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(650) 260-0005 | peninsulacleanenergy.com

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

REVISED AGENDA

Thursday, October 27, 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.

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 September 22, 2022 Board of Directors Meeting

3. Approval of Resolution to Honor Citizens Advisory Committee Member Joe Fullerton

4. Authorize the Implementation of New Peninsula Clean Energy Rates for the B6 Rate, Effective November 1, 2022, with a Net 5% Discount in Generation Charges for ECOplus

Compared to PG&E Generation Rates

5. Authorize Peninsula Clean Energy's General Counsel to Execute an Amendment to Extend the Engagement Agreement with Hall Energy Law PC, for a Term of Three-Years Through February 1, 2025 with a Not-to-Exceed Amount of $250,000

CLOSED SESSION

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

6. PUBLIC EMPLOYEE PERFORMANCE EVALUATION Title: Chief Executive Officer

7. CONFERENCE WITH LABOR NEGOTIATORS Agency Designated Representatives: Rick DeGolia and David Silberman; Unrepresented Employee: Chief Executive Officer

8. Reconvene Open Session (If Necessary) To Report Any Action(s) Taken During Closed Session

REGULAR AGENDA

9. Chair Report (Discussion)

10. CEO Report (Discussion)

11. Citizens Advisory Committee Report (Discussion)

12. Approval of Peninsula Clean Energy Integrated Resource Plan (IRP) (Action)

13. Approval of the Audited Financial Statements for Fiscal Year (FY) 2021-2022 (Action) (THIS ITEM WILL BE CONTINUED TO NOVEMBER 17, 2022)

14. Approval of Resolution Delegating Authority to Chief Executive Officer to Execute Energy Storage Service Agreement for an Energy Storage Project with Nova Power, LLC, and any Necessary Ancillary Documents with a Power Delivery Term of 15 Years Starting at the Commercial Operation Date on or About August 1, 2024, in an Amount Not to Exceed $153 Million (Action)

15. (CORRECTED FROM OCTOBER 21, 2022 VERSION) Approval of Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase and Sale Agreement for Renewable Supply with Whitegrass No. 2, LLC, and any Necessary Ancillary Documents

with a Power Delivery Term of 20 Years Starting at the Commercial Operation Date on or About December 31, 2024, in an Amount Not to Exceed $109 Million (Action)

16. Approval of Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase and Sale Agreement for Renewable Supply with Snow Mountain Hydro LLC, and any Necessary Ancillary Documents with a Power Delivery Term of 15 Years Starting on January 1, 2024, in an Amount Not to Exceed $13 Million (Action)

17. Adoption of the Diversity, Equity, Accessibility and Inclusion (DEAI) Policy (Action)

18. Approval of Addition of E-ELEC Rate Tariff for Peninsula Clean Energy Residential Customers (Action)

19. Approval of Seventh Amended and Restated Agreement Between Peninsula Clean Energy Authority and Chief Executive Officer (Action) (THIS ITEM WILL BE CONTINUED TO NOVEMBER 17, 2022)

20. Board Members' Reports (Discussion)

INFORMATIONAL REPORTS

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

22. Q3 Media Relations Report

23. Update on Regulatory Policy Activities

24. Update on Legislative Activities

25. Update on Community Energy Programs

26. Update on Energy Supply Procurement

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

28. 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**

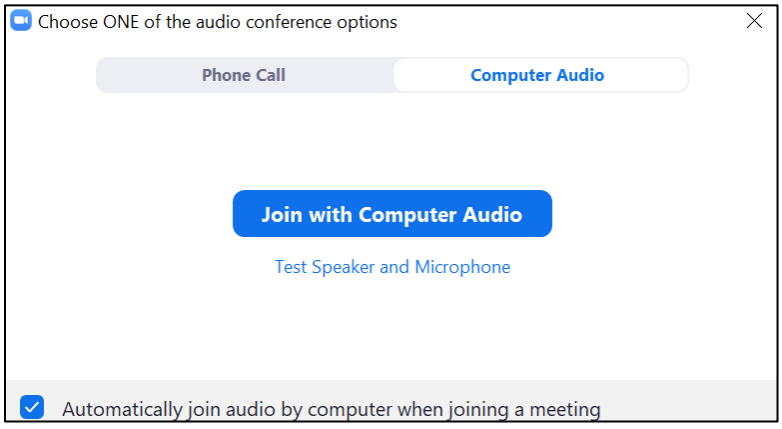
Videoconference Options:

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: October 21, 2022
BOARD MEETING DATE: October 27, 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.

On August 25, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On September 22, 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;

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WHEREAS, on August 25, 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 September 22, 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, September 22, 2022
5:30 p.m.
Zoom Video Conference and Teleconference

CALL TO ORDER

Meeting was called to order at 5:32 p.m. in virtual teleconference.

ROLL CALL

Participating Remotely:

Dave Pine, San Mateo County
Warren Slocum, San Mateo County, arrived at 6:32 p.m.
Rick DeGolia, Atherton, *Chair*
Julia Mates, Belmont, arrived at 6:30 p.m.
Coleen Mackin, Brisbane
Donna Colson, Burlingame, *Vice Chair*
Roderick Daus-Magbual, Daly City
Carlos Romero, East Palo Alto, arrived at 6:23 p.m.
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
Elmer Martinez Saballos, Redwood City
Marty Medina, San Bruno
Laura Parmer-Lohan, San Carlos
Rick Bonilla, San Mateo, arrived at 5:38 p.m.
James Coleman, South San Francisco

Pradeep Gupta, Director Emeritus
John Keener, Director Emeritus

Absent:

Raquel Gonzalez, Colma
Tom Faria, Los Banos
Jennifer Wall, Woodside

A quorum was established.

PUBLIC COMMENT

None

ACTION TO SET THE AGENDA AND APPROVE REMAINING CONSENT AGENDA ITEMS

MOTION: Director Aalfs moved, seconded by Chair DeGolia to set the Agenda, and approve Agenda Item Numbers 1-2.

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 August 25, 2022 Board of Directors Meeting

MOTION PASSED: 15-0 (Absent: San Mateo County, Belmont, Colma, East Palo Alto, Los Banos, Redwood City, San Mateo, Woodside)

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	15			8

REGULAR AGENDA

3. Chair Report

Chair DeGolia reported that Board Member Marty Medina was appointed to the Audit and Finance Committee and noted the Audit and Finance Committee, and the Executive Committee will meet on Wednesday, October 12, 2022 instead of the regular Monday meeting.

4. CEO Report

Jan Pepper, Chief Executive Officer, gave a report including a staffing update, a timeline for tonight's meeting, and information on upcoming meetings, including the Wednesday meetings for the Audit and Finance Committee and Executive Committee.

5. Citizens Advisory Committee Report

Cheryl Schaff, Citizens Advisory Committee (CAC) Chair, gave a report recapping the September 8, 2022 Citizens Advisory Committee Meeting including updates on CAC working group directives and progress made.

6. Approve an Amended and Restated Power Purchase Agreement (PPA) with Arica Solar + Storage (Action)

Chelsea Keys, Interim Director of Power Resources, gave a presentation including background on the project, information on challenges and disruptions in the energy market, impacts to buyers in the market, the California Public Utilities Commission (CPUC) mid-term reliability decision, impacts on Arica and Peninsula Clean Energy, and information on the procurement subcommittee meetings for this topic.

Director Bonilla asked if this project would continue to be built under a Project Labor Agreement. Chelsea responded that it would.

Director Emeritus Gupta asked if Arica Solar was the only contractor who returned to Peninsula Clean Energy to address an existing PPA due to supply chain issues. Chelsea Keys explained that last month Chaparral Solar was brought to the Board for a similar amendment approval.

Public Comment: David Mauro

MOTION: Director Bonilla moved, seconded by Director Pine to Approve Resolution Delegating Authority to the Chief Executive Officer to Execute an Amended and Restated Power Purchase and Sale Agreement (A&R PPA) with Arica Solar, LLC, and any necessary ancillary documents.

MOTION PASSED: 16-0 (Absent: San Mateo County, Belmont, Colma, East Palo Alto, Los Banos, Redwood City, Woodside)

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	16			7

7. Diversity, Equity, Accessibility, and Inclusion (DEAI) Policy Update (Discussion)

Shayna Barnes, Operations Specialist, gave a presentation that included an update that the DEAI Policy approval will be moved to October, but emphasized keeping diversity, equity, accessibility, and inclusion in mind throughout the evening's discussions.

Director Daus-Magbual shared that he is proud to be a part of this process.

Vice Chair Colson added that she sent an introductory email to the San Mateo County Reach Coalition to begin collaboration with Peninsula Clean Energy. Shayna shared that earlier in the DEAI process there had been collaboration with the Reach Coalition, but that it would be great to reconnect further along in the process.

8. Strategic Plan Dashboard Update

Jan Pepper, Chief Executive Officer, introduced the strategic plan dashboard update including material updates since the September 2021 Board Meeting, context on the market and industry, and an update on Peninsula Clean Energy's two organizational priorities.

Chelsea Keys, Interim Director of Power Resources, shared an update for Power Resources.

Rafael Reyes, Director of Energy Programs, shared an update for Community Energy Programs.

KJ Janowski, Director of Marketing and Community Relations shared an update for Marketing and Community Relations.

Leslie Brown, Director of Account Services, shared an update for Account Services.

Jeremy Waen, Directory of Regulatory Policy, and Marc Hershman, Director of Government Affairs, shared an update for Public Policy.

Kristina Cordero, Chief Financial Officer, shared an update on Financial Stewardship.

Jan Pepper concluded the presentation and shared an update on Organization Excellence.

Director Emeritus Gupta asked about a study for cost-based rate setting for Peninsula Clean Energy.

Jan explained that this item is part of the 2023 priorities. Kristina Cordero explained that the cost-of-service study is identified in the more detailed Board Memo for this item. Jan also thanked Shawn Marshall for her work putting together this presentation.

Public Comment: Bruce Karney, Drew

Kristina explained the decrease in days cash on hand as a decrease due to weathering an increase in expenditures in 2022.

Chair DeGolia made note of the success in Los Banos with only a 3% opt-out rate. KJ Janowski explained that the 97% participation rate is for the whole territory, including San Mateo County, and that the participation rate in Los Banos is currently at 95% though enrollment in Los Banos in not yet complete.

The Board of Directors took a break from 6:48 p.m. and returned at 6:53 p.m.

9. Update and Discussion on 100% Renewable on 24/7 Basis by 2025

Jan Pepper, Chief Executive Officer, introduced the team who will be sharing the report on the 100% Renewables on a 24/7 Basis by 2025 item as well as a presentation outline, information on terminology used in the presentation, background information on this organizational priority, progress to date, and a recommendation to target 99% time-coincident renewable energy on a planning forecast basis.

Sara Maatta, Senior Renewable Energy and Compliance Analyst presented background on this goal including Peninsula Clean Energy's supply on an annual basis, the 24/7 emissions footprint, annual accounting versus 24/7 accounting, and phasing for the time-coincident renewable goal.

Greg Miller, PhD candidate at UC Davis and Peninsula Clean Energy Intern, presented the modeling approach including the 24/7 objective, types of modeling, resources considered for the 24/7 goal, renewable goal scenarios and market sensitivity scenarios. Greg also presented the results for portfolios for 24/7 renewable energy including the current portfolio, the new capacity required to add to Peninsula Clean Energy's portfolio and information on excess generation.

Director Rarback asked where the 46% excess generation would go. Greg explained that the excess generation would be used by the grid, but it would not count towards meeting the 24/7 goal and wouldn't necessarily be used by Peninsula Clean Energy's consumers, though with increased electrification our consumers could grow into that portfolio in the future. Jan added that the excess energy generated would be sold into the market.

Director Bonilla asked for further information on the risk of excess generation. Greg explained that it could cause more potential market risk.

Chair DeGolia added that the California Public Utilities Commission (CPUC) currently requires more energy generated than customers consume. When you sell the excess generation into the market there is a risk you cannot cover your costs.

Director Pine asked why the amount of energy required for 100%-time coincidence is so different from 99%-time coincidence. Greg explained that there are certain hours of the year that there are not a lot of renewable sources available, such as winter evenings, The more cost-effective way to jump from 99% to 100% is through dramatically increasing the amount of storage.

Mehdi Shahriari, Senior Renewable Energy Analyst, continued the presentation by sharing results for the cost of 24/7 renewable energy including assumptions around the cost of energy, the cost of time-coincident procurement, market sensitivity analysis, stochastic results, the range of likely outcomes and risk premiums.

Chair DeGolia noted that this is the critical area of risk in Peninsula Clean Energy's business and very technical. When you buy energy, you buy the actual power and renewable energy credits and how you manage that is where the risk is.

Director Romero asked how the resale of energy was calculated. Mehdi explained that the resale assumes the sale of excess resource adequacy (RA) or renewable energy credits (REC) at a discounted rate. Director Romero asked for clarification on what the discounted rate is. Mehdi replied that the discount anticipates between 75-80% of the full value.

Chair DeGolia asked more clarification on the incremental difference between the cost of energy with resale and with no resale between 95% and 99% hourly. Mehdi explained that the incremental differences at a 96%, 97% and 98% hourly matching would fall between 95% and 99% on the range of likely outcomes. Mehdi explained the large difference at 100% hourly is due to a much higher amount of additional capacity in the portfolio.

Public Comment: Mark Roest, Drew, Bruce Karney

Director Emeritus Gupta suggested that demand possibilities were not taken into account in this modeling and that there might be some refinement if demand possibilities are also included. Mehdi explained that changes in load shapes for electric vehicle charging and building electrification were considered, but demand response is something that will be considered in the future.

Director Romero asked if a no-resale possibility exists because the market could be saturated and Peninsula Clean Energy couldn't sell the excess energy. Mehdi explained that in the long-term, if more communities are setting high renewable targets, there might be a smaller demand in the market for these attributes. In the near-term, there is more certainty for how much Peninsula Clean Energy can sell these attributes.

Director Aalfs noted that the grid of the future could allow for integrating with the rest of the Western U.S. and that it is remarkable that 99% time-coincident renewable energy with only a modest increase in costs is being presented.

Director Emeritus Keener stated that 99% coincident power at 2% more cost is something most all of us would do.

Mehdi continued the presentation including the results of emission and grid impacts of 24/7 renewable energy including information on the hourly carbon footprint, avoided emissions, impacts on the grid with system net peak and real time operations with time-coincident performance.

Director Romero asked if the target would be for 99% time-coincident but looking at a target between 96-98%? Mehdi explained that the planning forecast is for 99% time coincident as phase 1 of modeling. In phase two, following the year 2025, there will be a focus on real-time with access to load data from PG&E.

Sara continued the presentation discussing challenges and risks.

Chair DeGolia noted that requirements from the CPUC and regulatory uncertainty are a risk. Chair DeGolia also noted two retrospective insights on purchasing solar resources too slowly when prices were low and not purchasing enough energy with Geysers geothermal. Chair DeGolia stated that Peninsula Clean Energy should be proud of diving into the 24/7 goal.

Vice Chair Colson noted that the listed risks are incremental and already exist. Vice Chair Colson supports ways to mitigate financial risks.

Director Aalfs added with regulatory uncertainty, Peninsula Clean Energy is redefining the regulatory risks and that the state will be watching to see what happens with the time-coincident roll out.

Director Romero shared that from a risk mitigation perspective this may require the Committees to think about financial reserves to implement 24/7 and cover the uncertainties.

Director Emeritus Keener noted that wind energy is most susceptible to unfavorable contracts. The California market is saturated and may cost more.

Director Bonilla noted that there are two types of risks, the calculated risks as presented by staff which have been extensively reviewed, and other uncalculated risks.

Director Emeritus Gupta noted some opportunities as other Community Choice Aggregators and neighboring organizations make their own estimations of time-coincident energy. He noted there are possibilities of creating a market of reserves that may be more optimal than each organization looking at it themselves in isolation.

Chair DeGolia asked if there is a request to change the goal from 100% to 99%? Jan explained this Agenda Item is not listed as an action item, but that staff could return with that.

Sara concluded the presentation with a summary, recommendation, and next steps.

Public Comment: Mark Roest, Bruce Karney

SWEARING IN OF NEW BOARD MEMBER

David Silberman, General Counsel, presided over the official swearing-in of new Board Member Elmer Martinez Saballos from the City of Redwood City.

The Board of Directors took a break from 8:34 p.m. and returned at 8:40 p.m.

10. Update and Discussion on 2035 Decarbonization Plan

Jan Pepper, Chief Executive Officer, and Rafael Reyes, Director of Energy Programs, introduced the second strategic priority: the 2035 Decarbonization Plan.

Director Aalfs remarked that he was awestruck by the amount of work went into this strategic priority including the involvement of the advisory committee comprised of the who's who of sustainability leaders from many sectors.

Rafael presented the advisory committee members and shared key comments made by the committee, recapped the project schedule and Peninsula Clean Energy's 2035 plan scope

Phillip Kobernick, Programs Manager for Transportation, presented on transportation including electric vehicle (EV) growth for new vehicle sales, current EV charging distribution, and analysis and conclusions for transportation.

Blake Herrschaft, Programs Manager for Buildings, presented on the impact of utility rates, overarching income distribution in San Mateo County, small residential income distribution in San Mateo County, a special challenge for very low-income in San Mateo County, and analysis and conclusions for buildings.

