participate via teleconferencing. Peninsula Clean Energy has submitted a letter of support for **AB 1944**.

This bill passed off the floor of the Assembly, however it has failed to receive consideration in the state Senate.

SB 1020 (Laird) is being championed by the leadership of the state Senate as the Clean Energy, Jobs, and Affordability Act of 2022. Among the many provisions of the bill that address climate change issues by setting clean energy goals for the state, SB 1020 would establish a new state agency trust fund regarding clean energy and provide funding, mostly from federal funds, for home infrastructure upgrades. However, the provisions to establish the trust fund and decarbonization authority were stripped from the bill before it was passed out of the Assembly Committee on Appropriations.

PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: August 25, 2022
BOARD MEETING DATE: August 19, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy
Rafael Reyes, Director of Energy Programs

SUBJECT: Community Programs Report

SUMMARY

The following programs are in progress, and detailed information is provided below:

1. Building and EV Reach Codes
2. Buildings Programs
   - 2.1. Appliance Rebates and On-Bill Financing
   - 2.2. Low-Income Home Upgrades & Electrification
   - 2.3. Building Pilots
   - 2.4. Refrigerator Recycling
3. Distributed Energy Programs
   - 3.1. Local Government Solar
   - 3.2. Power On Peninsula – Homeowner
   - 3.3. FLEXmarket
4. Transportation Programs
   - 4.1. "EV Ready" Charging Incentive
   - 4.2. Used EV Rebate
   - 4.3. EV Ride & Drives/EV Rental Rebate
   - 4.4. E-Bikes for Everyone Rebate
   - 4.5. Municipal Fleets
   - 4.6. Transportation Pilots
5. 2035 Decarbonization Feasibility and Plan

DETAIL

1. Building and EV Reach Codes

Background: In 2018 the Board approved a building "reach code" initiative to support local governments in adopting enhancements to the building code for low-carbon and EV ready buildings. The initiative is a joint project with Silicon Valley Clean Energy (SVCE) and East Bay Community Energy (EBCE). The program includes small grants to

municipalities, technical assistance, and tools, including model codes developed with significant community input. The tools and model code language are available on the project website (www.BayAreaReachCodes.org).

In addition, in January 2020 the Board approved an extension of the reach code technical assistance plus additional elements – Education and training for developers and contractors, and consumer education program on the benefits of all-electric buildings. This technical assistance is publicly available at www.AllElectricDesign.org. In December 2020, the Board approved to extend the contract with TRC Engineers include technical assistance for developing policy for existing buildings. In February 2022 the Board extended the initiative for another two years.

SVCE and Joint Venture Silicon Valley are planning a webinar in September specifically for local elected officials on new and existing building Reach Codes. San Mateo electeds will be invited to attend.

Model Code Summary, available at www.bayareareachcodes.com:

- New construction building electrification codes require all-electric and include a menu of exceptions for cities to choose from
- New construction EV codes are the same as last cycle for most building types, requiring more access than the state code. Multi-family buildings are required to provide at least one level 2 charging access point for every dwelling unit. 15% must be Level 2 charging stations. 85% can be low-power Level 2 EV ready.
- Existing building model codes provide a full menu of options for cities to choose from, including: end of flow requirements, time-of-replacement mandates, time of sale disclosure requirements, and a requirement to upgrade existing EV-capable circuits to EV-ready by a time-certain deadline.

Status:

- **New Construction Codes:** Draft new and existing model codes are available.
- **Existing Building Decarbonization**: Existing building model codes are posted online. During a poll at a City Staff workshop, 64% of respondents stated that they were interested in exploring an existing building reach code.
- **City Progress:** all cities considering re-adoption should consider starting the process asap to meet the January 1st deadline. The following cities are currently advancing code updates:
    - New construction: County of San Mateo, City of San Mateo, Brisbane, Burlingame, Half Moon Bay, Redwood City, Pacifica, Belmont, Millbrae, Menlo Park, San Carlos, Portola Valley
    - Existing buildings: City of San Mateo, City of Brisbane, San Carlos, Menlo Park (slated for next year.)

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- 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

2. Buildings Programs

2.1. Appliance Rebates and Financing

Background: In May 2020, the Board approved a 4-year, $6.1 million for electrifying existing buildings. This included $2.8 million for implementing an appliance rebate program. Peninsula Clean Energy successfully launched the heat pump water heater rebates on January 01, 2021 for San Mateo County residents. Peninsula Clean Energy rebates are offered in partnership with BayREN's Home+ program. BayREN offers a rebate of $1,000 and Peninsula Clean Energy offers an additional rebate of $1,000 for methane gas to heat pump water heater (HPWH) or $500 for electric resistance to HPWH. Peninsula Clean Energy also offers a $1,000 bonus rebate for CARE/FERA customers and rebate up to $1,500 for electrical panel upgrades that might be needed to accommodate the HPWH. Additionally, in August 2021, the Board approved an On-Bill Financing program with $1.0 million in loan capital (treated as a balance sheet asset and not part of the annual budget). The program will offer qualified residential customers a 0% interest loan up to $10,000 to fund the cost of eligible electrification and complementary electrical and energy efficiency upgrades. The program is expected to be launched in Q4 2022.