Rafael continued the presentation with feasibility conclusions for the Peninsula Clean Energy 2035 Decarbonization Plan and scaling and partnerships including generating scale, acting with others, the San Mateo County Neutrality Action Plan and replication.

Director Nash noted that BlocPower may be worth exploring for partnerships.

Director Romero suggested partnering with Metropolitan Transportation Commission (MTC) for future collaborations as well as BayREN.

Rafael continued the presentation on financial strategy including key principles, and modeling assumptions. Blake continued the presentation on the financial model on the building side including the current cost of home upgrades, and information on electrification of existing buildings in comparison to the gas replacements. Phillip continued the presentation on the financial model on the transportation side including EV charging and vehicles.

Rafael continued the presentation including risks and uncertainties and introduced program concepts. Blake continued the presentation with buildings electrification and reach codes and other local policies. Phillip continued the presentation with transportation electrification. Rafael added Peninsula Clean Energy as a conduit to capital.

Director Romero asked about buying down the rates on PACE funding for low-income families and if a rate subsidization program for PACE funders would make some of the electrification of homes slightly less costly. Rafael explained there is intent to explore this.

Director Mackin asked about solutions to the high electrification cost of residences and of other companies besides Harvest Thermal producing this type of equipment. Director Mackin asked if Peninsula Clean Energy could accelerate development of that type of equipment to bring down the costs. Rafael explained that four pilot systems are in operation with Harvest Thermal, an innovation pilot that does both water and space heating with a single unitary system. Staff is currently tracking other companies that are trying to do the same thing; currently, there are three companies that staff is aware of.

Vice Chair Colson suggested a consistent, easy to access location on data for electrification programs and how the programs can integrate with each other. Vice Chair Colson also suggested creating a “store front” where only electric options are available for the public to explore, as well as partnering with retailers to incentivize selling electric options. Rafael explained that some of those elements have been incorporated, such as establishing a one stop shop to support and navigate and that engaging retailers is something staff can look at.

Director Mackin suggested more outreach to contractors to facilitate adoption; many contractors will negate electrification because they are unfamiliar with it and steer residents towards status quo.

Director Bonilla added that trained electricians and the workforce exist, but that demand is missing. Director Bonilla added that industry adapts to demand – if cities pass reach codes it will induce demand.

Director Nash suggested working together to get reach codes passed. Sacramento Municipal Utility District (SMUD) is doing a 1-800, make one phone call and people will come help replace immediately rather than working it out during an emergency. Director Nash noted the permit process needs some help - permitting for electrification is more difficult than with gas.

Chair DeGolia noted that high electricity rates are a large challenge noting the difference between Peninsula Clean Energy’s rates and SMUD being about 3:1. With this large difference it will be difficult to get mainstream adoption.

Rafael continued the presentation with policy needs, including key regional and state policies

Director Aalfs noted that rates do not need to be as good as SMUD; they just need to be better than PG&E gas rates.

Rafael concluded the presentation with next steps.

Public Comment: Diane Bailey, Mark Roest, Bruce Karney

11. Board Members’ Reports

Director Bigstyck noted that Fog Fest will take place in Pacifica this weekend.

ADJOURNMENT

Meeting was adjourned at 9:53 p.m.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: October 14, 2022
BOARD MEETING DATE: October 27, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Kirsten Andrews-Schwind, Senior Manager of Community Relations

SUBJECT: Resolution to Honor Citizens Advisory Committee Member Joe Fullerton

RECOMMENDATION:
Adopt a resolution honoring Joe Fullerton, member of the Citizens Advisory Committee.

BACKGROUND:
Peninsula Clean Energy's Citizens Advisory Committee (CAC) was formed by its Board of Directors in 2017. The committee is made up of up to 15 dedicated community volunteers who give their time and expertise as community liaisons and provide feedback on priorities of the organization.

DISCUSSION:
Joe Fullerton served as a valuable member of the CAC since 2017, enriching discussions with his practical experience with green buildings, electrification projects, and community education. He championed workforce development in electrification as the lead of the Work Force Working Group in 2020. As a member of working groups related to education, resiliency & distributed resources, and role of Citizens Advisory Committees, Joe lent his expertise to strengthen Peninsula Clean Energy and further the agency's mission across several areas. Joe also served as a liaison between Peninsula Clean Energy and the San Mateo County Community College District.

Joe is stepping off the Citizens Advisory Committee in October 2022. At its meeting on October 13 2022, the Citizens Advisory Committee (CAC) unanimously approved the following language honoring Joe Fullerton's service to Peninsula Clean Energy. The Citizens Advisory Committee recommends that the Board of Directors approve this resolution to formally recognize and honor Joe Fullerton's key contributions.

PENINSULA CLEAN ENERGY

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY BOARD OF DIRECTORS,

COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

RESOLUTION HONORING THE SERVICE OF CITIZENS ADVISORY COMMITTEE MEMBER JOE FULLERTON

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

WHEREAS, Peninsula Clean Energy's Citizens Advisory Committee (CAC) was formed by its Board of Directors in 2017. The committee is made up of up to 15 dedicated community volunteers who give their time and expertise as community liaisons and provide feedback on priorities of the organization; and

WHEREAS, the Citizens Advisory Committee and Peninsula Clean Energy staff would like to formally recognize and honor Joe Fullerton's key contributions to the organization.

WHEREAS, Joe Fullerton served as an active member of the Citizens Advisory Committee since 2017, enriching discussions with his practical experience with green buildings, electrification projects, and community education. He championed workforce development in electrification as the lead of the Work Force Working Group in 2020. As

a member of working groups related to education, resiliency & distributed resources, and role of Citizens Advisory Committees, Joe lent his expertise to strengthen Peninsula Clean Energy and further the agency's mission across several areas. Joe also served as a liaison between Peninsula Clean Energy and the San Mateo County Community College District.

BE IT RESOLVED that the Peninsula Clean Energy Citizens Advisory Committee and staff expresses their deep gratitude for the contributions of Joe Fullerton to the success of the organization.

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PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: October 17, 2022
BOARD MEETING DATE: October 27, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Leslie Brown, Director of Account Services

SUBJECT: Authorize the implementation of new Peninsula Clean Energy rates for the B6 rate, effective November 1, 2022, with a net 5% discount in generation charges for ECOplus compared to PG&E generation rates

RECOMMENDATION:

Approve a Resolution authorizing the implementation of new Peninsula Clean Energy ECOplus rates for the B6 rate, effective November 1, 2022, to reflect a net 5% discount relative to October 1, 2022 PG&E rates.

BACKGROUND:

On September 23, 2022, PG&E issued Advice Letter 6713-E whereby PG&E adjusted the rate structure of the B6 tariff. PG&E originally approved this change as part of its 2020 GRC Phase 2 proceeding, with the requirement that changes to B6 be implemented by November 2022. Adjustments to the TOU differentials impact both the Distribution and Generation components of the rate; changes to the Generation components will result is increases to the Peak rates in both the Winter and Summer seasons with decreases in the Off Peak and Super Off Peak rates. These changes to the Generation components necessitate that Peninsula Clean Energy adjust its rates to maintain the 5% discount value proposition for ECOplus.

FISCAL IMPACT:

The October 1, 2022 changes to the B6 tariff which PG implemented will have nominal impacts to Peninsula Clean Energy's financial position. Such is the case because PG&E's shift in TOU differentials is intended to be a 'revenue neutral' change; however, because Peninsula Clean Energy serves only a subset of PG&E's customers, the change will not

be entirely revenue neutral for Peninsula Clean Energy. B6 is an optional small commercial rate. PG&E notified Customers taking service under this rate of the upcoming change to the rate in September 2022.

STRATEGIC PLAN:

Adjusting PCE rates to maintain the net 5% discount value proposition is consistent with PCE's goal of providing customers with cleaner electricity at a lower cost than what would otherwise be provided by PG&E.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO,

STATE OF CALIFORNIA

*** * * * * ***

RESOLUTION AUTHORIZING THE IMPLEMENTATION OF NEW PENINSULA CLEAN ENERGY RATES FOR THE B6 RATE, EFFECTIVE NOVEMBER 1, 2022, TO MAINTAIN A 5% DISCOUNT IN GENERATION CHARGES AS COMPARED TO PG&E GENRATION RATES

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

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

WHEREAS, on October 1, 2016 Peninsula Clean Energy began offering service to residents and businesses throughout San Mateo County;

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

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

WHEREAS, on October 1, 2022, PG&E implemented adjustments to the generation rates for the rate structure of the B6 tariff (the "B6 Rate"); and

WHEREAS, PG&E's rate changes necessitate that Peninsula Clean Energy adjust its ECOplus rates to maintain a net 5% discount value proposition for generation charges.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board authorizes the Chief Executive Officer to implement new Peninsula Clean Energy ECOplus rates for the B6 rate for San Mateo County and the City of Los Banos, to maintain a net 5% discount in generation charges compared to PG&E, effective November 1, 2022.

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PENINSULA CLEAN ENERGY
JPA Board Correspondence
General Counsel

DATE: October 17, 2022
BOARD MEETING DATE: October 27, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable PCE Joint Powers Board

FROM: David A. Silberman, General Counsel
Jennifer Stalzer, Associate General Counsel

SUBJECT: Authorize the General Counsel to execute with the law firm of Hall Energy Law PC, Amendment(s) to the Existing Retention Agreement or alternatively, Additional Retention Agreements in substantially the same form already approved by the Board, allowing for a Term Extension through 2025.

RECOMMENDATION:
Adopt a Resolution authorizing the General Counsel to execute with the law firm of Hall Energy Law PC amendment(s) to the existing retention agreement or alternatively, additional retention agreements in substantially the same form already approved by the Board, allowing for a term extension through February 2025.

BACKGROUND:
The County Attorney's Office provides legal services to the Peninsula Clean Energy (PCE) Authority pursuant to a contract approved by the Board March 24, 2016 and subsequently amended to extend the term and increase the amount.

Pursuant to that agreement, the County Attorney's Office serves as General Counsel to the Board and has authority to retain services of outside counsel in an amount not to exceed $25,000.

Certain projects important to PCE can benefit from time-to-time by the assistance of lawyers who focus primarily and/or specialize in those areas of law, including the litigation of complicated regulatory proceedings before the California Public Utilities Commission ("CPUC") and negotiation of complex power purchase agreements.

In January 2021, the PCE Board approved an amendment authorizing the General Counsel to execute with Hall Energy Law PC, an engagement agreement allowing for a

term from February 2021 through February 2022 in an amount not to exceed of$250,000. Due to a clerical oversight, the January 2021 amendment expired in February 2022 with funds of $208,000 remaining. PCE Staff is rectifying this issue through presentation of this amendment.

DISCUSSION:

Stephan Hall, then of Troutman Sanders, was PCE's first outside counsel for power purchase agreements, and has provided PCE with significant assistance in negotiating many of PCE's power purchase agreements since approval by the Board to engage his services on August 11, 2016. PCE staff and management have been very satisfied with that assistance to date.

The cost of Mr. Hall's legal services since 2021is approximately $42,000 and has not exceeded previously authorized amounts as allocated by the Board. At this point, PCE has budgeted to spend $780,000 per year on legal fees related to the negotiation of power purchase agreements and expects to continue doing so for the foreseeable future.

Accordingly, we are asking the Board to authorize the General Counsel to execute amendment(s) to the existing agreement previously approved by the Board or alternatively, additional agreements in substantially the same form already approved by the Board as long as the total amount of all amendments or agreements provide for a total expenditure not to exceed $250, inclusive of all amounts expended to date. The term of the amendment shall be retroactive from February 2022 and extend through February 2025.

RESOLUTION NO. _____

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

* * * * * *

RESOLUTION AUTHORIZING GENERAL COUNSEL TO EXECUTE WITH THE LAW FIRM OF HALL ENERGY LAW PC AMENDMENT(S) TO THE EXISTING RETENTION AGREEMENT OR ALTERNATIVELY, ADDITIONAL RETENTION AGREEMENTS IN SUBSTANTIALLY THE SAME FORM AS PREVIOUSLY APPROVED BY THE BOARD, ALLOWING FOR A TERM EXTENSION THROUGH FEBRUARY 2025 WITH NO INCREASE TO THE TOTAL NOT TO EXCEED AMOUNT OF $250,000

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") was formed on February 29, 2016; and

WHEREAS, the JPA Agreement forming Peninsula Clean Energy delegates to the Board the power to hire a General Counsel pursuant to Paragraph 3.3.2; and

WHEREAS, the San Mateo County Attorney's Office has been appointed General Counsel and has been delegated authority to retain outside legal services in amounts not to exceed $25,000; and

WHEREAS, the General Counsel determined it necessary to seek outside legal services related to the negotiation of Power Purchase Agreements, and in January 2021 this Board authorized the General Counsel to engage Hall Energy Law PC on behalf of Peninsula Clean Energy for that purpose and to execute the retention agreement then presented to the Board; and

WHEREAS, the Board approved that amendment on January 28, 2021;

WHEREAS, the contract with Hall Energy Law PC lapsed in February 2022 due to a clerical oversight and staff wishes to amend and update the contract to accurately reflect the current term;

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the General Counsel is authorized to execute with the law firm of Hall Energy Law PC additional retention agreements in substantially the same form as previously approved by the board, allowing for a term extension through February 2025 with no increase to the total not to exceed amount of $250,000.

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PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: October 21, 2022
BOARD MEETING DATE: October 27, 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

Staffing Updates
We have filled the Strategic Accounts Manager and will be welcoming Justin Pine to PCE on November 28!

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

Director of Power Resources
Marketing Communications Specialist / Senior Specialist

Third Quarterly All-Staff In-Person Meeting
On October 18, Peninsula Clean Energy staff held our third quarterly in-person all-staff meeting. As before, it was wonderful to get the entire staff together, and to have everyone personally meet the new staff members who have joined us since our last all-staff meeting on July 12. The focus of the day was on DEAI training for all of the staff, with a 4-hour training session provided by Darrylyn Swift of Premier OD.

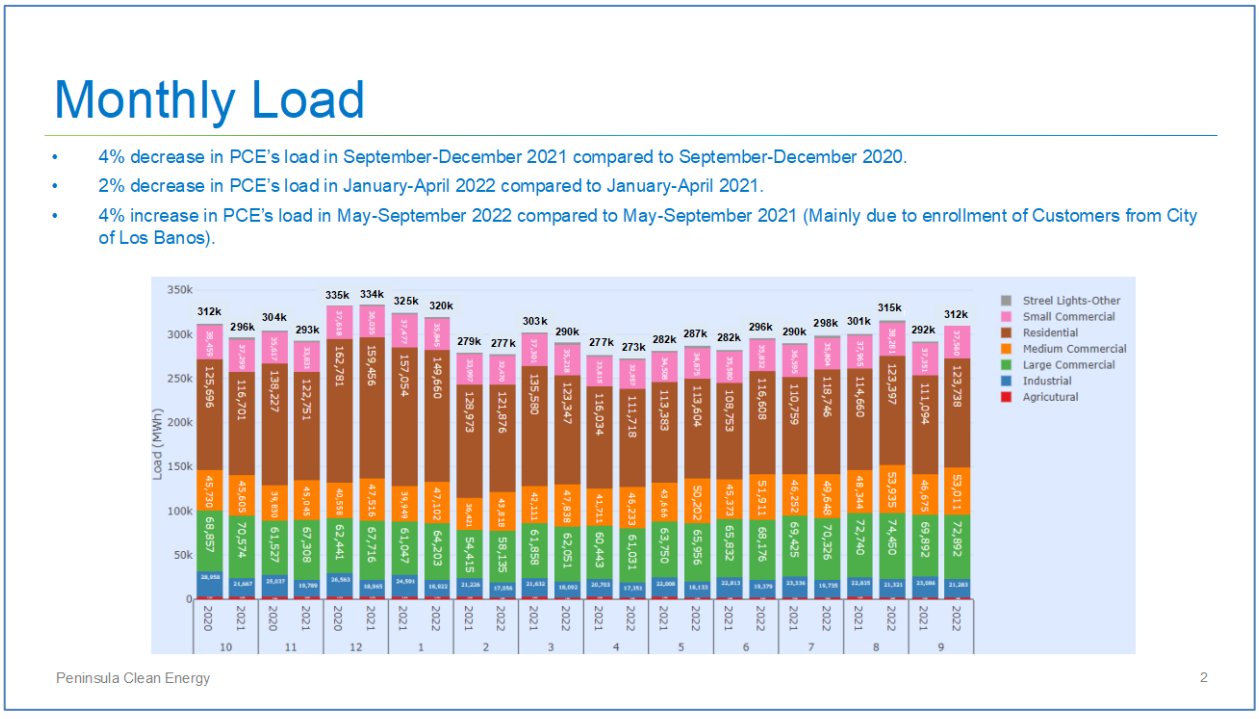
Presentations
I am continuing to make presentations on what's happening at Peninsula Clean Energy to various city councils:

- October 3: presentation to the Redwood City City Council.
- October 12: presentation to the Portola Valley Town Council.
- October 20: presentation to the Brisbane City Council
- October 25: presentation to the Woodside City Council.

On October 19, I gave a presentation on CCAs and our progress to the Peninsula Division of the League of California Cities meeting in Menlo Park.