Status: The Appliance Rebate Program, initially focused on HPWH rebateswas launched on January 01, 2021 and as of August 9, 2022 has issued 268 HPWH rebates, which amounts to $383,000 or 14% of the total program budget. Overall, the Peninsula Clean Energy program accounts for approximately 32% of the HPWHs installed across the 9-county Bay Area since 2019. Currently 7 San Mateo County contractors and 25 contractors outside the county are enrolled in the program. Peninsula Clean Energy has been promoting the incentive through digital ads, email outreach and other channels. The TECH program that had been providing HPWH, heat pump HVAC, and panel upgrade incentives throughout 2022 ran out of funding in PG&E service territory as of May 12, 2022. Peninsula Clean Energy and BayREN still offer incentives for customers installing HPWH for a total of $2,000. Additional incentives are available for income-qualified customers and electrical panel upgrades.

Peninsula Clean Energy will be rolling out modifications and enhancements to the appliance rebates program in Q4 2022. Those include:

1. **Increase HPWH rebate:** currently, residents in San Mateo County making the switch from a methane gas water heater to a HPWH are eligible for $2,000 in rebates ($1,000 from Peninsula Clean Energy and $1,000 from BayREN). In Los

Banos, residents are only eligible for Peninsula Clean Energy's incentives. Before the statewide TECH program ran out of funding, the combined rebates in both territories were between $3,100 - $3,800. Based on Peninsula Clean Energy and BayREN data on water heater installations in San Mateo County and the Bay Area, the median installed cost (equipment + labor) of a HPWH is $6,000 and $2,000 for a methane gas tank water heater. With the objective of reaching cost parity, Peninsula Clean Energy rebate will increase its HPWH rebate to $3,000, making the total available $4,000 when factoring in the BayREN rebate. Los Banos is not in BayREN territory so not eligible for BayREN incentives. Peninsula Clean Energy is studying whether the total incentives for Los Banos could be made equivalent to those available in San Mateo County

2. **Add heat pump heating ventilation and air conditioning (HP HVAC) rebate:** Peninsula Clean Energy has not offered a HP HVAC rebate to date. Before it ran out of funding, TECH offered a $3,000 rebate. Based on BayREN and TECH data, the median installed cost (equipment + labor) of a HP HVAC system is $19,000. Based on our research, this is $500-3,000 more expensive than adding or replacing air conditioning in the same home. Peninsula Clean Energy plans to add a $3,500 rebate for HP HVAC installations. This will provide support important for proposed existing building electrification codes being considered by multiple cities, which requires new or replaced air conditioners to be heat pumps capable of heating and cooling.
3. **Simplify electrical panel rebates:** currently, Peninsula Clean Energy panel upgrade rebates are as follows: $750 for subpanel upgrade or addition, $750 for main panel upgrade up to 200 amps, or $1,500 for main panel upgrade up to 100 amps. This nuanced rebate structure is a common point of confusion for contractors. With the objective of simplifying the structure, the rebate will be $1,500 irrespective of type. Before it ran out of funding, TECH offered an additional $1,300 rebate making the total combined amount to $2,800. Based on data from Peninsula Clean Energy HPWH projects with panel upgrades, the average cost of a panel upgrade is $3,700.
4. **Run a temporary marketing bonus:** in 2021, Peninsula Clean Energy ran time limited "bonus" rebates for projects that were completed before a certain date (September 30th). This bonus, paired with a robust marketing campaign, was very effective in driving volume. In the month the bonus expired, the number of installations doubled from that of the previous rate. A new marketing bonus of $500 for both HPWH and HP HVAC installs will again be put in place to drive volume and motivation for customer action.
5. **Offer rebates to all customers irrespective of contractor used:** currently, in San Mateo County, the program is fully integrated with the BayREN Home+ program, meaning customers can only access they Peninsula Clean Energy rebates if they work with a BayREN-approved contractor. The program was set up this way to streamline the application experience by allowing contractors to submit a single application (through BayREN) on behalf of the customer to get the rebates from both programs. Since BayREN does not operate in Los Banos a separate

rebate application, directly through Peninsula Clean Energy, was created for Los Banos residents. This means in Los Banos, residents are able to work with any contractor or even install the equipment themselves, and still be able to access the Peninsula Clean Energy rebate. Peninsula Clean Energy plans to make this option available to San Mateo County residents as well so they will be able to access the rebates if working with a non-BayREN-approved contractor or installing it themselves. City permits for the installed equipment will be required as part of the application process. The integrated BayREN process will remain, however, as it will continue to be the most streamlined way for customers to access all rebates available through a single application and make use of the experienced electrification contractors who are BayREN-approved.

The cost of electrifying water heating and space heating are higher than doing a gas-to-gas replacement. Incentive support is important to reduce customer costs enabling existing building reach code policy adoption without undue burden to residents. Staff is making these modifications to A) bring fuel switching/electrification to at least cost parity with gas replacements, B) backstop the loss of TECH incentives, and C) support the adoption of existing building reach codes.

Lastly, Peninsula Clean Energy will launch the the Zero Percent Financing program (I.e. On-Bill Financing) concurrently with the Appliance Rebates Program modifications and enhancements noted above as the two programs are highly interconnected. Customers will be able to get rebates and finance the net project cost through this program.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

2.2. (Low-Income) Home Upgrade Program

Background: In May 2020, the Board approved $2 million for implementing a turn-key low-income home upgrade program to offer minor home repair, energy efficiency, and electrification measures to income-qualified homeowners at no cost to them. The measures implemented in each home will vary depending on the home's needs but will include at least one electrification measure such as installing a HPWH or replacing a gas stove with an electric induction stove. The contract with the administration and implementation firm, Richard Heath & Associates (RHA), was executed after being approved by the Board in the March 2021 meeting.

Status: The program was announced on September 28, 2021. The below table summarizes the program's status as of June 30, 2022.

Stage/category	#s as of June 30 2022
Leads	462
Reached	312
Pre-assessments	228
Enrolled	176
Ineligible	136
Installations in progress	37
Fully complete	45

The following table summarizes the number of electrification measures implemented on the fully complete homes.

Measure	Count
Heat pump water heater	19
Induction cooktop/range	9
Electric dryer	15
Central or mini split eat pump (HVAC)	3
Window or wall mounted heat pump (HVAC)	7
Portable heat pump (HVAC)	11

Strategic Plan:

Goal 3 – Community Energy Programs

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities
- Key Tactic 3: Support workforce development programs in the County

2.3. Building Pilots

Background: In May 2020, The Board approved $300,000 for piloting a new innovative technology from Harvest Thermal Inc., a Bay Area-based startup, that combines residential space and water heating into a unified heat pump electric system with a single water storage tank. Through this project, this technology will be installed in 3-5 homes within the San Mateo County to assess its performance and demonstrate its effectiveness for emission reductions.

Status: The home recruitment process began in late April 2021 and the project received 290 applications. Homes were selected based on technical criteria (home characteristics, energy usage patterns, and technical feasible of the upgrade within budget). The four pilot homes are located in Daly City, South San Francisco, Redwood City, and Menlo Park. As of May 13, 2022, the Daly City, South San Francisco, and Redwood City homes

have had their system installed. The Menlo Park home received its city permit this month and installation is expected to be completed this month. The consulting firm TRC has been contracted to provide independent measurement and verification services for the project and have begun collecting data on the homes installed. A final report is anticipated in the summer of 2023 after a year a data has been collected and analyzed. Lastly, the Technical Advisory Committee (TAC) had its second meeting on June 2, 2022, following the first meeting on September 30, 2021. The objective of the TAC is to review and provided feedback on the project. TAC members include former building officials, former contractor, city commissioner, peer CCA program managers, CPUC staff, CAC member and Board member Jeff Aalfs. A small ribbon-cutting event was held at the Daly City home on June 4th with PCE staff in attendance. Additionally, Senator Josh Becker toured a Harvest Thermal home and Home Upgrade home on July 20th with PCE staff in attendance.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective C: Innovation and Scale: Leverage leadership, innovation, and regulatory action for scaled impact

- Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

2.4. Refrigerator Recycling

Background: In April 2019, Peninsula Clean Energy launched a small turnkey refrigerator recycling program with a budget of $75,000 as part of the Community Pilots program. The program administrator, ARCA Recycling, manages orders intake, pick up scheduling, and rebate processing. The objective of the program is to capture high impact greenhouse gas gases from old appliances by facilitating proper recycling of the appliance's refrigerants and foaming agents for insulation (which also continue refrigerants). The initial program budget was exhausted in May but in June 2022, following Board approval, staff executed a contract amendment to continue, and expand the program with an additional budget of $200,000 over three years (FY23-FY25). The contract amendment includes adding more appliance types (air conditioning units, and allowing non-working units to be eligible) and allowing for bulk pickups from apartment complexes and waste distribution centers.

Status: Since inception in April 2019, the recycling program has recycled 367 refrigerators and freezers resulting in 673 MTCO2e in greenhouse gas reduction.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

3. Distributed Energy Programs

Peninsula Clean Energy has Board-approved strategies for the promotion of 20 MW of new distributed energy resources in San Mateo County and is advancing distributed energy resources to provide resilience, lower decarbonization costs, provide load shaping to support our strategic goal for 24/7 renewables. The projects described below are efforts towards meeting both of these goals.