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 October 2020 through September 2022. We saw a 4% decrease in PCE's overall load in January – April 2022 compared to January – April 2021. We see a 4% increase in PCE's load in May – September 2022 compared to May – September 2021 mainly due to enrollment of customers from the City of Los Banos. 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 September 2022 compared to those same months in 2021. Residential and commercial load continues to show an increase since May 2022 through September 2022 compared to last year. The third graph, "Load Shapes (PCE)", shows the change overall in our load on an hourly basis. September 2022 load was higher than the comparable 2020-2021 loads in all hours. Thank you to Mehdi Shahriari on our Power Resources team for compiling these graphs.



Monthly Load Changes by Customer Class

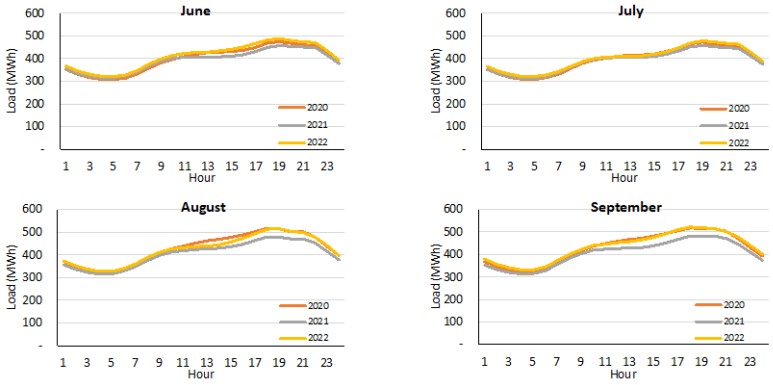
- In September-December 2021, Residential and Industrial load was significantly lower compared to same months in 2020, mainly due to the heatwaves that we experienced in 2020.
- In January-April of 2022, Industrial and Residential load was lower compared to same months in 2021. Commercial load was higher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

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

* For months 10-12, the heatmap shows how much load in 2021 was lower/higher compared to same month in 2020. For months 1-9, the heatmap shows how much load in 2022 was lower/higher compared to same month in 2021

Load Shapes (PCE)

- 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.
- August: 2022 Load was higher than 2021 load in all hours.
- September: 2022 load was higher than 2021 load in all hours.



Reach Codes

Below is a newly formatted table showing the status of Reach Code adoption by Peninsula Clean Energy jurisdictions, including the status for reach codes for New Construction and reach codes for Existing Buildings. San Bruno adopted new construction reach codes on October 11, 2022. Atherton passed their first reading of new construction reach codes this month. Portola Valley passed their first reading of new construction and some existing building reach codes on October 12, with second reading planned on October 26, 2022. A number of jurisdictions are looking at re-adoption of the new construction reach codes they adopted during the previous round. San Carlos is planning a study session on existing construction reach codes for January 2023.

	Member Agency	2019 Status	2022 Status: New Construction	2022 Status: Existing Construction
New	Atherton		Passed first reading 10/19	
	Belmont	Adopted		
	Brisbane	Adopted	Re-adoption in-progress	Exploring
	Burlingame	Adopted	Re-adoption in-progress	
	Colma	Adopted		
	County of San Mateo	Adopted		
	Daly City	Adopted	Re-adoption in-progress	
	East Palo Alto	Adopted		
	Foster City			
	Half Moon Bay	Adopted		
	Hillsborough	Adopted		
	Menlo Park	Adopted	Re-adoption in-progress	Exploring
	Millbrae	Adopted		
	Pacifica	Adopted		
New	Portola Valley		Passed first reading 10/12, second reading planned 10/26	
	Redwood City	Adopted	Re-adoption in-progress	
New	San Bruno		Adopted 10/11	
	San Carlos	Adopted	Re-adoption in-progress	Study session on 1/23/23
New	San Mateo	Adopted	Passed first reading 10/17, second reading planned 11/7	
	South San Francisco	Adopted		
	Woodside			

Other Meetings and Events Attended by CEO

Attended weekly and monthly CalCCA Board and Executive Committee meetings.

Attended CC Power Board Meeting on October 19

Item No. 12

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: October 21, 2022
BOARD MEETING DATE: October 27, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Janis C. Pepper, Chief Executive Officer
Sara Maatta, Senior Renewable Energy and Compliance Analyst

SUBJECT: Approve 2022 CPUC Integrated Resource Plan Submission

RECOMMENDATION:

Approve the results of the Integrated Resource Plan analysis and the submission of those results as presented by staff, or in a form substantially similar to that presented by staff and direct the CEO to prepare and submit the final narrative and data templates to the CPUC on or before November 1, 2022.

BACKGROUND:

The Integrated Resource Plan ("IRP") is a long-term planning proceeding intended to evaluate the safety, reliability, and cost-effectiveness of the electric supply of entities subject to the CPUC's jurisdiction[1] to ensure that California's electric supply is safe, reliable, and affordable. The IRP is the implementation mechanism for Senate Bill ("SB") 350 and SB 100, with the goal of achieving a Renewable Portfolio Standard (RPS) content of 60% by 2030, and a zero-carbon goal for all retail electricity by 2045. The IRP proceeding looks 10 to 15 years forward to determine the least-cost resource mix, including demand modifiers, required to meet these goals while maintaining system reliability.

SB 350 (de León, 2015) set the RPS content to be 50% by 2030. SB 100 (de León, 2018) accelerated the RPS to 60% by 2030, and set a zero-carbon goal for all retail electricity by 2045.

All Load Serving Entities (LSEs) in California are required to produce and submit to the CPUC an IRP on or before November 1, 2022. The CPUC engages in a two-year planning cycle for IRPs. The main steps of the IRP process are as follows:

[1] This includes investor-owned utilities (IOUs), community choice aggregators (CCAs), and electricity service providers (ESPs).

1. The CPUC conducts statewide modeling to determine the aggregate resources needed for the electricity sector to meet its future greenhouse gas ("GHG") reduction goals under SB 350 and SB 100. The result of this analysis is the Reference System Plan ("RSP"). The CPUC has signaled that it may move away from developing RSPs in every odd numbered year, and may instead develop RSPs on an "as-needed" basis.
2. Individual LSEs develop IRPs based on the statewide planning process and submit those plans to the CPUC in even numbered years.
3. The CPUC aggregates individual IRPs into a Preferred System Plan, which represents the aggregate behavior of the electricity sector if all LSEs procure according to their IRPs. The aggregate behavior of all LSEs may be adjusted to ensure statewide goals are met. The aggregated procurement is the Preferred System Plan. The Preferred System Plan is developed in odd numbered years.
4. The CPUC compares between the RSP and the Preferred System Plan to determine whether sector-wide GHG mitigation targets will be met and whether corrective action is needed.

The first cycle occurred in 2018-2019, and the second cycle occurred in 2020-2021. Peninsula Clean Energy staff are now preparing to submit Peninsula Clean Energy's third IRP in the 2022-2023 cycle.

The CPUC requires each LSE to submit portfolios that achieve their proportional share of two alternative statewide electric sector GHG targets: (1) 30 million metric tons (MMT) of GHG emissions by 2035; and (2) 25 MMT of GHG emissions by 2035. A single portfolio may be used to satisfy both scenarios if that portfolio meets or exceeds the LSE's assigned GHG emissions reduction goals in the 25 MMT scenario. The inputs and assumptions used in each scenario must be consistent with CPUC-assumptions; the required assumptions are discussed below. Entities are also permitted to submit alternative portfolios that use different assumptions, however the CPUC will not use alternative portfolios in the aggregate analysis of state-wide procurement.

Staff are recommending that the Board:

1. Approve results of IRP analysis as presented by staff, or in a form substantially similar to that presented by staff.
2. Authorize staff to use the results of the IRP analysis to populate the CPUC-required document templates and direct the CEO to approve the final IRP reports on behalf of the Board for submittal to the CPUC on or before November 1, 2022.

DISCUSSION:

To comply with the IRP, the CPUC requires LSEs to complete and submit three documents by November 1, 2022[2]: the IRP Narrative Template, the Resource Data Template, and the

[2] These filing requirements are defined by CPUC Decisions 18-02-018, 22-02-004, and the documents available on the CPUC's 2022 IRP Cycle Events and Materials website here: https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/long-term-procurement-planning/2022-irp-cycle-events-and-materials

Clean System Power Calculator according to the instructions and filing requirements provided by the CPUC[3]. Each document is described below, followed by a discussion of the filing requirements, the CPUC's modeling inputs and assumptions, an overview of Peninsula Clean Energy's approach to IRP analysis and a discussion of the results of our analysis. Peninsula Clean Energy plans to report a single portfolio that will meet or exceed our GHG emissions reductions targets in both scenarios.

Required Templates

Narrative Template
This document provides a written description of the approach to completing the IRP, including a description of the analytical work, results of the analysis, and action plan. LSEs develop a single Narrative Template that describes all the portfolios developed for the IRP.

Resource Data Template
This document is an Excel workbook that reports energy and capacity contracts that are indicated from the analysis as necessary to meet or exceed the 30 MMT and 25 MMT scenarios. The CPUC uses this document to analyze and aggregate individual entities' IRP portfolios. LSEs submit one Resource Data Template for each portfolio developed for the IRP. Peninsula Clean Energy will submit one Resource Data Template.

Clean System Power Calculator
This document is an Excel workbook that calculates the estimated GHG and criteria air pollutant emissions associated with each of the portfolios detailed in a Resource Data Template. The CPUC uses this document to check that each entity meets the required GHG targets. LSEs submit one Clean System Power Calculator for each portfolio developed for the IRP, or if an LSE is only submitting a single portfolio, that LSE shall submit two Clean System Power Calculators, demonstrating the performance of the portfolio in each of the two GHG emissions scenarios (30MMT and 25MMT). Peninsula Clean Energy will submit two Clean System Power Calculators; one demonstrating that our portfolio meets or exceeds the GHG reduction targets in the 30 MMT scenario, and one demonstrating that our portfolio meets or exceeds the GHG reduction targets in the 25 MMT scenario.

Required Assumptions

The CPUC requires its jurisdictional entities to use certain standardized inputs and assumptions. The required assumptions include:

- Load forecast: Each LSE is required to use the CPUC-approved, California Energy Commission (CEC)-developed 2021 Integrated Energy Policy Report (IEPR) demand forecast update, as modified by CPUC in the Administrative Law Judge's

[3] The Narrative Template, Resource Data Template and CSP Calculators for 30MMT and 25MMT portfolios were finalized by the CPUC and made available on June 15, 2022, September 23, 2022, and July 15, 2022, respectively. Staff is currently in the process of populating the templates.

Ruling Finalizing Load Forecasts and Greenhouse Gas Emissions Benchmarks for 2022 Integrated Resource Plan Filings (June 15, 2022) (the ALJ Ruling). The 2021 IEPR forecast identified annual retail sales for entities out to 2035; then added and subtracted load to reflect the CEC's forecast for the expansion of Additional Achievable Energy Efficiency (AAEE), behind-the-meter solar PV generation, behind-the-meter combined heat & power generation, other self-generation, time of use rate effects, electric vehicle expansion, and other transportation electrification. Each LSE is required to use the total annual load volume assigned by the CPUC, but LSEs may use custom load shapes. LSEs are required to use the peak load share assigned by the CPUC in the same ALJ Ruling.

- Available Resources and Resource Profiles: In the Clean System Power Calculator template, the CPUC provides information on potential future available resources within and outside of California and the expected generation profile of each resource. LSEs may use the default generation profiles or may enter a custom profile for selected resources.

- Capital cost and financing information for resource development: The CPUC provides assumptions regarding levelized cost for resource development. LSEs are allowed to use alternative resource cost assumptions if the LSE has better information that more accurately reflects its situation. Peninsula Clean Energy plans to use resource cost information recently updated to reflect our view of the market.

- Resource Adequacy Requirements: In the current 2022-2023 IRP cycle, CPUC requires LSEs to use a perfect capacity assumption for the planning reserve margin, and a marginal effective load carrying capacity (ELCC) methodology to determine resource net qualifying capacity[4]. These assumptions are unique to the 2022-2023 IRP cycle, and do not match the assumptions used in the Resource Adequacy compliance proceedings. The CPUC provided ELCC values for each resource type in the Resource Data Template, and each LSE's peak load share is adjusted to be consistent with a perfect capacity and marginal ELCC approach. LSEs are required to use the perfect capacity and marginal ELCC approach in modeling Resource Adequacy performance of their portfolios.

- GHG and Criteria Air Pollutant Emissions: The Clean System Power Calculator template calculates hourly emissions associated with LSEs' demand and supply. The emissions profiles are based on CPUC modeling of hourly weighted-average emissions from CAISO dispatchable gas resources and unspecified imports. Criteria pollutant emissions factor data was compiled from a combination of CAISO dispatch data, scientific literature, and EPA and CARB criteria pollutant data.

[4] https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/2022-irp-cycle-events-and-materials/20220719-fr-and-reliability-mag-slides.pdf

- Other Inputs and Assumptions consistent with those used by CPUC staff to develop the 2021 Preferred System Plan (PSP). LSEs are generally required to use other inputs and assumptions consistent with those used by CPUC to develop the Preferred System Plan.

Peninsula Clean Energy's 2035 assigned load forecast is 4,033 GWh and our assigned emissions targets in 2035 are 0.417 MMT for the 30 MMT scenario and 0.333 MMT for the 25 MMT scenario.

	2030 State-wide Emissions Goal	2035 State-wide Emissions Goal
30 MMT Scenario	38 MMT	30 MMT
25 MMT Scenario	30 MMT	25 MMT
A single portfolio may meet both requirements, if it meets or exceeds the 25 MMT scenario targets		

	2030 Peninsula Clean Energy Share of Emissions Goal	2035 Peninsula Clean Energy Share of Emissions Goal
30 MMT Scenario	0.530 MMT	0.417 MMT
25 MMT Scenario	0.400 MMT	0.333 MMT
A single portfolio may meet both requirements, if it meets or exceeds the 25 MMT scenario targets		

Preferred System Plan

As part of the IRP process, the CPUC developed a Preferred System Plan (PSP) in 2021 that meets a statewide 38 million metric ton (MMT) greenhouse gas (GHG) target for the electric sector in 2030 and 35 MMT in 2032. This portfolio was developed first with an aggregation of the individual IRPs of all LSEs, reflecting the resource preferences of those LSEs. Then CPUC staff made adjustments to extend the timeframe beyond 2030 to 2032 for transmission planning purposes and to add the resources required in Decision 21-06-035 for mid-term reliability purposes. Finally, the portfolio utilizes a managed mid-demand paired with high electric vehicle (EV) demand forecast from the CEC's IEPR of 2020. The PSP is sent to the CAISO for inclusion in the 2022-2023 Transmission Planning Process.

LSEs must use the Preferred System Plan assumptions to develop their individual IRPs.

The 38 MMT in 2030 scenario was adopted as the PSP in 2021, which corresponds to the 30 MMT in 2035 scenario in the 2022-2023 IRP (the previous IRP studied two scenarios: 46 MMT in 2030, and; a 38 MMT in 2030).

Differences Between the CPUC IRP and Peninsula Clean Energy's Internal 24x7 Analysis

Both the CPUC IRP and our internal 24x7 analysis are planning exercises intended to provide procurement guidance on how to structure our portfolio to meet various goals, including our goal to provide time-coincident renewable energy to our customers. The CPUC IRP process requires us to use specific assumptions as outlined above. The CPUC required assumptions often take a state-wide perspective, and we believe these assumptions are not always reflective of our service territory or for our portfolio goals. We believe our 24x7 results more accurately reflect our portfolio planning. However, the CPUC IRP is in general agreement with our internal planning.

The procurement recommended in the CPUC IRP process is not currently enforceable by the CPUC.

Community Outreach

Staff met with the Citizen's Advisory Committee in July 2022, with the Executive Committee in October 2022, and met again with the Citizen's Advisory Committee in October 2022 to review the CPUC IRP process and filing requirements, and to solicit feedback from the community.

Modeling Approach

In the 2022-2023 IRP cycle, Peninsula Clean Energy staff performed the modeling in-house. Peninsula Clean Energy staff used the MATCH model, presented at the September 2022 Board Retreat, and described below, to develop the cost-optimal portfolio that met all of the specified planning goals. Staff then used the proprietary PowerSimm software, developed by Ascend Analytics, to perform a stochastic evaluation of the selected portfolio.

Peninsula Clean Energy modeled a portfolio that will provide renewable energy to serve 100% of our customer load on an annual basis, and will provide time-coincident renewable energy to match customer load in 95% of hours. The 95% hourly target is less aggressive than the proposed 99% hourly target under consideration by the Board of Directors, however, Peninsula Clean Energy staff recommends the use of a 95% hourly planning target in the CPUC IRP process. Although conformance to the portfolios reported in the CPUC IRP process is not currently enforceable, staff feels that the use of a more conservative planning target in the CPUC IRP process is advisable.

The MATCH model is a modification of an open-source power system modeling software called Switch[5]. The modifications to the Switch software to create the MATCH model were implemented by Peninsula Clean Energy staff. The MATCH model is a deterministic portfolio optimization tool that determines the cost-optimal selection and dispatch of resources to meet load based on a set of assumptions and operating restrictions.