3.1. Local Government Solar Program

Background: The Local Government Solar program is aimed at aggregating local government facilities into a group procurement of solar and optionally storage systems. Peninsula Clean Energy provides no-cost site assessments and preliminary designs as well as manages the procurement process. Participating sites have systems installed as part of power purchase agreements directly with Peninsula Clean Energy. As part of the pilot phase, in October 2020, the Board approved a Solar Site Evaluation Services contract with McCalmont Engineering for Solar site evaluation and designs for County and municipal facilities identified as candidates for solar-only or solar + storage resilience projects. In March 2022, the board approved up to $8 million in capital for system installations to be repaid over 20 years and $600,000 for technical assistance on the second round of the aggregated solar program.

Status: Peninsula Clean Energy developed a portfolio of 15 sites in 13 cities for a total portfolio size of approximately 2 MW of solar. Battery storage will be explored for 4 of the 15 sites. City council commitments for the projects were secured from all 13 cities.

Peninsula Clean Energy launched a Request for Proposals for solar+storage at public facilities as part of this program. The deadline for interested bidders to submit their Statements of Interest was July 15, and the deadline for proposal submissions was August 1.

The RFP solicited bids that could fit into two procurements models. In Model 1, Peninsula Clean Energy in partnership with a tax financing partner would purchase the systems from a contractor that would procure, install, and maintain equipment. In Model 2, Peninsula Clean Energy would secure a master PPA for the full portfolio with an entity that can provide both tax equity and installation. There are pros and cons to each model. Multiple proposals have been received and are under evaluation.

3.2. Power On Peninsula – Homeowner

Background: Power on Peninsula – Homeowner is a solar+storage energy resiliency program run by Peninsula Clean Energy in partnership with Sunrun.. This program provides energy storage systems paired with solar power to single family and multifamily Peninsula Clean Energy customers. Customers who sign up for this program receive an incentive up to $500. At Peninsula Clean Energy's direction, Sunrun will dispatch the stored energy during evening hours when renewable generation on the California grid is low. This will also help Peninsula Clean Energy to reduce its peak load and thereby reduce our resource adequacy requirements.

Status: The program has commenced dispatching customer batteries in the evening to help reduce Peninsula Clean Energy's net peak. Sunrun will continue to enroll new customers throughout 2022. The program is being impacted by supply chain issues including contractor, materials, and product supply and cost. Sunrun is currently working on ensuring that all batteries installed are capable of delivering Load Modification in order to reduce customers' peak energy load. Staff is working with a firm to provide labor compliance assistance and has begun developing the process for analyzing workforce data.

3.3. FLEXmarket

Background: In November 2021 the Board approved a program plan for the establishment of an innovative "virtual power plant" using what is known as FLEXmarket. FLEXmarket is a market-based program structure that provides incentives to program "aggregators" to implement programs for energy efficiency and load shaping. The novel elements of the structure include a "pay-for-performance" approach which only provides incentives on confirmed performance using meter data. This novel structure was innovated by MCE and also is being implemented by East Bay Community Energy and Sonoma Clean Power. In addition, the program plan was developed for submission to the CPUC to allow Peninsula Clean Energy to run the program with fully reimbursed funding through the CPUC. Peninsula Clean Energy's billing data services provider Calpine has entered into a strategic partnership with the firm Recurve to provide FLEXmarket services through a streamlined structure.

Status: Peninsula Clean Energy's proposed FLEXmarket program was approved by the CPUC on May 5th and the Board approved the contract with Calpine to implement the program in June. Staff developed and submitted a Program Implementation Plan to the California Energy Data and Reporting System on July 5. The required contract between Peninsula Clean Energy and Calpine is nearly finalized, and the incentive design is in progress. It is anticipated that program design will continue over the coming weeks, and that contractor recruitment will commence in Summer and Fall.

Strategic Plan:

- Distributed Energy Resources: 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
- Key Tactic 2: Support distributed energy resources to lower costs, support reliability, and advance distributed and grid decarbonization
- Key Tactic 3: Foster Resilience

4. Transportation Programs

4.1. Used EV Rebate Program

Background: Launched in March 2019, the Used EV Rebate Program (formerly referred to as "DriveForward Electric") provided an incentive up to $4,000 for the purchase of used plug-in hybrid electric vehicles (PHEVs) and full battery electric vehicles (BEVs) to income-qualified San Mateo County residents (those making 400% of the Federal Poverty Level or less). The incentives may be combined with other state-funded income-qualified EV incentive programs. In October 2020, the Board approved expanding the program to offer used EV incentives to all San Mateo County and Los Banos residents, while maintaining the increased incentives for income-qualified residents. In February 2021, Peninsula Clean Energy executed a competitively bid contract with GRID Alternatives ("GRID") to administer the expanded program. The 'old' program incentivized 105 rebates from March 2019 through August 2021. In August 2021, the program was officially re-launched. In March 2022, staff made modifications to the program to adjust to market conditions (I.e. high used vehicle prices). Modifications included raising the eligible vehicle price cap from $25,000 to $35,000 and increasing the rebate amount for income-qualified residents by $2,000 taking the maximum rebate amount to $6,000.

Status: Since the re-launch of the program in August 2021, 101 rebates have been provided under the new program and 200+ customers are actively in the pipeline (customers must apply prior to purchase). Since the increased incentives were put in place in March, the program has a substantial increase in applications, doubling the pace from prior months.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 1: Drive personal electrified transportation to majority adoption

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities

4.2. "EV Ready" Charging Incentive Program

Background: In December 2018 the Board approved $16 million over four years for EV charging infrastructure incentives ($12 million), technical assistance ($2 million), workforce development ($1 million), and administrative costs ($1 million). Subsequent to authorization of funding, Peninsula Clean Energy successfully applied to the California Energy Commission (CEC) for the CEC to invest an additional $12 million in San Mateo County for EV charging infrastructure. Of Peninsula Clean Energy's $12 million in incentives, $8 million is administered through the CEC's California Electric Vehicle Incentive Project (CALeVIP) and $4 million under a dedicated, complementary Peninsula Clean Energy incentive fund. The dedicated Peninsula Clean Energy incentives address Level 1 charging, assigned parking in multi-family dwellings, affordable housing new construction, public agency new construction, and charging for resiliency purposes.

Status: The program is being significantly impacted by supply chain issues including contractor scheduling materials, and product supply and cost. This is resulting in installation delays. Peninsula Clean Energy engaged directly with participating contractors to understand installation delay issues and IBEW 617 to explore solutions. Peninsula Clean Energy's technical assistance and outreach is ongoing. Current outreach is focused on small to medium apartments in San Mateo County (~3,000 buildings). In addition, the Center for Sustainable Energy (CSE), which manages the CALeVIP component of the program for the CEC and Peninsula Clean Energy has had ongoing and serious delays in the program, greatly hampering the ability to install charging stations. Peninsula Clean Energy is implementing changes to the EV Ready program to expedite installations. These include providing customers with greater flexibility in selecting contractors, adjusted incentive levels to account for rising costs, and direct management of all Level 2 projects not already approved by the Center for Sustainable Energy in the CALeVIP program. The CALeVIP projects were notified in late August and are in the process of transferring to PCE direct management.

Summary of program metrics is outlined in the table below:

	Sites/ Applications	Ports	Incentive Amount
# of sites in Technical Assistance	136	939	-
# of site evaluations approved by PCE	94	1997	-
# of funding applications received in Peninsula Clean Energy incentive program	36	487	$1,226,500
# of funding applications approved in Peninsula Clean Energy incentive program	20	382	$832,500
# of CALeVIP applications approved in Year 1*	86	1,057	
# of CALeVIP applications anticipated in Year 2 & Year 3			0
Total # of ports installed	11	254	$701,000

*Includes DCFC and L2 ports: 306 DCFC, 751 L2 ports

Strategic Plan:
Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings
- Key Tactic 1: Drive personal electrified transportation to majority adoption
- Key Tactic 5: Support local government initiatives to advance decarbonization

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities
- Key Tactic 3: Support workforce development programs in the County

4.3. EV Ride & Drives / EV Rental Rebate

Background: In February 2019, the Board approved continuation of the EV Ride & Drive program over three years (2019-2021) following a 2018 pilot. It provides for community and corporate events in which community members can test drive a range of EVs. The program generated 19 events and 3,033 experiences since inception in 2018. Event surveys indicate that the ride and drive was the first EV experience for 64% of participants and 87% report an improved opinion of EVs. Trailing surveys 6 months or more after events have yielded a 33% response rate and 17% of respondents indicate they acquired an EV after the event. Due to the COVID-19 pandemic, ride & drive events have been paused. As a result, staff developed a suite of virtual EV engagement pilot programs that replaced the in-person ride & drive events. Staff evaluated these pilots in January 2021 and phased out some due to low uptake and to prioritize limited funding for the most successful programs – Virtual EV Forums & EV Rental Rebate. The Virtual EV Forums in partnership with large San Mateo County employers continued through the end of FY20-21. Four EV Forums were held. Most of the FY21-22 EV Ride & Drive/Engagement budget was be dedicated to the EV Rental Rebate. Peninsula Clean Energy evaluated re-starting ride & drive events again this year, however the vehicle supply shortage has meant that dealerships do not have cars available for ride & drive events and thus it is not feasible to re-start the program again at this time.

Status: The EV Rental Rebate has been phased out due to low utilization at this time. The program officially closed on July 31, 2022 and issued a total of 216 rebates since its launch in October 2020. Staff sent surveys to participants 6 months after the rental and of 34 respondents, 8 of them (8%) have purchased an EV since the rental.