Some key features of MATCH are:

- Cost-optimal resource selection and dispatch
- Ability to match supply and demand on an hourly basis
- Easy-to-use weather-correlated resource generation profiles
- Ability to dispatch storage either to meet load or to respond to market signals

The key inputs to the MATCH model are:

- Hourly Load Forecast
- Hourly Market Prices at each modeled node
- Available resource characteristics and costs (model can automatically develop resource generation profiles, or a user may enter a specified resource generation profile)
- Resource Adequacy Requirements

Once the cost-optimal portfolio was selected in MATCH, staff used PowerSimm to model the stochastic performance of the portfolio.

Peninsula Clean Energy considered partnering with other CCAs to perform a joint modeling effort in the 2022-2023 IRP cycle, similar to the joint modeling effort underlying our 2020 IRP. However, following discussions with other CCAs, Peninsula Clean Energy determined the ideal approach in this cycle was to perform individual modeling.

Modeling Results

Staff are providing and requesting Board approval of the results of the 2022 IRP Preferred Portfolio.

Using the approach described above, the Preferred Portfolio shows a portfolio of approximately 2,438 MW by 2035. Of this portfolio, approximately 1,072 MW is currently contracted as of September 2022. Thus, Peninsula Clean Energy would need to procure an additional approximately 1,366 MW over the next 13 years. Figure 2 shows the approximate build-out by year.

The resources included in the Preferred Portfolio include Geothermal, Onshore and Offshore Wind, Small Hydro, Solar PV, Solar Thermal, and Storage.

The Preferred Portfolio performs better than Peninsula Clean Energy's assigned GHG emissions targets under both the 30MMT and the 25MMT scenario, as calculated by the CPUC's Clean System Power Calculator.

[5] The SWITCH model is available at https://switch-model.org/

The Preferred Portfolio provides sufficient capacity to meet Peninsula Clean Energy's assigned peak load share under the perfect capacity and marginal ELCC framework used in the 2022-2023 IRP.

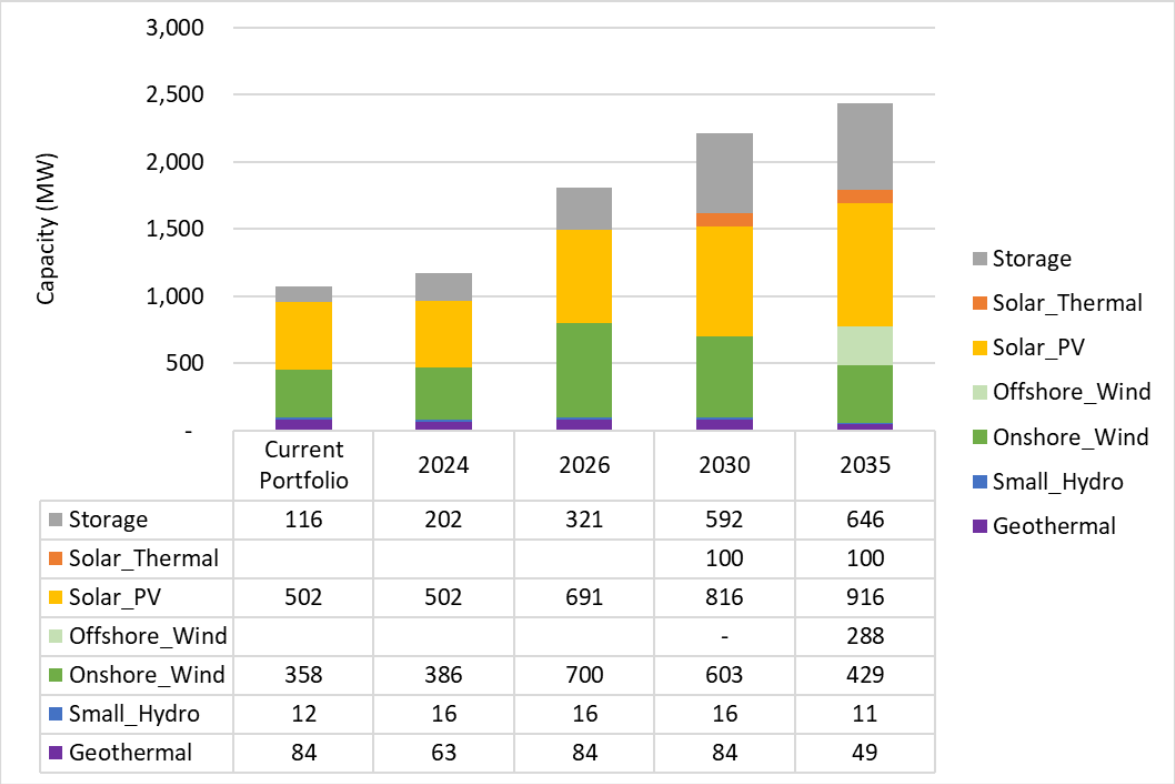
The expected cost of the Preferred Portfolio is within a similar range as we have currently budgeted and is consistent with the results presented at the September 2022 Strategic Board Retreat.

Next Steps

Staff will finalize the Narrative Template, the Resource Data Template, and the Clean System Power Calculator with the results of the analysis and findings, have the CEO review and approve the final reports and file with the CPUC by November 1, 2022.

Figures

Figure 1: 2022-2023 Peninsula Clean Energy Preferred Portfolio



	Current Portfolio	2024	2026	2030	2035
Storage	116	202	321	592	646
Solar_Thermal				100	100
Solar_PV	502	502	691	816	916
Offshore_Wind				-	288
Onshore_Wind	358	386	700	603	429
Small_Hydro	12	16	16	16	11
Geothermal	84	63	84	84	49

Tables

Table 1: Peninsula Clean Energy Preferred Portfolio GHG Emissions Results

	2024	2026	2030	2035
Assigned Load Forecast (GWh)	3,456	3,496	3,721	4,033
25 MMT GHG Benchmark (MMT CO_2)			0.40	0.33

38 MMT GHG Benchmark (MMT CO_2)			0.53	0.42
Preferred Portfolio Emissions (MMT CO_2)	0.18	0.02	0.05	0.01

Table 2: Peninsula Clean Energy Preferred Portfolio Reliability Results

	2024	2026	2030	2035
Peak Load Met by Effective Load Carrying Capacity of Resources in Preferred Portfolio?	Yes	Yes	Yes	Yes

FISCAL IMPACT:

There is no impact to Peninsula Clean Energy's budget. The Integrated Resource Plan is a planning exercise mandated by the CPUC, but the recommended procurement is not currently enforceable by the CPUC.

STRATEGIC PLAN:

The Integrated Resource Plan supports 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
    - Objective A: Planning: Key Tactic 1: 24/7 Strategy: Develop strategy to achieve 100% 24x7 goal.
    - Objective C: Operations: Key Tactic 2: Regulatory Compliance: Ensure all requirements are submitted accurately and on time.

RESOLUTION NO. _____

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

* * * * * *

RESOLUTION APPROVING THE RESULTS OF THE INTEGRATED RESOURCE PLAN ANALYSIS AND THE SUBMISSION OF RESULTS AS PRESENTED BY STAFF, OR IN A FORM SUBSTANTIALLY SIMILAR TO THAT PRESENTED BY STAFF AND DIRECTING THE CEO TO PREPARE AND SUBMIT THE FINAL NARRATIVE AND DATA TEMPLATES TO THE CPUC ON OR BEFORE NOVEMBER 1, 2022.

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, all Load Serving Entities (LSEs) in California are required to produce and submit to the California Public Utilities Commission (CPUC) an Integrated Resources Plan (IRP) on or before November 1, 2022; and

WHEREAS, the CPUC has directed Community Choice Aggregators such as Peninsula Clean Energy to seek Board approval for their IRPs prior to submission; and

WHEREAS, this Board has been provided with an overview of Peninsula Clean Energy's approach to IRP analysis, including its plan with regard to the documents which the CPUC requires PCE to submit on or before the November 1, 2022, and

specifically the IRP Narrative Template, the Resource Data Template, and the Clean System Power Calculator.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board approves the results of the IRP analysis and the submission of results as presented by staff, or in a form substantially similar to that presented by staff, and directs the CEO to prepare and submit the final narrative and data templates to the CPUC on or before November 1, 2022.

* * * * * *

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: October 27, 2022
BOARD MEETING DATE: October 27, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Kristina Cordero, Chief Financial Officer, Peninsula Clean Energy

SUBJECT: Approve the Audited Financial Statements for Fiscal Year 2021-2022

RECOMMENDATION:

Approve the Audited Financial Statements for Fiscal Year 2021-2022.

BACKGROUND:

Peninsula Clean Energy's (PCE) financials for the Fiscal Year ending June 30, 2022 were audited by the independent auditors Pisenti and Brinker LLP (Auditors).

The PCE Audit and Finance Committee reviewed the draft audited financial statements at its meeting on October 12, 2022. The Audit and Finance Committee discussed the audited financial statements at length and some members met with representatives of Pisenti and Brinker LLP. A resolution was passed by Audit and Finance Committee members to recommend approval of the audited financials by the full Board.

FISCAL IMPACT:

No fiscal impact

STRATEGIC PLAN:

The audited financial statements support the following objectives in Peninsula Clean Energy's strategic plan:

- Objective B: Financial Controls and Management: Implement financial controls and policies that meet or exceed best practices for leading not-for-profit organizations

ATTACHMENTS

A. Audited Financial Statements for Fiscal Year 2021-2022

RESOLUTION NO. _____

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

* * * * * *

RESOLUTION TO APPROVE THE AUDITED FINANCIAL STATEMENTS FOR FISCAL YEAR 2021-2022

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

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

WHEREAS, Pisenti and Brinker, LLP, certified public accountants and advisors, were selected as independent auditors to audit PCEA's financials for the fiscal years ending June 30, 2018, June 30, 2019, June 30, 2020, June 30, 2021 and June 30, 2022; and

WHEREAS, Pisenti and Brinker, LLP conducted the fieldwork to audit the financials for the fiscal year ending June 30, 2022; and

WHEREAS, the draft audited financial statements were reviewed by the Audit and Finance Committee on October 12, 2022; and

WHEREAS, the Audit and Finance Committee approved a resolution recommending that the Board approve the audited financial statements.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Chair of the Board of Directors is hereby authorized and directed to accept the audited financial statements for fiscal year 2021-2022 for and on behalf of the Peninsula Clean Energy Authority.

* * * * * *

FINANCIAL STATEMENTS
FISCAL YEARS ENDED JUNE 30, 2022 AND 2021
WITH REPORT OF
INDEPENDENT AUDITORS

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PENINSULA
CLEAN ENERGY

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The Management's Discussion and Analysis provides an overview of Peninsula Clean Energy Authority's financial activities as of and for the years ended June 30, 2022, and 2021. The information presented here should be considered in conjunction with the audited financial statements.

BACKGROUND

The formation of Peninsula Clean Energy was made possible in 2002 by the passage of California Assembly Bill 117, enabling communities to purchase power on behalf of their residents and businesses and creating competition in power generation.

Peninsula Clean Energy was created as a California Joint Powers Authority (JPA) on February 29, 2016. Peninsula Clean Energy was established to provide electric power at a competitive cost as well as to provide other benefits within San Mateo County, including reducing greenhouse gas emissions related to the use of power, procuring energy with a priority on the use and development of local renewable resources, stimulating local job creation through various programs and development, promoting personal and community ownership of renewable resources, as well as promoting long-term electric rate stability and energy reliability for residents and businesses.

Peninsula Clean Energy currently serves twenty-two jurisdictions located in San Mateo County and Merced County. The jurisdictions include the City of Los Banos, in Merced County, which Peninsula Clean Energy began serving on April 1, 2022 and each of the twenty cities and towns that make up San Mateo County (Atherton, Belmont, Brisbane, Burlingame, Colma, Daly City, East Palo Alto, Foster City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco, and Woodside) in addition to the unincorporated areas of San Mateo County. Peninsula Clean Energy is governed by twenty-three board members, with a representative from each of the twenty cities and towns of San Mateo County, two board members representing the unincorporated areas of San Mateo County, and one board member representing the City of Los Banos. Peninsula Clean Energy's Board of Directors has the rights and powers to set rates for the services it furnishes, incur indebtedness, and issue bonds or other obligations. Peninsula Clean Energy is responsible for the acquisition of electric power for its service area.

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Financial Reporting

Peninsula Clean Energy presents its financial statements as an enterprise fund under the economic resources measurement focus and the accrual basis of accounting, in accordance with Generally Accepted Accounting Principles (GAAP) for proprietary funds, as prescribed by the Governmental Accounting Standards Board (GASB).

Contents of this Report

This report is divided into the following sections:

- Management's discussion and analysis.
- The basic financial statements:
    - The *Statements of Net Position* include all of Peninsula Clean Energy's assets, liabilities, and net position and provides information about the nature and amount of resources and obligations at a specific point in time.
    - The *Statements of Revenues, Expenses and Changes in Net Position* report all of Peninsula Clean Energy's revenues and expenses for the years shown.
    - The *Statements of Cash Flows* report the cash provided and used by operating activities, as well as other sources and uses, such as capital asset acquisitions and investment.
    - The notes to the Basic Financial Statements, which provide additional details and information related to the basic financial statements.

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FINANCIAL HIGHLIGHTS

The following table is a summary of Peninsula Clean Energy's assets, liabilities, and net position and a discussion of significant changes during the years ended June 30:

	2022	2021	2020
Current assets			
Cash and cash equivalents	$ 9,777,452	$ 16,153,603	$ 48,437,676
Accounts receivable & accrued revenue	53,591,360	29,365,007	36,650,317
Investments	17,564,207	16,672,184	81,408,338
Other current assets	13,417,474	11,742,230	5,424,892
Total current assets	94,350,493	73,933,024	171,921,223
Noncurrent assets			
Capital and lease assets, net	2,355,826	2,930,410	2,152,196
Investments	107,748,793	137,275,212	80,169,968
Other noncurrent assets	192,878	248,976	134,840
Total noncurrent assets	110,297,497	140,454,598	82,457,004
Total assets	204,647,990	214,387,622	254,378,227
Accrued cost of electricity	27,138,918	23,574,255	28,835,532
Other current liabilities	6,424,980	6,274,032	33,564,250
Noncurrent liabilities	3,413,358	3,822,281	3,460,665
Total liabilities	36,977,256	33,670,568	65,860,447
Net position			
Investment in capital assets	261,774	343,640	427,683
Restricted for security collateral	-	4,449,194	5,618,194
Unrestricted	167,408,960	175,924,219	182,471,903
Total net position	$167,670,734	$180,717,053	$188,517,780

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Current Assets

Cash decreased from 2020 to 2021 as a result of planned operating losses that occurred during 2021 as well as the return of large cash collateral from energy suppliers. Planned operating losses occurred again in 2022, resulting in a further decrease in cash. Accounts receivable and accrued revenue dropped from 2020 to 2021 due to normal customer payment timing fluctuations. From 2021 to 2022, accounts receivable and accrued revenue increased by a large amount. This increase was due to customer rate increases that took effect in April 2022. The current portion of investments dropped from 2020 to 2021 due to the changing maturity dates of investments. Other current assets, which consist mostly of collateral deposits, increased significantly from 2020 to 2021, then held fairly steady from 2021 to 2022.

Noncurrent Assets

Capital assets are reported net of depreciation. Each year, the change is mostly due to leasehold improvements at Peninsula Clean Energy's office, and the acquisition of furniture and equipment less depreciation expense. Peninsula Clean Energy does not own assets used for electricity generation or distribution.

A lease asset is recorded in accordance with Governmental Accounting Standards Board No. 87 (GASB 87) that was implemented during 2022, with a restatement back to 2020. According to GASB, the Statement aims to increase the usefulness of governments' financial statements by requiring reporting of certain lease liabilities that previously were not reported.

During 2022, Peninsula Clean Energy decreased its investments with maturities of over one year. These investments are valued at $107,749,000 and are reported as noncurrent assets in the Statement of Net Position. See Note 5 to the financial statements for further discussion regarding investments.

Other noncurrent assets held fairly stable from 2021 to 2022. This account consists of various deposits for regulatory and other operating purposes expected to be held longer than a year. Included are deposit postings with the California Public Utilities Commission (CPUC), rent deposits, and collateral held by Peninsula Clean Energy from energy suppliers.

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Current Liabilities

The most significant element of current liabilities are obligations to pay the cost of electricity delivered to customers. Accrued cost of electricity at the end of each year remained stable.

Peninsula Clean Energy returned a large energy supplier deposit in 2021, which accounts for the decrease in other current liabilities compared to 2020. Also included in other current liabilities are trade accounts payable, taxes and surcharges due to governments, and various other accrued liabilities.

Noncurrent Liabilities

Various contracts entered into by Peninsula Clean Energy require the supplier to provide Peninsula Clean Energy with a security deposit. These deposits will be returned by Peninsula Clean Energy at the completion of the related contract or as other milestones are met. There was little change in deposits in 2022 as compared to 2021.

The following table is a summary of Peninsula Clean Energy's results of operations and a discussion of significant changes for years ended June 30:

	2022	2021	2020
Operating revenues	$ 237,898,558	$ 228,101,324	$ 278,092,535
Nonoperating revenues	1,824,346	35,636	2,511
Interest and investment income (loss)	(6,153,368)	40,816	2,266,285
Total revenues	233,569,536	228,177,776	280,361,331
Operating expenses	246,539,330	236,303,283	231,271,144
Charitable contributions	-	50,000	-
Interest and finance costs	76,525	179,171	157,583
Total expenses	246,615,855	236,532,455	231,428,727
Change in net position	$ (13,046,319)	$ (8,354,679)	$ 48,932,604

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Operating revenues

Peninsula Clean Energy's operating revenues are derived from the sale of electricity to commercial and residential customers throughout its territory. Peninsula Clean Energy reports its revenue net of uncollectible accounts. In February 2021, Peninsula Clean Energy implemented a rate reduction across all customer classes in order to provide its customers relief from increased fees associated with the Power Charge Indifference Adjustment (PCIA) and to maintain a competitive advantage in the marketplace. This rate reduction corresponded directly with a large drop in revenue from 2020 to 2021. In order to compensate for this revenue shortfall, Peninsula Clean Energy has been able to draw on its reserve funds. Revenue increased from 2021 to 2022 as a result of customer rate increases in April 2022 as well as the expansion to Los Banos during the spring of 2022.

Other revenues

The nonoperating revenue increase from 2021 to 2022 was primarily the result of grant income from the California Arrearage Payment Plan (CAPP) that was received in 2022. Investment income decreased in 2022 as a result of a reduction of market interest rates. Management intends to hold investments to maturity. Accordingly, most of the reported investment loss was unrealized at the end of 2022.

Operating expenses

Peninsula Clean Energy's largest expense each year was the purchase of electricity delivered to retail customers. Peninsula Clean Energy procures energy from a variety of sources and focuses on maintaining a balanced renewable power portfolio at competitive costs. Electricity costs increased each year from 2020 to 2022. The main cause of the increase was overall higher market prices. In 2022, the expansion to Los Banos also required additional resources to be purchased. Expenses for staff compensation, contract services, and other general and administrative expenses increased each year as the organization continued to grow to support its business demands.

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ECONOMIC OUTLOOK

In December 2017, Peninsula Clean Energy published its first strategic Integrated Resource Plan (IRP), which outlines the procurement strategy to fulfill the State's regulatory mandates, while also accelerating the State's decarbonization goals. The IRP describes Peninsula Clean Energy's approach to mitigating risk by diversifying its power portfolio through contract term length, project ownership, location, technology, size, and additionality (increasing "steel in the ground").

Peninsula Clean Energy is developing energy programs to reduce greenhouse gas emission from transportation and buildings. Incentives are offered for used electric vehicles to reduce the costs of these vehicles for residents and to increase the number of electric vehicle charging stations. Peninsula Clean Energy has also approved and funded grants for community pilot programs to advance Peninsula Clean Energy's mission to reduce greenhouse gas emissions, support Peninsula Clean Energy's workforce policy and serve a high number of Peninsula Clean Energy customers.

Peninsula Clean Energy started delivering electricity services to customers of Los Banos on April 1, 2022.

The COVID-19 pandemic impacted Peninsula Clean Energy's business like many other businesses during fiscal years 2020-21 and 2021-22 as the regional economy slowed during shelter-in place orders and the subsequent return to a new normal of economic activity. While Peninsula Clean Energy's overall electricity loads have declined from a high of 3.71 million MWh in fiscal year 2019-20 to 3.55 million MWh in fiscal year 2021-22 driven by pandemic impact and recoveries, we project loads will recover to 3.69 million MWh in fiscal year 2022-23. Additionally included in the projected load are the impacts of electricity service to customers of Los Banos which began on April 1, 2022.

REQUEST FOR INFORMATION

This financial report is designed to provide Peninsula Clean Energy's customers and creditors with a general overview of the organization's finances and to demonstrate Peninsula Clean Energy's accountability for the funds under its stewardship.

Please address any questions about this report or requests for additional financial information to 2075 Woodside Road, Redwood City, CA 94061.

Respectfully submitted,

Janis Pepper, Chief Executive Officer

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BASIC FINANCIAL STATEMENTS

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PENINSULA CLEAN ENERGY AUTHORITY
STATEMENTS OF NET POSITION
JUNE 30, 2022 AND 2021

ASSETS	**2022**	**2021**
Current assets		
Cash and cash equivalents	$ 9,777,452	$ 11,704,409
Accounts receivable, net of allowance	32,869,379	18,409,996
Accrued revenue	20,721,981	10,955,011
Investments	17,564,207	16,672,184
Other receivables	2,986,880	4,389,125
Prepaid expenses	4,976,571	3,571,212
Deposits	5,454,023	3,781,893
Restricted cash	-	4,449,194
Total current assets	94,350,493	73,933,024
Noncurrent assets		
Investments	107,748,793	137,275,212
Deposits and other assets	192,878	248,976
Lease asset, net of amortization	2,094,052	2,586,770
Capital assets, net of depreciation	261,774	343,640
Total noncurrent assets	110,297,497	140,454,598
Total assets	204,647,990	214,387,622
LIABILITIES		
Current liabilities		
Accrued cost of electricity	27,138,918	23,574,255
Accounts payable	1,171,803	1,247,108
Other accrued liabilities	1,078,334	1,103,134
User taxes and energy surcharges due to other governments	1,081,831	748,987
Supplier deposits - energy suppliers	2,624,090	2,735,397
Lease liability	468,922	439,406
Total current liabilities	33,563,898	29,848,287
Noncurrent liabilities		
Supplier deposits - energy suppliers	1,653,433	1,593,433
Lease liability	1,759,925	2,228,848
Total noncurrent liabilities	3,413,358	3,822,281
Total liabilities	36,977,256	33,670,568
NET POSITION		
Investment in capital assets	261,774	343,640
Restricted for security collateral	-	4,449,194
Unrestricted	167,408,960	175,924,219
Total net position	$ 167,670,734	$ 180,717,053

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The accompanying notes are an integral part of these financial statements.

PENINSULA CLEAN ENERGY AUTHORITY
STATEMENTS OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
YEARS ENDED JUNE 30, 2022 AND 2021

	2022	2021
OPERATING REVENUES		
Electricity sales, net	$ 233,526,144	$ 225,451,521
Green electricity premium	2,858,977	2,649,803
Grant revenue	1,020,254	-
Liquidated damages revenue	493,183	-
Total operating revenues	237,898,558	228,101,324
OPERATING EXPENSES		
Cost of electricity	226,678,063	213,833,819
Contract services	10,188,609	10,531,713
Staff compensation	6,351,193	5,637,450
General and administration	2,747,244	5,716,643
Depreciation and amortization	574,221	583,658
Total operating expenses	246,539,330	236,303,283
Operating loss	(8,640,772)	(8,201,959)
NONOPERATING REVENUES (EXPENSES)		
Grant revenue	1,824,346	-
Miscellaneous income	-	35,636
Interest and investment income (loss)	(6,153,368)	40,816
Charitable contributions	-	(50,000)
Interest and finance costs	(76,525)	(179,171)
Nonoperating revenues (expenses), net	(4,405,547)	(152,719)
CHANGE IN NET POSITION	(13,046,319)	(8,354,679)
Net position at beginning of year (as restated)	180,717,053	189,071,732
Net position at end of year	$ 167,670,734	$ 180,717,053

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The accompanying notes are an integral part of these financial statements.

PENINSULA CLEAN ENERGY AUTHORITY
STATEMENTS OF CASH FLOWS (CONTINUED)
YEARS ENDED JUNE 30, 2022 AND 2021

	2022	2021
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from customers	$ 216,039,305	$ 239,450,678
Receipts from grantors	1,020,254	-
Receipts from supplier security deposits	2,639,091	4,974,578
Receipts of liquidated damages	493,183	-
Payments to suppliers for electricity	(226,221,013)	(254,214,226)
Payments for other goods and services	(12,725,566)	(15,933,200)
Payments for staff compensation	(6,249,329)	(5,460,310)
Payments of taxes and surcharges to other governments	(3,547,693)	(4,136,810)
Payments of charitable contributions	-	(50,000)
Net cash used by operating activities	(28,551,768)	(35,369,290)
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Grant revenue	1,824,346	-
Deposits and collateral received	4,000,000	2,247,128
Interest and finance costs paid	(76,525)	(179,389)
Deposits and collateral paid	(5,616,033)	(6,143,158)
Net cash provided by (used by) non-capital financing activities	131,788	(4,075,419)
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES		
Payments to acquire capital assets	-	(22,061)
Payments of lease liability	(533,808)	(514,839)
Net cash used by capital and related financing activities	(533,808)	(536,900)
CASH FLOWS FROM INVESTING ACTIVITIES		
Proceeds from investment sales	58,926,086	140,659,234
Investment income received	1,947,354	1,828,256
Purchase of investments	(38,295,803)	(134,789,954)
Net cash provided by investing activities	22,577,637	7,697,536
Net change in cash and cash equivalents	(6,376,151)	(32,284,073)
Cash and cash equivalents at beginning of year	16,153,603	48,437,676
Cash and cash equivalents at end of year	$ 9,777,452	$ 16,153,603
Reconciliation to the Statement of Net Position		
Cash and cash equivalents (unrestricted)	$ 9,777,452	$ 11,704,409
Restricted cash	-	4,449,194
Cash and cash equivalents	$ 9,777,452	$ 16,153,603

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The accompanying notes are an integral part of these financial statements.

RECONCILIATION OF OPERATING LOSS TO NET CASH USED BY OPERATING ACTIVITIES

	2022	2021
Operating loss	$ (8,640,772)	$ (8,201,959)
Adjustments to reconcile operating loss to net cash used by operating activities		
Depreciation and amortization expense	574,221	583,658
Provision for uncollectible accounts	(38,138)	996,988
Nonoperating miscellaneous income	-	35,636
Charitable contributions considered an operating activity for cash flow purposes only	-	(50,000)
(Increase) decrease in:		
Accounts receivable	(14,421,245)	3,501,608
Accrued revenue	(9,766,970)	2,786,714
Other receivables	1,305,636	(2,679,401)
Prepaid expenses	(1,405,359)	118,146
Increase (decrease) in:		
Accrued cost of electricity	3,564,669	(5,261,283)
Accounts payable	(75,305)	52,514
Other accrued liabilities	69,595	(961,217)
User taxes and energy surcharges due to other governments	333,207	(108,402)
Supplier security deposits	(51,307)	(26,182,292)
Net cash used by operating activities	$ (28,551,768)	$ (35,369,290)

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The accompanying notes are an integral part of these financial statements.

1. REPORTING ENTITY

Peninsula Clean Energy is a joint powers authority created on February 29, 2016. As of June 30, 2022, parties to its Joint Powers Agreement consist of the following local governments:

County	Cities and Towns	
San Mateo	Atherton	Menlo Park
	Belmont	Millbrae
	Brisbane	Pacifica
	Burlingame	Portola Valley
	Colma	Redwood City
	Daly City	San Bruno
	East Palo Alto	San Carlos
	Foster City	San Mateo
	Half Moon Bay	South San Francisco
	Hillsborough	Woodside
	Los Banos	

Peninsula Clean Energy is separate from and derives no financial support from its members. Peninsula Clean Energy is governed by a Board of Directors whose membership is composed of elected officials representing the member governments.

A core function of Peninsula Clean Energy is to provide electric service that includes renewable sources, and it operates as a Community Choice Aggregation Program subject to California Public Utilities Code Section 366.2.

Peninsula Clean Energy began its energy delivery operations in October 2016. Electricity is acquired from electricity suppliers and delivered through existing physical infrastructure and equipment managed by Pacific Gas and Electric Company.

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2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

BASIS OF ACCOUNTING

Peninsula Clean Energy's financial statements are prepared in accordance with Generally Accepted Accounting Principles (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements.

Peninsula Clean Energy's operations are accounted for as a governmental enterprise fund and are reported using the economic resources measurement focus and the accrual basis of accounting – similar to business enterprises. Accordingly, revenues are recognized when they are earned, and expenses are recognized at the time liabilities are incurred. Enterprise fund-type operating statements present increases (revenues) and decreases (expenses) in total net position. Reported net position is segregated into three categories – investment in capital assets, restricted and unrestricted.

When both restricted and unrestricted resources are available for use, it is Peninsula Clean Energy's policy to use restricted resources first, and then unrestricted resources as they are needed.

CASH AND CASH EQUIVALENTS

For purposes of the Statements of Cash Flows, Peninsula Clean Energy defines cash and cash equivalents to include cash on hand, demand deposits and short-term investments with an original maturity of three months or less. For the purpose of the Statements of Net Position, restricted cash balances are presented separately. Restricted cash reported on the Statements of Net Position includes collateral for letters of credit, deposits from energy suppliers, as well as a required minimum balance to be maintained in one of Peninsula Clean Energy's bank accounts.

PREPAID EXPENSES AND DEPOSITS

Contracts to purchase energy may require Peninsula Clean Energy to provide the supplier with advanced payments or security deposits. Deposits are generally held for the term of the contract and are classified as current or noncurrent assets depending on the length of time the deposits will be outstanding. Also included are prepaid expenses and deposits for regulatory and other operating purposes.

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2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

LEASE ASSET AND LEASE LIABILITY

Peninsula Clean Energy recognizes an asset and liability when it enters into certain leasing arrangements. The leased asset is amortized over the term of the lease. The lease liability is the present value of payments expected to be paid to the lessor during the lease term. Peninsula Clean Energy's only leased asset and liability relates to its office premises.

CAPITAL ASSETS AND DEPRECIATION

Peninsula Clean Energy's policy is to capitalize furniture and equipment valued over $5,000 that is expected to be in service for over one year. Depreciation is computed according to the straight-line method over estimated useful lives of three years for electronic equipment, seven years for furniture and ten years for leasehold improvements. Peninsula Clean Energy does not own any electric generation assets.

SUPPLIER DEPOSITS – ENERGY SUPPLIERS

Various energy contracts entered into by Peninsula Clean Energy require the supplier to provide Peninsula Clean Energy with a security deposit. These deposits are generally held for the term of the contract or until the completion of certain benchmarks. Deposits are classified as current or noncurrent depending on the length of time the deposits will be held.

NET POSITION

Net position is presented in the following components:

Investment in capital assets: This component of net position consists of capital assets, net of accumulated depreciation and reduced by outstanding borrowings that are attributable to the acquisition, construction, or improvement of those assets. Peninsula Clean Energy did not have any such outstanding borrowings as of June 30, 2022 and 2021.

Restricted: This component of net position consists of constraints placed on net asset use through external creditor constraints imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments, or constraints imposed by law through constitutional provisions or enabling legislation.

Unrestricted: This component of net position consists of net position that does not meet the definition of "investment in capital assets" or "restricted."

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2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

OPERATING AND NONOPERATING REVENUES

Operating revenues include revenue derived from the provision of energy to retail and wholesale customers. Many of Peninsula Clean Energy's retail customers have opted to purchase a 100% renewable electricity product and pay a $0.01 per kilowatt hour premium. Revenues derived from this premium are reported throughout these financial statements as "Green electricity premium."

Investment income includes interest earned on bank deposits as well as unrealized gains and losses on its investment holdings. Interest and investment income (loss) is considered a nonoperating activity.

REVENUE RECOGNITION

Peninsula Clean Energy recognizes revenue on the accrual basis. This includes invoices issued to customers during the reporting period and electricity estimated to have been delivered but not yet billed. Management estimates that a portion of the billed amounts will be uncollectible. Accordingly, an allowance for uncollectible accounts has been recorded.

OPERATING AND NONOPERATING EXPENSES

Operating expenses include the costs of electricity and services, administrative expenses, and depreciation on capital assets. Expenses not meeting this definition are reported as nonoperating expenses.

ELECTRICAL POWER PURCHASED

During the normal course of business, Peninsula Clean Energy purchases electrical power from numerous suppliers. Electricity costs include the cost of energy and capacity arising from bilateral contracts with energy suppliers as well as generation credits, and load and other charges arising from Peninsula Clean Energy's participation in the California Independent System Operator's centralized market. The cost of electricity and capacity is recognized as "Cost of Electricity" in the Statements of Revenues, Expenses and Changes in Net Position.

To comply with the State of California's Renewable Portfolio Standards (RPS) and self-imposed benchmarks, Peninsula Clean Energy acquires RPS eligible renewable energy evidenced by Renewable Energy Certificates (Certificates) recognized by the Western Renewable Energy Generation Information System (WREGIS). Peninsula Clean Energy obtains Certificates with the intent to retire them and does not sell or build surpluses of Certificates with a profit motive. Peninsula Clean Energy recognizes an expense on a monthly basis that corresponds to the volume sold to its customers for its various renewable and carbon free products. This expense recognition increases accrued cost of electricity reported on the Statements of Net Position. Payments made to suppliers reduce accrued cost of electricity.

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2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

ELECTRICAL POWER PURCHASED (CONTINUED)

Peninsula Clean Energy purchases capacity commitments from qualifying generators to comply with the California Public Utilities Commission's Resource Adequacy Program. The goals of the Resource Adequacy Program are to provide sufficient resources to the California Independent System Operator to ensure the safe and reliable operation of the grid in real-time and to provide appropriate incentives for the siting and construction of new resources needed for reliability in the future.

STAFFING COSTS

Peninsula Clean Energy fully pays employees semi-monthly and fully pays its obligation for health benefits and contributions to its defined contribution retirement plan each month. Peninsula Clean Energy is not obligated to provide post-employment healthcare or other fringe benefits and, accordingly, no related liability is recorded in these financial statements. Peninsula Clean Energy provides compensated time off, and the related liability is recorded in these financial statements.