Strategic Plan:
Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings
- Key Tactic 1: Drive personal electrified transportation towards majority adoption

4.4. E-Bikes for Everyone Rebate Program

Background: The Board initially approved the income-qualified E-Bikes Rebate program in July 2020 with a budget of $300,000 and approved an increase of an additional $300,000 in December 2022, bringing the total program budget to $600,000. The first phase of the program launched in May 2021 and sold out immediately and provided 276 rebates. The second phase is currently underway and will provide approximately 320 rebates. The program is available to residents with low to moderate incomes. Silicon Valley Bicycle Coalition is under contract to Peninsula Clean Energy as an outreach and promotional partner and local bike shops are under contract to provide the rebate as a point-of-sale discount to customers. Enrolled bike shops include Summit Bicycles, Mike's Bikes, Sports Basement, Chain Reaction, Woodside Bike Shop, and E-Bix Annex.

Status: The second round of the program is currently underway. 180 e-bikes have already been purchased. The new round utilizes more targeted outreach with community partners and a lottery method for awarding incentives rather than the first-come, first-served method used in the previous round.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 1: Drive personal electrified transportation to majority adoption

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities

4.5. Municipal Fleet Program

Background: The Board approved the Municipal Fleet Program in November 2020. This program will run for three years with a total budget of $900,000 and is comprised of three components to help local agencies begin their fleet electrification efforts: hands-on technical assistance and resources, gap funding, and a vehicle to building resiliency demonstration that will assess the costs and benefits of utilizing fleet EVs as backup power resources for agencies in grid failures and other emergencies.

Status: Staff have selected a consulting team and is bringing the contract to this Board meeting for approval at this Board meeting. The program is expected to become available in fall 2022. A workshop will be held in the fall to promote the program and recruit local agency fleet managers.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation and initiate the transition to clean energy buildings

- Key Tactic 2: Bolster electrification of fleets and shared transportation
- Key Tactic 5: Support local government initiatives to advance decarbonization

Objective C: Innovation and Scale: Leverage leadership, innovation, and regulatory action for scaled impact

- Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

4.6. Transportation Pilots

Ride-Hail Electrification Pilot

Background: This pilot, approved by the Board in March 2020, is Peninsula Clean Energy's first program for the electrification of new mobility options. The project partners with Lyft and FlexDrive, its rental-car partner, to test strategies that encourage the adoption of all-electric vehicles in ride-hailing applications with up to 100 EVs. Because ride-hail vehicles drive much higher than average miles per year, each vehicle in this electrification pilot is expected to save over 2,000 gallons of gas and 20 tons of greenhouse gas emissions per year.

Status: The 100 EV fleet has been put into service by Lyft and Peninsula Clean Energy is monitoring progress. 130+ unique drivers have already rented them, with each rental averaging over a month. 700,000+ all electric miles have been driven so far with an average of 120 miles/day per vehicle, comparable to gas counterparts. Vehicles include a customer-facing placard that informs riders about the pilot and directs them to the PCE website for more information.

EV Managed Charging Pilot

Background: Peninsula Clean Energy aims to facilitate EV charging that avoids expensive and polluting evening hours through "managed charging" systems. This work is in the second phase of a pilot. In 2020, Peninsula Clean Energy ran a proof-of-concept pilot for EV managed charging with startup FlexCharging to test timing of EV charging through vehicle-based telematics. This was a limited pilot with approximately 10 vehicles. The system utilizes existing Connected Car Apps and allows Peninsula Clean Energy to manage EV charging via algorithms as a non-hardware-based approach to shift more charging to occur during off-peak hours. The pilot is moving to Phase 2 intended for a larger set of 1,000 to 2,000 vehicles. In October of 2021, the Board approved a contract up to $220,000 with the University of California, Davis' Davis Energy Economics Program (DEEP) to develop and advise on an incentive structure experiment that will be used to inform the Peninsula Clean Energy managed charging program design. This collaboration has been ongoing.

Status: Staff released an RFP for the telematics-based platform for the Phase 2 pilot and are currently finalizing contract negotiations. The contract for the recommended winner will be brought to the Board for approval shortly. A Technical Advisory Committee, consisting of staff from CEC, CPUC, CCAs, and NGOs, is also informing the pilot and held its first meeting mid-February. The pilot is temporarily delayed to allow staff to focus on near-term priorities, though the contract is expected to be brought to the Board in the fall with a launch in early 2023.