INCOME TAXES

Peninsula Clean Energy is a joint powers authority under the provision of the California Government Code and is not subject to federal or state income or franchise taxes.

ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

RECLASSIFICATIONS

Certain amounts in the prior-year financial statements have been reclassified for comparative purposes to conform to the presentation of the current-year financial statements. These reclassifications did not result in any change in previously reported net position or change in net position.

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3. CASH AND CASH EQUIVALENTS

Peninsula Clean Energy maintains its cash in both interest-bearing and non-interest-bearing deposit accounts in several banks. Peninsula Clean Energy's deposits are subject to California Government Code Section 16521, which requires banks to collateralize public funds in excess of the Federal Deposit Insurance Corporation (FDIC) limit of $250,000 by 110%. Certain short-term investments with original maturities of less than three months are classified as cash and cash equivalents, which are not subject to the collateral requirement or FDIC coverage previously mentioned. Accordingly, the amount of risk is not disclosed. Peninsula Clean Energy monitors its risk exposure on an ongoing basis.

At the end of 2021, Peninsula Clean Energy had restricted cash that was held as collateral for letters of credit posted by Peninsula Clean Energy and for supplier security deposits received by Peninsula Clean Energy. The restriction expired in April 2022.

4. ACCOUNTS RECEIVABLE

Accounts receivable were as follows as of June 30:

	2022	2021
Accounts receivable from customers	$34,793,412	$20,372,167
Allowance for uncollectible accounts	(1,924,033)	(1,962,171)
Net accounts receivable	$32,869,379	$18,409,996

The majority of account collections occur within the first few months following customer invoicing. Peninsula Clean Energy estimates that a portion of the billed accounts will not be collected. Peninsula Clean Energy continues collection efforts on accounts in excess of *de minimis* balances regardless of the age of the account. Although collection success generally decreases with the age of the receivable, Peninsula Clean Energy continues to have success in collecting older accounts. The allowance for uncollectible accounts at the end of a period includes amounts billed during the current and prior fiscal years. During 2022 Peninsula Clean Energy recorded a combined $2,045,000 in accounts receivable write-offs and increases to its allowance for uncollectible accounts. In 2022, Peninsula Clean Energy received CAPP funds (see Note 8) that helped recover for previously written off accounts receivable.

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5. INVESTMENTS

During the years ended June 30, 2022, and 2021, Peninsula Clean Energy purchased investments with original maturities of three months or more. As of June 30, the fair value of investments were as follows:

	2022	2021
Current Investments:		
U.S. Treasury Securities	$ 16,280,704	$ 16,567,184
Corporate bonds	1,283,503	-
Municipal bonds	-	105,000
Total current investments	$ 17,564,207	$ 16,672,184

	2022	2021
Noncurrent Investments:		
U.S. Treasury Securities	$ 69,956,207	$ 95,313,500
Corporate bonds	31,409,654	34,917,691
Municipal bonds	6,382,932	7,044,021
Total noncurrent investments	$ 107,748,793	$ 137,275,212

FAIR VALUE MEASUREMENT

GASB Statement No. 72, *Fair Value Measurement and Application*, sets forth the framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Level 1 inputs are quoted prices in active markets for identical assets, Level 2 inputs are significant other observable inputs, and Level 3 inputs are significant unobservable inputs.

In instances where inputs used to measure fair value fall into different levels in the above fair value hierarchy, fair value measurements in their entirety are categorized based on the lowest level input that is significant to the valuation. Peninsula Clean Energy's assessment of the significance of particular inputs to these fair value measurements requires judgment and considers factors specific to each asset or liability.

As of June 30, 2022 and 2021, Peninsula Clean Energy's investments are considered Level 1 inputs.

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5. INVESTMENTS (continued)

CUSTODIAL CREDIT RISK

Custodial credit risk for investments is the risk that, in the event of the failure of the counterparty to a transaction, Peninsula Clean Energy would not be able to recover the value of the investment or collateral securities that are in the possession of an outside party. Investment securities are exposed to custodial credit risk if the securities are uninsured, are not registered in Peninsula Clean Energy's name, and are held by the counterparty.

INTEREST RATE RISK

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. Duration is a measure of the price sensitivity of a fixed income portfolio to changes in interest rates. It is calculated as the weighted average time to receive a bond's coupon and principal payments. The longer the duration of a portfolio, the greater its price sensitivity to changes in interest rates. Peninsula Clean Energy manages its exposure to declines in fair values by limiting the weighted average maturity of its investments.

Following is a summary of investment maturities as of June 30, 2022:

		Investment Maturities	
Investment Type	**Fair Value**	**Less Than 1 Year**	**1-5 Years**
U.S. Treasury Securities	$ 86,236,911	$ 16,280,704	$ 69,956,206
Corporate bonds-U.S.	32,198,932	1,283,503	30,915,429
Corporate bonds-foreign	494,225	-	494,225
Municipal bonds	6,382,932	-	6,382,932
	$ 125,313,000	$ 17,564,207	$ 107,748,793

Following is a summary of investment maturities as of June 30, 2021:

		Investment Maturities	
Investment Type	**Fair Value**	**Less Than 1 Year**	**1-5 Years**
U.S. Treasury Securities	$ 111,880,684	$ 16,567,184	$ 95,313,500
Corporate bonds-U.S.	34,917,691	-	34,917,691
Municipal bonds	7,149,021	105,000	7,044,021
	$ 153,947,396	$ 16,672,184	$ 137,275,212

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6. CAPITAL ASSETS AND LEASE ASSET

Capital asset activity for the years ended June 30, 2022 and 2021 was as follows:

	Furniture & Equipment	Leasehold Improvements	Accumulated Depreciation	Total
Balances at June 30, 2020	$ 439,684	$ 213,233	$ (225,234)	$ 427,683
Additions	6,897	-	(90,940)	(84,043)
Balances at June 30, 2021	446,581	213,233	(316,174)	343,640
Additions	-	-	(81,503)	(81,503)
Dispositions	(2,179)	-	1,816	(363)
Balances at June 30, 2022	$ 444,402	$ 213,233	$ (395,861)	$ 261,774

Lease asset activity for the years ended June 30, 2022 and 2021 was as follows:

	Lease Asset	Accumulated Amortization	Total
Balances at June 30, 2020	$ -	$ -	$ -
Additions	3,079,488	(492,718)	2,586,770
Balances at June 30, 2021	3,079,488	(492,718)	2,586,770
Additions	-	(492,718)	(492,718)
Balances at June 30, 2022	$ 3,079,488	$ (985,436)	$ 2,094,052

7. DEBT

During fiscal year 2021, Peninsula Clean Energy had an available bank line of credit in the amount of $12,000,000 to provide additional liquidity for operations, as needed. There is no collateral requirement related to the line of credit and Peninsula Clean Energy did not draw any funds against it. Amounts drawn from the line of credit are charged interest at one-month LIBOR plus 3.1%. Peninsula Clean Energy terminated this line of credit as of June 30, 2021.

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8. GRANTS

Peninsula Clean Energy administers a grant from the California Arrearage Payment Program (CAPP) that offers financial assistance for California energy utility customers to help reduce past due energy bill balances that increased during the COVID-19 pandemic. This program is funded through the federal American Rescue Plan Act (ARPA) with Coronavirus State and Local Fiscal Recovery Funds.

Peninsula Clean Energy also administers a grant from the California Public Utilities Commission (CPUC) for the Disadvantaged Communities Green Tariff (DAC-GT). This grant provides bill discounts for eligible customers.

The following is a summary of grant revenue for the years ending June 30:

	2022	2021
CAPP	$ 1,824,346	$ -
DAC	1,020,254	-
Total grant revenue	$ 2,844,600	$ -

9. DEFINED CONTRIBUTION RETIREMENT PLAN

Peninsula Clean Energy provides retirement benefits through the County of San Mateo 401(a) Retirement Plan (Plan). The Plan is a defined contribution (Internal Revenue Code 401(a)) retirement plan established to provide benefits at retirement to employees of certain qualified employers admitted by the Plan. The Plan is administered by Massachusetts Mutual Life Insurance Company. As of June 30, 2022, there were 33 plan members. Peninsula Clean Energy is required to contribute 6% of annual covered payroll and up to an additional 4% of annual covered payroll to match employee contributions. Peninsula Clean Energy contributed $473,000 and $395,000 during the years ended June 30, 2022 and 2021, respectively. Plan provisions and contribution requirements are established and may be amended by the Board of Directors.

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10. RISK MANAGEMENT

Peninsula Clean Energy is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; and errors and omissions. During the year, Peninsula Clean Energy purchased insurance policies from investment-grade commercial carriers to mitigate risks that include those associated with earthquakes, theft, general liability, errors and omissions, and property damage. Settled claims have not exceeded coverage in the last two years. There were no significant reductions in coverage compared to the prior year. Peninsula Clean Energy has general liability coverage of $2,000,000 as well as a $10,000,000 umbrella policy. Deductibles on the various policies range from $0 to $25,000. From time to time, Peninsula Clean Energy may be party to various pending claims and legal proceedings. Peninsula Clean Energy has no current litigation or claims pending that are expected to have a material adverse effect on Peninsula Clean Energy's financial position or results of operations.

Peninsula Clean Energy maintains risk management policies, procedures and systems that help mitigate credit, liquidity, market, operating, regulatory and other risks that arise from participation in the California energy market. Credit guidelines include a preference for transacting with investment-grade counterparties, evaluating counterparties' financial condition and assigning credit limits as applicable. These credit limits are established based on risk and return considerations under terms customarily available in the industry. In addition, Peninsula Clean Energy enters into netting arrangements whenever possible and where appropriate obtains collateral and other performance assurances from counter parties.

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11. PURCHASE COMMITMENTS

In the ordinary course of business, Peninsula Clean Energy enters into various power purchase agreements in order to acquire renewable and other energy and electric capacity. The price and volume of purchased power may be fixed or variable. Variable pricing is generally based on the market price of either natural gas or electricity at the date of delivery. Variable volume is generally associated with contracts to purchase energy from as-available resources such as solar, wind, and hydro-electric facilities.

The following table details the obligations to purchase existing energy, renewable, and resource adequacy (RA) contracts as of June 30, 2022:

Year ending June 30,	
2023	$ 228,000,000
2024	192,000,000
2025	157,000,000
2026	143,000,000
2027	140,000,000
2028-45	1,185,000,000
Total	$2,045,000,000

As of June 30, 2022, Peninsula Clean Energy had outstanding non-cancelable commitments to professional service providers through June 2024, for services yet to be performed. Fees associated with these contracts are based on volumetric activity and are expected to be approximately $6.7 million.

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12. LEASE

In June 2017, GASB issued Statement No. 87, *Leases*. As amended, the effective date of the Statement was for fiscal years beginning after June 15, 2021. Peninsula Clean Energy implemented the Statement in these financial statements. According to GASB, the Statement aims to increase the usefulness of governments' financial statements by requiring reporting of certain lease liabilities that previously were not reported. As a result of implementing the Statement, net position has been reduced by approximately $449,000 and $455,000 for the years ended June 30, 2022 and 2021, respectively.

On August 1, 2017, Peninsula Clean Energy entered into an 86-month non-cancelable lease for its office premises. The rental agreement includes an option to renew the lease for two additional five-year terms. In September 2019, the lease was extended an additional two years to September 30, 2026. As part of the extension, Peninsula Clean Energy leased additional office space through the same termination date.

Rental expense under this lease was $530,000 and $512,000 for the years ended June 30, 2022 and 2021, respectively,

As of June 30, 2022, future minimum lease payments under this lease were projected as follows:

	Principal	Interest	Total
Years ending June 30,			
2023	$ 468,922	$ 62,487	$ 531,410
2024	499,837	47,515	547,352
2025	532,209	31,563	563,772
2026	566,100	14,586	580,686
2027	161,778	877	162,655
Total	$ 2,228,847	$ 157,028	$ 2,385,875

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13. FUTURE GASB PRONOUNCEMENTS

The requirements of the following GASB Statements are effective for years ending after June 30, 2022:

GASB has approved GASB Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements,* GASB Statement No. 96, *Subscription-Based Information Technology Arrangements,* GASB Statement No. 97, *Certain Component Unit Criteria and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans*, GASB Statement No. 99, *Omnibus 2022*, GASB Statement No. 100, *Accounting Changes and Error Corrections – An Amendment of GASB Statement No. 62*, and GASB Statement No. 101, *Compensated Absences*. When they become effective, application of these standards may restate portions of these financial statements.

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SUPPLEMENTARY INFORMATION

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PENINSULA CLEAN ENERGY AUTHORITY
SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
YEAR ENDED JUNE 30, 2022

Federal Grantor/Program Title	Federal ALN Number	Award Number	Federal Expenditures
AMERICAN RESCUE PLAN ACT (ARPA)			
California Department of Community Services and Development (CSD)			
California Arrearage Payment Program (CAPP)	21.027	68-0283471	$1,824,346

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See accompanying Notes to Schedule of Expenditures of Federal Awards

PENINSULA CLEAN ENERGY AUTHORITY
NOTES TO SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
YEAR ENDED JUNE 30, 2022

1. BASIS OF PRESENTATION

The accompanying Schedule of Expenditures of Federal Awards (the Schedule) includes the federal grant activity of Peninsula Clean Energy (PCE) under programs of the federal government for the year ended June 30, 2022. The information in the Schedule is presented in accordance with the requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles,* and *Audit Requirements for Federal Awards* (Uniform Guidance). Therefore, some amounts presented in this Schedule may differ from amounts presented in, or used in the preparation of, PCE's financial statements. Because the Schedule presents only a selected portion of the operations of PCE, it is not intended to and does not present the financial position, changes in the net position or cash flows of PCE.

All federal awards received directly from federal agencies, as well as federal awards passed through nonfederal agencies and organizations are included in the Schedule. Pass-through entity identifying numbers are presented when available.

The reporting entity for PCE is based upon criteria established by the Governmental Accounting Standards Board.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES FOR FEDERAL AWARDS

Expenditures on the accompanying Schedule are reported primarily on an accrual basis of accounting. Expenditures are recognized when approved for payment and posted to PCE's accounting system. Expenditures are paid prior to including on the Schedule. Expenditures for federal awards are recognized following the cost principles contained in the Uniform Guidance. Under these cost principles certain types of expenditures are not allowable or are limited as to reimbursement.

3. SUB-RECIPIENTS

Of the federal expenditures presented in the Schedule, PCE did not provide federal awards to sub-recipients for the year ended June 30, 2022.

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PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: October 14, 2022
BOARD MEETING DATE: October 27, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer
Chelsea Keys, Interim Director Power Resources

SUBJECT: Approve Resolution Delegating Authority to Chief Executive Officer to Execute Energy Storage Service Agreement for an Energy Storage Project with Nova Power, LLC, and any necessary ancillary documents with a Power Delivery Term of 15 years starting at the Commercial Operation Date on or about August 1, 2024, in an amount not to exceed $153 million.

RECOMMENDATION:

Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Energy Storage Service Agreement for an Energy Storage Project with Nova Power, LLC, and any necessary ancillary documents with a Power Delivery Term of 15 years starting at the Commercial Operation Date on or about August 1, 2024, in an amount not to exceed $153 million.

BACKGROUND:

The Board set a goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy by 2025. One set of technologies that will help Peninsula Clean Energy to meet this goal is energy storage which is intended to shift grid energy from times when there is oversupply, which generally correlates to solar production hours, to times when there is high demand for energy on the grid. Staff conducted a preliminary analysis of the necessary resources to attain this goal and found that Peninsula Clean Energy will need to procure a sufficient amount of energy storage for its portfolio. The Nova project will be the second standalone storage resource to be added to Peninsula Clean Energy's portfolio but its first 4-hour standalone storage project. Peninsula Clean Energy has executed contracts with a long-duration (8-hours or longer) storage project and two solar resources paired with storage, all of which are under development.

CPUC MTR Procurement Mandate

On June 24, 2021, the California Public Utilities Commission (CPUC) adopted D.21-06-035. This decision is commonly known as the mid-term reliability (MTR) procurement mandate. It directs load serving entities (LSEs) to collectively procure 11,500 MW[1] of new resources between 2023 to 2026 to meet mid-term grid reliability needs. The decision requires that contracts have a term of at least 10 years and that resources be zero-emission or eligible under the California renewable portfolio standard (RPS). Specific category requirements were assigned to 4,500 MW of the requirement.

State-Wide MTR Procurement Requirements (MW NQC)

Procurement Category	2023	2024	2025	2026	Total
Zero-emissions generation, generation paired with storage, or demand response resources[2]	-	-	2,500	-	2,500
Firm zero-emitting resources	-	-	-	1,000	1,000
Long-duration storage resources	-	-	-	1,000	1,000
Remaining New Capacity Required			-	-	7,000
Total Annual Net Qualifying Capacity (NQC) Requirements	***2,000***	***6,000***	***1,500***	***2,000***	***11,500***

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

Procurement Category	2023	2024	2025	2026	Total
Zero-emissions generation, generation paired with storage, or demand response resources[3]	-	-	47	-	47
Firm zero-emitting resources	-	-	-	19	19

[1] Requirement measured as net qualifying capacity (NQC) rather than nameplate capacity. The CPUC issued a report identifying what percent of a technology's nameplate capacity would count toward this requirement. This means that each LSE's nameplate capacity is higher than the requirement identified in the decision.
[2] Zero-emissions resources required to replace Diablo Canyon must be procured by 2025 but may occur in any of the years 2023-2025; therefore, the columns do not add to the total.
[3] Zero-emissions resources required to replace Diablo Canyon must be procured by 2025 but may occur in any of the years 2023-2025; therefore, the columns do not add to the total.

Long-duration storage resources	-	-	-	19	19
Remaining New Capacity Required			-	-	132
Total Annual Net Qualifying Capacity (NQC) Requirements	***38***	***113***	***28***	***38***	***217***

One of the categories identified in the decision was zero-emissions generation to be online by 2025 which may include standalone energy storage. Once this decision was issued, Peninsula Clean Energy soon issued a request for offers to focus on meeting the various tranches of this procurement mandate.

The requirements were allocated to each LSE based on load share. Under the decision, Peninsula Clean Energy was allocated a requirement to bring online a total of 179 MW of zero-emission generation by 2025. Peninsula Clean Energy is planning for the Nova project to satisfy 37 MW of this total obligation, which is the amount of NQC that a 50 MW storage project such as Nova qualifies for under the MTR.

2021 Renewable Request for Offers

Peninsula Clean Energy launched a request for offers (RFO) in late-2021 targeting procurement of renewable energy and energy storage resources to satisfy the MTR procurement mandate and contribute toward its 24/7 100% renewable goal. Additionally, the RFO sought long-term contracts which provide better value than short-term contracts and expand the amount of renewable energy serving California.

Peninsula Clean Energy received a robust response to the RFO from 43 participants for 70 different projects for renewable, renewable plus storage, and standalone storage. Staff evaluated these projects based on value to Peninsula Clean Energy, development status, project viability, project team experience, compliance with workforce policy and environmental impact.

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

Staff reviewed shortlisted projects with the CEO and then entered into exclusive negotiations with the shortlisted projects. Throughout 2022, Peninsula Clean Energy has worked with the project developer on negotiating the power contract.

Additionally, staff met with the Procurement Board subcommittee in October 2022 to review the shortlisted projects from the RFO including the Nova project.

Overview of Project

Project Name	Nova Power Bank
Technology	Lithium-ion Standalone Storage
Capacity	50 MW
Commercial Operation Date	08/01/2024
Project Owner	Nova Power, LLC
Developer	Calpine Corporation
Location	Riverside County, CA

Nova is a new standalone storage project with a total generating capacity of 680 MW, located in Riverside County, California. This project is replacing a combined cycle gas generator that ceased operations in 2019 and was decommissioned in 2021. Nova will not require any new transmission infrastructure; rather it will use the existing interconnection. Peninsula Clean Energy is contracting for a 50 MW share and will retain the scheduling coordination rights for its share because the facility will be deployed as a modularized storage system. The other project shares from Nova will be metered separately from Peninsula Clean Energy's share.

The Commercial Operation Date is August 1, 2024. The project has an executed interconnection agreement, and the existing deliverability will allow Full Capacity Deliverability Status (FCDS) upon commercial operation, meaning it will provide resource adequacy attributes to Peninsula Clean Energy. The project will interconnect to the SCE Valley substation. The project is expected to start construction by November 2023.

Under the contract, Peninsula Clean Energy will pay for 50 MW of storage capacity at a fixed-price rate per kW-month with no escalation, for the full term of the contract (15 years). Peninsula Clean Energy is entitled to all product attributes from the facility, including storage capacity (charging and discharging energy), ancillary services, and resource adequacy.

Developer

Nova Power, LLC is a wholly owned, indirect subsidiary of Calpine Corporation. The project is being developed by Calpine Corporation and its affiliates (collectively "Calpine") which has a team with a wide range of experience developing and operating various energy technologies. Calpine has more than 6,000 MW installed capacity including two operational lithium-ion battery projects for a total of 40 MW and over 1,000 MW of battery storage projects under development. Additionally, Calpine develops, owns, and operates assets throughout the United States. Calpine is the operator of the largest geothermal operation in the world at the Geysers located in Lake and Sonoma Counties totaling over 700 MW, of which Peninsula Clean Energy is an off-taker, receiving 35 MW for 10 years which started mid-2022.

Environmental Review

Peninsula Clean Energy staff worked with several environmental non-profits to develop a system for evaluating the environmental impact of projects. Specifically, we asked each bidder to provide a geospatial footprint of their project. During the evaluation period, staff studied the geospatial footprint of the project to evaluate whether the project is located in a restricted or high conflict area for renewable energy development. These areas include but are not limited to:

- Protected areas at the federal, state, regional, local level (e.g. County-designated conservation areas, BLM Areas of Critical Environmental Concern, critical habitat for listed species, national, state, county parks, etc.).
- Identified and mapped important habitat and habitat linkages, especially for threatened and endangered species (either state or federally listed).

Further, projects that are located in areas designated for renewable energy development or in areas that are not suitable for other developmental activities, such as EPA re-power sites, receive positive environmental scores.

For this project, the analysis showed that the project was not located in a protected area based on the USGS Protected Areas Database[4] (PAD-US). Additionally, the project is not located in an area not suitable for renewable energy development as identified by the Renewable Energy Transmission Initiative (RETI)[5]. Since this project doesn't require new transmission there is no environmental impact anticipated from interconnection and transmission.

Workforce Requirements

Nova has agreed that the construction of the project will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or other similar agreement providing for terms and conditions of employment with applicable labor organizations.

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% renewable energy by 2025 that aligns supply and consumer demand on a 24x7 basis". Energy storage will play a key role in meeting Peninsula Clean Energy's renewable energy goals by shifting an oversupply of generation in the middle of the day to later hours when the energy is needed to meet demand.

The Nova project will provide 50 MW of energy storage capacity which means it will not directly produce generation to serve Peninsula Clean Energy's load, but it will help shift generation from the grid to serve its customers' load when it is most needed.

[4] USGS PAD-US: https://www.usgs.gov/core-science-systems/science-analytics-and-synthesis/gap/science/protected-areas
[5] RETI: https://reti.databasin.org/

FISCAL IMPACT:

The fiscal impact of the Nova project will not exceed $153 million over the 15-year term of the Agreement.

STRATEGIC PLAN:

The Nova project supports 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:

Nova Power Energy Storage Service 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 ENERGY STORAGE SERVICE AGREEMENT FOR AN ENERGY STORAGE PROJECT WITH NOVA POWER, LLC, AND ANY NECESSARY ANCILLARY DOCUMENTS WITH A POWER DELIVERY TERM OF 15 YEARS STARTING AT THE COMMERCIAL OPERATION DATE ON OR ABOUT AUGUST 1, 2024, IN AN AMOUNT NOT TO EXCEED $153 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, Peninsula Clean Energy conducted a request for offers for renewable energy and storage resources including standalone storage and engaged in negotiations for the Nova Power project; and

WHEREAS, Peninsula Clean Energy seeks to execute a Energy Storage Service Agreement (ESSA) to procure 50 MW of 4-hour standalone storage capacity from the Nova Power project, based on project's desirable offering of products, pricing, and terms; and

WHEREAS, the Nova Power project will contribute toward the regulatory requirement set by the California Public Utilities Commission to procure new capacity by 2025 to ensure better reliability for the California grid; and

WHEREAS, staff is presenting to the Board for its review the ESSA, 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 Agreement and any other ancillary documents required for said purchase of storage capacity from Nova Power, LLC; and

WHEREAS, the Board's decision to delegate to the Chief Executive Officer the authority to execute the Agreement is contingent on the Nova Power, LLC Board approving the Agreement's terms consistent with those presented to the Board.

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

Execute the Agreement and any ancillary documents with Nova Power, LLC with terms consistent with those presented, in a form approved by the General Counsel; and for a power delivery term of up to fifteen years, in an amount not to exceed $153 million.

* * * * * *

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

Seller: Nova Power, LLC, a Delaware limited liability company

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

Description of Facility: A 50 MW AC energy storage facility with at least four (4) hours of continuous discharging at the maximum rate of discharge, located in Riverside County, California (as further defined herein, the **"Facility"**).

Guaranteed Commercial Operation Date: August 1, 2024

Milestones:

Milestone	Completion Date
Site Control	**Complete**
Conditional Use Permit	[redacted]
Phase II Interconnection Study Results	**Complete**
Executed Interconnection Agreement	**Complete**
Procure Major Equipment	[redacted]
Financial Close	[redacted]
Construction Start	[redacted]
Initial Synchronization	[redacted]
Commercial Operation Date	**8/1/2024**
Deliverability Network Upgrades completed	**3/1/2024**
Obtain Full Capacity Deliverability Status Allocation	**Complete**

Delivery Term: Fifteen (15) Contract Years

Guaranteed Storage Capacity: 50 MW AC at four (4) hours of continuous discharging at the maximum rate of discharge (50 MWh per hour and 200 MWh over four hours).

Guaranteed Interconnection Capacity: 50 MW

Guaranteed Round Trip Efficiency:

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

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

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

Product:

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

Guaranteed RA Amount: [redacted]

Scheduling Coordinator: Buyer or Buyer's Agent

Development Security: [redacted]

Performance Security: [redacted]

Damage Payment: [redacted]

Notice Addresses:

Seller:

Nova Power, LLC
717 Texas Avenue, Suite 1000
Houston, TX 77002
Attention: Contract Administration
Phone No.: [redacted]
Email: [redacted]

With a copy to:

Nova Power, LLC
717 Texas Avenue, Suite 1000
Houston, TX 77002
Attn: Chief Legal Officer

With a copy to:

Nova Power, LLC
3003 Oak Road, Suite 400
Walnut Creek, CA 94597
Attn: Vice President, Origination

With a copy to:

Nova Power, LLC
3003 Oak Road, Suite 400
Walnut Creek, CA 94597
Attn: Deputy General Counsel

Scheduling:

Nova Power, LLC
717 Texas Avenue, Suite 1000
Houston, TX 77002
Attention: [redacted]
Phone No.: [redacted]
Email: [redacted]

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
Nova Power, LLC	Peninsula Clean Energy Authority
By: _____	By: _____
	PCE Executive Officer
Name: _____	
Title: _____	

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ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service 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 energy storage 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 all Product;

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

ARTICLE 1
DEFINITIONS

1.1 **Contract Definitions**. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"**AC**" means alternating current.

"**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**" means ancillary services as defined in the CAISO Tariff that are associated with the Facility and any related services, and include Frequency Regulation, Frequency Response, Voltage Control, VAR Dispatch, and Power Factor Correction (as each is defined in the CAISO Tariff).

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

"**Available Storage Capacity**" means the capacity from the Facility, expressed in whole MWs, that is available at a particular time to charge and discharge Energy.

"**Average Monthly T4B5 Price**" has the meaning set forth in Exhibit Q.

"**Bankrupt**" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition

filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

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

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

"**CAISO Approved Meter**" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy delivered by the Facility to the Delivery Point 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 Certification**" means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services that the Facility can provide, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

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

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

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

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of Energy that the Facility can store and/or deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits. Capacity Attributes shall also include all rights to provide and all benefits related to the provision of Ancillary Services (as defined in the CAISO Tariff) and reactive power.

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

"**Change of Control**", in the case of Seller, means any circumstance in which Seller's Ultimate Parent ceases to be the Ultimate Parent or to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

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

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

Notwithstanding the foregoing, (a) so long as the Ultimate Parent Controls Persons owning at least [redacted] MW of operating renewable electricity generating projects and/or energy storage projects, a change in or 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 [redacted] Business Days of its occurrence.

"**Charging Energy**" means all Energy, less Station Use and Electrical Losses, if any, delivered to the Facility pursuant to a Charging Notice, as measured by the Storage Facility Meter. All Charging Energy shall be used solely to charge the Facility.

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

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

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

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

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.6(c).

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

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

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

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

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

"**Control**" (including, with correlative meanings, the terms "Controlled by" and "under common Control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast more than fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of more than fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

"**Cover Sheet**" means the cover sheet to this Agreement.

"COVID-19" means the viral pneumonia named coronavirus disease 2019 (COVID-19) by the World Health Organization and caused by the virus named Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) by the International Committee on Taxonomy of Viruses and any mutations and variants thereof.

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

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

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

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

"**Curtailment Order**" means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail Energy deliveries;

(b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if the Facility is interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning,

forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's or distribution operator's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

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

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

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

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

"**Daily Delay Damages**" means an amount equal to [redacted]

[redacted]

"**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(b).

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

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

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

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

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

"**Development Cure Period**" has the meaning set forth in Exhibit B.

"**Development Security**" means (i) cash or (ii) a Letter of Credit in the amount specified on the Cover Sheet, deposited with Buyer in conformance with Section 8.7.

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

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

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

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

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

"**Energy**" means metered electrical energy in MWh.

"**Energy Storage Incentive**" means: any federal Tax credit for capital investment in equipment which receives, stores and delivers energy using batteries or other energy storage technologies.

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

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

"**Excused Event**" has the meaning set forth in Exhibit M.

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

"**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 that prevents Seller from providing Product and that is not the result of a Force Majeure Event.

"**Forced Labor**" has the meaning set forth in Section 13.4.

"**Full Capacity Deliverability Status**" has the meaning set forth in the CAISO Tariff.

"Full Network Model" has the meaning set forth in the CAISO Tariff.

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

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

"**GHG Regulations**" means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

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

"**Greenhouse Gas**" or "**GHG**" has the meaning set forth in the GHG Regulations or in any other applicable Laws.

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

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

"**Guaranteed Interconnection Capacity**" means the interconnection rights provided under the Interconnection Agreement in the amount set forth on the Cover Sheet.

"**Guaranteed RA Amount**" has the meaning set forth on the Cover Sheet.

"**Guaranteed Round Trip Efficiency**" has the meaning set forth on the Cover Sheet.

"**Guaranteed Storage Availability**" has the meaning set forth in Section 4.10(a).

"**Guaranteed Storage Capacity**" has the meaning set forth on the Cover Sheet, as may be adjusted pursuant to Exhibit B.

"**Imbalance Energy**" means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy or Discharging 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 to the Facility from the interconnection point or from the Facility to the interconnection point, as specified in the Interconnection Agreement.

"**Installed Storage Capacity**" means the maximum dependable operating capability of the Facility to discharge electric energy for four (4) consecutive hours at the maximum discharge rate (up to but not in excess of the Guaranteed Storage Capacity), as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit G-2 hereto provided by Seller to Buyer.

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

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

"**Interconnection Capacity Limit**" means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point.

[redacted]

"**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 8.1.

"**Internal Revenue Service Requirements**" means those requirements set forth in Section 48 of the Internal Revenue Code and associated regulations promulgated by the Internal Revenue Service that pertain to the eligibility of energy property to qualify for the federal investment tax credit.

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

"**Joint Powers Agreement**" means that certain Joint Powers Agreement dated February 29, 2016 under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"**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.

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

"**Local Capacity Area Resource**" has the meaning set forth in the CAISO Tariff.

"Local Capacity Area Resource Adequacy Benefits" means the attributes, however defined, of a Local Capacity Area Resource that can be used to satisfy the local resource adequacy obligations of a load serving entity.

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

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

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

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

"**Monthly Storage Availability**" has the meaning set forth in Exhibit M.

"**Moody's**" means Moody's Investors Service, Inc., or its successor.

"**MW**" means megawatts measured in alternating current, unless expressly stated in terms of direct current.

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

"**Network Upgrades**" has the meaning set forth in the CAISO Tariff.

"**Non-Availability Charge**" has the meaning set forth in the CAISO Tariff.

"**Non-Defaulting Party**" has the meaning set forth in Section 11.2.

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

"**Operating Restrictions**" means the requirements and limitations set forth on Exhibit O.

"**Other Facility(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.

"**Participating Transmission Owner**" or "**PTO**" means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is Southern California Edison Company.

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

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

"**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.

"**Permitted Scheduled Maintenance**" has the meaning set forth in Section 6.1(a).

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

"**PMAX**" means the applicable CAISO-certified maximum operating level of the Facility.

"**PMIN**" means the applicable CAISO-certified minimum operating level of the Facility.

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

"**Primary Availability**" has the meaning set forth in Exhibit M.

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

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

"**Prudent Operating Practice**" means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry in the Western United States for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

"**Qualified Transferee**" means an entity that: (a) has [redacted] (b) is not a public utility regulated by the CPUC or an Affiliate thereof; and (c) has, or retains to operate the Facility a Person that has, at least three (3) years of experience operating at least two (2) or more storage facilities of the same technology and with at least as much Installed Storage Capacity as the Facility.

"**RA Deficiency Amount**" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.6(b).

"**RA Guarantee Date**" means the Commercial Operation Date.

"**RA Plan**" has the meaning set forth for "Resource Adequacy Plan" in the CAISO Tariff.

"**RA Reduction**" has the meaning set forth in Section 3.6(c).

"**RA Shortfall**" means the difference, expressed in kW, of (i) the Guaranteed RA Amount (adjusted as provided in Section 3.6(c), if applicable) minus (ii) the System Resource Adequacy Benefits of the Facility for such month able to be shown on Buyer's monthly or annual RA Plan to the CAISO and CPUC and counted as System Resource Adequacy Benefits.