Strategic Plan:

Goal 3 – Community Energy Programs

Community Benefits: Deliver tangible benefits throughout our diverse communities
Key Tactic 1: Invest in programs that benefit underserved communities

Innovation and Scale: Leverage leadership, innovation and regulatory action for scaled impact

Key Tactic 1. Identify, pilot, and develop innovative solutions for decarbonization
Pilot and scale EV load shaping programs to ensure that 50% of energy for EV charging takes places in non-peak hours

5. 2035 Decarbonization Feasibility and Plan

Background: In September 2021 the Board adopted a resolution accelerating its goal of reaching carbon neutrality from 2045 to 2035 as follows “Direct Peninsula Clean Energy to adopt a goal of 100% greenhouse gas free by 2035 and direct staff to return with a plan for achieving that goal.” A Board sub-committee was established including Chair DeGolia and directors Pine, Aalfs, Nash, Parmer-Lohan to oversee the project. The schedule is as follows:

Q1: Schedule, scope, market conditions analysis
Q2: Segments, costs, and finance options
Q3: PCE investment, finance, marketing, roadmap
Sept. Retreat: Present draft analysis & plan
Q4: Confirm and align budget forecast and finalize plan

The final deliverable is to be a slide deck for the retreat and potentially a white paper to follow. In addition, Peninsula Clean Energy’s primary scope for decarbonization was approved:

- Transportation: private passenger vehicles, local government and local commercial fleets, ride-hailing, alternative mobility
- Buildings: single-family and small multi-family residential, office, small commercial

It is envisioned that Peninsula Clean Energy may engage beyond these segments on a limited basis.

Status: Development of the plan is ongoing. The background analysis phase of the project has been completed including detailed assessment of the market conditions, segments and costs, finance options and other components. The most recent components were reviewed by the Board sub-committee on August 11th and work has begun on the elements detailing the specific plan. The plan will be presented at the September Board retreat.

An Advisory Committee was formed including former CEC and CPUC commissioners, national lab directors, senior practitioners, and local government staff and has met twice, on June 6th and July 19th. The sessions have yielded substantive discussion including a number of key questions on rates, equity and other considerations. Advisory Committee participants were:

Jeff Aalfs	Board of Directors, Peninsula Clean Energy
Diane Bailey	Executive Director, Menlo Spark
Jeff Byron	Former CEC Commissioner
Andrea Chow	Sustainability Analyst, City of San Mateo
Pierre Del Forge	Clean Buildings Director, NRDC
Cisco Devries	CEO, OhmConnect
Adrienne Etherton	Sustainability Manager, City of Brisbane
Laura Feinstein	Sustainability Policy Director, SPUR
Zach Franklin	Chief Strategy Officer, GRID Alternatives
Matt Golden	CEO, Recurve
Ortensia Lopez	Executive Director, El Concilio
Loren McDonald	EV Industry Analyst, EVAdoption.com
Joshua Pierce	EVP, Richard Heath and Associates
Mary Anne Piette	Division Director, Lawrence Berkeley National Lab
James Russell	Energy Transition Director, CLEAResult
Nancy Ryan	Former CPUC Commissioner
Justin Zuganis	Director of Decarbonization, Silicon Valley Clean Energy

Strategic Plan:

Goal 3 – Community Energy Programs
Decarbonization Programs: Develop market momentum for electric transportation and initiate the transition to clean energy buildings

Innovation and Scale: Leverage leadership, innovation and regulatory action for scaled impact

Key Tactic 1. Identify, pilot, and develop innovative solutions for decarbonization
Develop strategy for supporting decarbonization by 2035 (updated 2022)

PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: August 12, 2022
BOARD MEETING DATE: August 25, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer

SUBJECT: Energy Supply Procurement Report – August 2022

BACKGROUND
This memo summarizes energy procurement agreements entered into by the Chief Executive Officer since the last regular Board meeting in July. This summary is provided to the Board for information purposes only.

DISCUSSION

Execution Month	Purpose	Counterparty	Term
July	Purchase of Energy Hedge	TransAlta Energy Marketing (U.S.) Inc.	3 Months
July	Purchase of Energy Hedge	Calpine Energy Services, L.P.	12 Months
July	Purchase of Energy Hedge	Morgan Stanley Capital Group Inc.	9 Months
July	Purchase of Resource Adequacy	Calpine Energy Services, L.P.	5 Months
July	Purchase of Resource Adequacy	Silicon Valley Clean Energy	1 Month
April	Sale of Import Allocation Rights for Resource Adequacy	Southern California Edison	1 Month
August	Purchase of Resource Adequacy	Central Coast Community Energy	1 Month
August	Sale of Resource Adequacy	Central Coast Community Energy	1 Month
June	Amendment to EEI Agreement	Brookfield Renewable Trading and Marketing L.P.	N/A
June	Amendment #3 of PPA	Gonzaga Ridge Wind Farm, LLC	N/A

August	Amendment #2 of PPA	Chaparral Solar, LLC	N/A
June	Purchase of Energy Hedge	Constellation Energy Generation, LLC	3 Months
August	Purchase of Carbon Free Energy	Portland General Electric Company	5 Months
August	Purchase of Resource Adequacy	Shell Energy North America (US), L.P.	3 Months

In January 2020, the Board approved the following Policy Number 15 – Energy Supply Procurement Authority.

Policy: "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. Chief Executive Officer has authority to approve Energy Procurement contracts with terms of twelve (12) months or less, in addition to contracts for Resource Adequacy that meet the specifications in section (b) and in Table 1 below.
   b. 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 MW, 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 November 31st of the prior year	Up to 36 months
System Resource Adequacy	In year 1, must demonstrate capacity to meet 90% of system obligation for summer months (May – September) by November 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 November 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. The CEO shall report all such agreements to the PCE board monthly.

2) **Medium-Term Agreements:** Chief Executive Officer, in consultation with the General Counsel, the Board Chair, and other members of the Board as CEO 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 CEO shall report all such agreements to the PCE board monthly.

3) **Intermediate and Long-Term Agreements:** Approval by the PCE Board is required before the CEO enters into Energy Procurement contracts with terms greater than five (5) years.

4) **Amendments to Agreements**: 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.

STRATEGIC PLAN

The contracts executed in November support the Power Resources Objective A for Low Cost and Stable Power: Develop and implement power supply strategies to procure low-cost, reliable power.

California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacommunitypower.org

TO: CC Power Board of Directors and Alternates **DATE:** 8/17/2022
FROM: Tim Haines – Interim General Manager
SUBJECT: **Report on CC Power Special Board of Directors Meeting – August 17, 2022**

The CC Power Board of Directors held its regularly scheduled meeting on Wednesday, August 17, 2022, 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: https://cacommunitypower.org

Highlights of the meeting included the following:

- **Consent Calendar** - The Board unanimously approved the following items:
  - Minutes of the Regular Board Meeting held on June 15, 2022.
  - Resolution 22-08-01 Determination that Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees as a Result of the Proclaimed State of Emergency

- **Resolution 22-08-02 Acceptance of Marin Clean Energy Withdrawal from California Community Power**. MCE provided CC Power with a notice of intent to withdraw from CC Power. The stated reasons are MCE has not participated in CC Power projects and has been successful contracting directly. MCE does note that it anticipates the pause is temporary and expects to rejoin CC Power in the future subject to market and technology needs. The remaining debts that MCE will pay are $5,000.

- **Update from Strategic Business Plan ad hoc Committee**. Interim General Manager informed the Board that the ad hoc Committee is close to selecting a consultant with extensive experience with California public utilities at the Board and executive management level. Mr. Haines explained how the plan will reflect the Board's ideas for future projects, organization, and leadership.

- **Open Discussion on Inflation Reduction Act and Potential Impacts.** The Board discussed the potential significant opportunities that the IRA creates for CC Power and its members. The Chair asked the Interim GM to work with the Budget ad hoc committee and return to the Board with a budget plan to staff up CC Power at a future Board meeting. This will compliment the Strategic Business Plan.

- **General Manager's Report**
  - Follow-up on CC Power Discussion with California Independent System Operator. The Interim GM informed the Board that the CC Power had initiated outreach with the CAISO. The report discussed the next steps in the education and engagement process.

- Resolution 22-08-03 Approval of 2022 Budget Amendment and Cash Calls. The Interim General Manager proposed, and the Board adopted the 2022 budget amendment and the associated cash calls to members.

PENINSULA CLEAN ENERGY

COMMONLY USED ACRONYMS AND KEY TERMS

AB xx – Assembly Bill xx
ALJ – Administrative Law Judge
AMP- Arrears Management Plans
AQM – Air Quality Management
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)
CCP – Community Choice Programs
CEC – California Energy Commission
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
DA – Direct Access
DAC-GT - Disadvantaged Communities Green Tariff
DER – Distributed Energy Resources
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
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
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
IDER – Integrated Distributed Energy Resources
IOU – Investor-Owned Utility (e.g. PG&E, SCE, SDG&E)
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)
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
MW – Megawatt (Power) = 1000 kW
MWh – Megawatt-hour (Energy) = 1000 kWh
MUD – Multi-unit Dwelling
NBCs – non-bypassable charges
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
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)

PCE – Peninsula Clean Energy Authority
PCIA – Power Charge Indifference Adjustment
PCL – Power Content Label
PLA – Project Labor Agreement
POU – Publicly Owned Utility
PPA – Power Purchase Agreement
PPSA – Project Participation Share Agreement (CC Power)
PSPS – Public Safety Power Shutoff
PV – Photovoltaics (solar panels)
RA – Resource Adequacy
RE – Renewable Energy
REC – Renewable Energy Credit/Certificate
RICAPS - Regionally Integrated Climate Action Planning Suite
RPS – California Renewable Portfolio Standard
SB xx – Senate Bill xx
SCP – Sonoma Clean Power
SJCE – San Jose Clean Energy
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
TEF – Transportation Electrification Framework (CPUC Proceeding)
TNCs – Transportation Network Companies (ridesharing companies)
TOB – Tariff on Bill
TOU RATES – Time of Use Rates
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