"**RA Shortfall Month**" means the applicable calendar month following the RA Guarantee Date during which Seller fails to provide Resource Adequacy Benefits in an amount equal to or greater than the Guaranteed RA Amount as required hereunder for purposes of calculating an RA Deficiency Amount under Section 3.6(b).

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

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

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

"**Replacement RA**" means Resource Adequacy Benefits that are equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and that are provided from a facility that: (a) provides Flexible Resource Adequacy Benefits that are of the same system or local designation as the Facility; (b) has the same Flexible Capacity Category and Resource Category as the Facility;

(c) provides Resource Adequacy Benefits in the same hourly periods as the Facility; (d) is located in the same Transmission Access Charge Area (as described in the CAISO Tariff) as the Facility; and (e) is located in the same Local Capacity Area as the Facility (if the Facility is located in a designated Local Capacity Area). Replacement RA shall not be provided from any generating facility or unit that utilizes coal or coal materials as a source of fuel.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 19-10-021, and any subsequent CPUC ruling or decision or by any other entity including CAISO, and shall include System Resource Adequacy Benefits, Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits associated with the Facility.

"**Resource Category**" means the maximum cumulative capacity and resource categories (commonly known as "MCC buckets") for system and local resource adequacy as well as categories of must-offer for flexible resource adequacy described in the most recent filing guide for system, local, and flexible resource adequacy compliance filings issued or published on the CPUC's website by the CPUC or its staff specifying the guidelines, requirements, and instructions for load serving entities to demonstrate compliance with the CPUC's resource adequacy program.

"**Resource ID**" has the meaning set forth in the CAISO Tariff.

"**Round Trip Efficiency**" has the meaning set forth in Exhibit Q.

"**Round Trip Efficiency Factor**" has the meaning set forth in Exhibit Q.

"**RTE Shortfall Payment**" has the meaning set forth in Exhibit Q.

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

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

"**Scheduled Energy**" means the Energy reflected in a final Day-Ahead Schedule, FMM Schedule, and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time.

"**Scheduled Maintenance**" has the meaning set forth in Section 6.1(a).

"**Scheduling Coordinator**" or "**SC**" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.

"**Secondary Availability**" has the meaning set forth in Exhibit M.

"**Security Interest**" has the meaning set forth in Section 8.9.

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

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

"**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.

"Showing Deadline" means the initial deadline that a Scheduling Coordinator must meet to submit its RA Plan, as established by CAISO or any other Governmental Authority. For illustrative purposes only, the CAISO monthly Showing Deadline is approximately 45 days prior to the RA delivery month.

"**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).

"**Storage Availability Adjustment**" has the meaning set forth in Exhibit M.

"**Storage Capacity**" means the maximum dependable operating capability of the Facility (expressed in MW AC) to discharge electric energy at the maximum discharge rate that can be sustained for four (4) consecutive hours, as the same is to be established as of the Commercial Operation Date and adjusted from time to time pursuant to Exhibit N to reflect the results of the most recently performed Storage Capacity Test; provided that the Storage Capacity shall not at any time exceed the lesser of (a) the Guaranteed Storage Capacity, and (b) the Facility's then current PMax in the Facility's CAISO's Master Data File and Resource Data Template (or successor data systems).

"**Storage Capacity Payment**" has the meaning set forth in Section 3.2.

"**Storage Capacity Test**" or "**SCT**" means any test or retest of the capacity of the Facility conducted in accordance with the testing procedures, requirements and protocols set forth in Exhibit N.

"**Storage Facility Meter**" means the CAISO Approved Meter (with a 0.3 accuracy class), sufficient for monitoring, recording and reporting, in real time, the amount of (i) Charging Energy, (ii) Discharging Energy and (iii) Energy that serves Station Use. For clarity, the Facility may include multiple measurement devices and calculations that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and calculations and the aggregated data of all such measurement devices and calculations, taken together.

"**Storage Rate**" has the meaning set forth on the Cover Sheet.

"**Stored Energy**" means the electric energy in the Facility available to be discharged as Discharging Energy.

"**Stored Energy Level**" means, at a particular time, the amount of electric energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

"**Subsequent Purchasers**" means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

"**Supplementary Storage Capacity Test Protocol**" has the meaning set forth in Exhibit N.

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

"**System Emergency**" means any 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.

"System Resource Adequacy Benefits" means the attributes, however defined, of a resource that can be used to satisfy the resource adequacy obligations of a load serving entity, other than Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits.

"**Tangible Net Worth**" means the tangible assets (for example, not including intangibles such as goodwill and rights to patents or royalties) that remain after deducting liabilities as determined in accordance with generally accepted accounting principles.

"**Tax**" or "**Taxes**" means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

"**Terminated Transaction**" has the meaning set forth in Section 11.2.

"**Termination Payment**" has the meaning set forth in Section 11.3.

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

"**Ultimate Parent**" means the entity that Controls, directly or indirectly, Seller and that is not Controlled by any other entity. As of the Effective Date, the Ultimate Parent [redacted]

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

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

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

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

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

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment,

supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the 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 installed and commissioned storage equipment with a capacity of no less than [redacted] of the Guaranteed Storage Capacity;

(b) Seller shall have delivered to Buyer certificates from a Licensed Professional Engineer substantially in the form of Exhibits G-1 and G-2;

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

(d) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement, including all modifications and amendments thereto, delivered to Buyer;

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

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

(g) The CAISO has provided notification supporting Commercial Operation;

(h) Buyer, or its designee, is the Scheduling Coordinator for the Facility; provided that if this requirement is not met because of Buyer's (or its designee's) actions or failure to take actions, and this is the only requirement for Delivery Commencement that has not been met, Seller shall be entitled to a day for day extension of the Guaranteed Commercial Operation Date for such Buyer (or its designee) actions or failure to act;

(i) Seller shall have delivered to Buyer a copy of all environmental impact reports, studies or assessments prepared by or obtained by Seller or its Affiliates, the conditional use permit or other principal land use approval for the Facility, and a certificate signed by an authorized representative of Seller stating that Seller is in compliance with the requirements of the conditional use permit or other principal land use approval;

(j) Seller shall have caused the Facility to be included in the Full Network Model and has ability to offer Bids into CAISO Day-Ahead Markets and Real-Time Markets;

(k) Seller shall have completed all necessary steps to provide Ancillary Services from the Facility, including completing the certification and testing requirements in Section 8 and Appendix K of the CAISO Tariff;

(l) Seller has delivered to Buyer all reports, studies and analyses related to the Facility prepared by any independent engineer in connection with the financing of the construction or permanent operation of Facility [redacted]

(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; and

(o) 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**. 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 [redacted], Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date (or the [redacted] 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 [redacted]

ARTICLE 3
PURCHASE AND SALE

3.1 **Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller all of the Product. In no event shall Seller have the right to procure any element of the

Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except with respect to Replacement RA.

3.2 **Compensation**.

(a) Buyer shall compensate Seller for the Product in accordance with this Section 3.2. For each month of the Delivery Term, Buyer shall pay Seller an amount equal to: (i) the product of: (A) the Storage Rate; multiplied by (B) the current Storage Capacity (in kW); multiplied by (C) the applicable Storage Availability Adjustment determined in accordance with Exhibit M); minus (ii) the applicable RTE Shortfall Payment determined in accordance with Exhibit Q (the result is the "**Storage Capacity Payment**") [redacted] The Storage Capacity Payment constitutes the entirety of the amount due to Seller from Buyer for the Product.

(b) Seller represents and warrants to Buyer that the Storage Rate is calculated to reflect the expectation that Seller or its Affiliate or Lender will receive an Energy Storage Incentive that results in a tax credit of [redacted] of the cost of qualifying property.

3.3 **Imbalance Energy**.

(a) Buyer and Seller recognize that from time to time the amount of delivered 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 3.3(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.

(b) If Seller is not in compliance with any applicable provisions of this Agreement, 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.

3.4 **Future Environmental Attributes**.

(a) The Parties acknowledge and agree that as of the Effective Date, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Buyer shall have the right to obtain such Future Environmental Attributes without any adjustment to the Storage Rate paid by Buyer under this Agreement. 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 3.4(a), the Parties agree to negotiate in good faith with respect to the development of any further agreements and documentation that may be 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. [redacted]

3.5 **Capacity Attributes**. Seller shall request Full Capacity Deliverability Status in connection with the Facility in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Storage Facility throughout the Delivery Term.

(b) Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) For the duration of the Delivery Term, Seller shall maintain an interconnection capacity under its Interconnection Agreement of at least the amount of the Guaranteed Interconnection Capacity.

(e) If, as a result of Scheduled Maintenance or otherwise, CAISO requires RA Substitute Capacity in connection with Seller's provision of Resource Adequacy Benefits to Buyer from the Facility, Seller shall provide such RA Substitute Capacity in accordance with applicable CAISO requirements. Seller acknowledges and agrees that any failure by Seller to provide such RA Substitute Capacity may result in CAISO rejecting or cancelling Scheduled Maintenance or other outage of the Facility. Buyer 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. If Seller declines to provide RA Substitute Capacity, and notifies Buyer to that effect no less than five (5) Business Days before the applicable Showing Deadline, then Buyer will not include the Facility (or, if

applicable, the portion of the Facility) in its Supply Plan for the Facility and Seller's sole liability will be payment of the RA Deficiency Amount for such RA Shortfall pursuant to Section 3.6.

3.6 **Resource Adequacy Failure**.

(a) RA Deficiency Determination. Notwithstanding Seller's obligations set forth in Section 4.3 or anything to the contrary herein, the Parties acknowledge and agree that if Seller has failed to obtain Full Capacity Deliverability Status for the Facility by the RA Guarantee Date, or if Seller otherwise fails to provide Resource Adequacy Benefits in an amount equal to or greater than the Guaranteed RA Amount 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 the sum of:

(i) For any portion of the RA Shortfall for which Buyer incurs a CPUC System RA Penalty ("**Penalized Shortfall**"), the amount of such CPUC System RA Penalty incurred by Buyer (which, for the avoidance of doubt, shall be zero (0) for any other portion of the RA Shortfall with respect to which Buyer does not incur any CPUC System RA Penalty [redacted] plus

(ii) For the portion of the RA Shortfall that is not the Penalized Shortfall, an amount equal to the greater of [redacted]

provided, that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA up to the RA Shortfall; so long as Seller provides Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit K at least [redacted] Business Days before the CPUC and CAISO Showing Deadline for the operating month for the purpose of annual and monthly RA Plan reporting. For the avoidance of doubt, Resource Adequacy Benefits submitted as Replacement RA must meet all requirements and criteria in the definition of Replacement RA in order to qualify as such hereunder. [redacted]

(c) Change in Law. If after the Effective Date (i) there is a change in Law or in the rules and/or methodology for calculating the Resource Adequacy Benefits that are available from the Facility or that can be included in a monthly or annual Supply Plan, (ii) the Net Qualifying Capacity of the Facility is reduced as a result of such a change that applies to all storage facilities as a resource class, and (iii) such reduction (A) is not the result of Seller's or the Facility's forced

outage rate or failure to satisfy the requirements of this Agreement, including any failure to achieve or maintain the Guaranteed Storage Availability, Guaranteed Storage Capacity, or Guaranteed Round Trip Efficiency, (B) is not the result of Seller's failure to operate and maintain the Facility in accordance with Prudent Operating Practice, and (C) cannot be avoided through Seller's expenditure of costs and expenses in an aggregate amount of [redacted] in any Contract Year, [redacted] throughout the Delivery Term (the "**Compliance Expenditure Cap**") (the amount of any such reduction in Net Qualifying Capacity, expressed in kW, is an "**RA Reduction**"), [redacted]

3.7 **Buyer's Re-Sale of Product**. Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.7, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall make available and Buyer shall accept at the Delivery Point all Product. Seller retains all rights to the Facility and to use and dispose of Product before and after the Delivery Term. Each Party shall perform all obligations under this Agreement, including all generation, scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

4.2 **Title and Risk of Loss**. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Title to and risk of loss related to the Charging Energy, if any, shall pass and transfer from Buyer to Seller at the Delivery Point.

4.3 **Scheduling Coordinator Responsibilities**.

(a) Buyer as Scheduling Coordinator for the Facility. Commencing as of the 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. Beginning at least thirty (30) days prior to the planned initial synchronization date, (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, 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; [redacted] 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 3.3(b), 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 3.3(b). CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any

CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under Section 4.3(e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as 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 (and Buyer, if necessary due to Buyer's role as the Scheduling Coordinator) shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent, not to be unreasonably withheld.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

4.4 **Forecasting**. Seller shall provide the forecasts described below. Seller's Available Storage Capacity forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Storage Capacity accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Monthly Forecast of Available Storage Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Storage Capacity for each

day of the following month in the form attached hereto as Exhibit L, or as reasonably requested by Buyer.

(b) Daily Forecast of Available Storage Capacity. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Available Storage 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 Available Storage Capacity.

(c) Real-Time Available Storage Capacity. During the Delivery Term, Seller shall notify Buyer of any changes in Available Storage 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. [redacted] If the Available Storage 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 Storage Capacity, as applicable, the expected end date and time of such event, the expected Available Storage 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 Storage 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(c), then Seller shall send such communications by telephone and e-mail to Buyer.

4.5 **Curtailment**.

(a) General. Subject to any limitations required by the Operating Restrictions (if such limitations are allowed under the CAISO Tariff), Seller agrees to reduce its consumption of Charging Energy and its delivery of Discharging Energy by the amount and for the period set forth in any Curtailment Order. Buyer has no obligation to purchase or pay for any Product delivered in violation of any Curtailment Order or for any Product that could not be delivered to the Delivery Point due to a Force Majeure Event.

(b) Failure to Comply. If Seller fails to comply with a Curtailment Order as provided above, then (i) for each MWh of Charging Energy that is consumed by Seller in contradiction to the Curtailment Order, Seller shall pay Buyer for each MWh an amount equal to the sum of (A) + (B), where: (A) is an amount equal to the absolute value of LMP, if any, for the Curtailment Period, times the amount of MWh of Energy consumed by Seller in contradiction to

the Curtailment Order, and (B) is any penalties or other charges resulting from Seller's failure to comply with the Curtailment Order; and (ii) for each MWh of Discharging Energy that is delivered to the Delivery Point in contradiction to the Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B), where: (A) is an amount equal to the absolute value of the LMP, if any, for the Curtailment Period, times the amount of MWh of Energy delivered to the Delivery Point in contradiction to the Curtailment Order, and (B) is any penalties or other charges resulting from Seller's failure to comply with the Curtailment Order.

(c) Seller Equipment Required for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment as are required under the CAISO Tariff, and implement such protocols and practices, as necessary to respond to and follow operating instructions from the CAISO and Buyer's SC, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility and required by CAISO or which Buyer reasonably determines are necessary to comply with this Agreement (provided, that in the event of any conflicts between the CAISO's requirements and the Buyer's requirements, Seller shall comply with the CAISO's requirements), Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall promptly repair and replace as necessary such facilities, communication links or other equipment, and shall notify Buyer as soon as Seller discovers any defect. If 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(b) for failure to comply with a Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.6 **Charging and Discharging Energy**.

(a) Buyer will be the Scheduling Coordinator for the Facility and will have sole and exclusive rights to charge and discharge the Facility and to bid and schedule the Facility in CAISO markets, subject to the terms of this Agreement, including compliance with the Operating Restrictions.

(b) Seller shall comply with Charging Notices and Discharging Notices that comply with the terms of this Agreement. Upon receipt of a valid Charging Notice, Seller shall accept the Charging Energy at the Facility in accordance with the terms of this Agreement (including the Operating Restrictions), at the times and in the quantities specified in such Charging Notice. Upon receipt of a valid Discharging Notice, Seller shall deliver the Discharging Energy to the Delivery Point in accordance with the terms of this Agreement (including the Operating Restrictions), at the times and in the quantities specified in such Discharging Notice.

(c) [redacted] Buyer will have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided that Buyer's right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including compliance with the Operating Restrictions and the CAISO Tariff. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.

(d) Seller shall not charge the Facility during the Contract Term other than pursuant to a valid Charging Notice or in connection with a Storage Capacity Test (for which Seller may request a Charging Notice from Buyer and with costs allocated as provided below), or pursuant to a notice from CAISO, the PTO, or any other Governmental Authority. [redacted] If, during the Contract Term, Seller (i) charges the Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice (except as permitted in the first sentence of this Section 4.6(d)), or (ii) charges the Facility in violation of the first or second sentence of Section 4.6(b), then, in addition to any other costs and charges for which Seller is responsible, including Imbalance Energy costs and other amounts specified in Section 4.3(c), and without limiting any of Buyer's other rights under this Agreement:

(i) Seller shall be responsible for all Energy costs associated with such charging of the Facility;

(ii) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy);

(iii) the Monthly Storage Availability calculation shall be affected to the extent specified in Exhibit M.

(e) Subject to compliance with the CAISO Tariff, other applicable Laws and the Operating Restrictions, Buyer will have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(f) Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice or in connection with a Storage Capacity Test (for which Seller may request a Charging Notice from Buyer), or pursuant to a notice from CAISO, the PTO, or any other Governmental Authority. Discharging for Station Use may occur only as specified in Section 6.4. In the case of a Storage Capacity Test, Buyer shall pay for costs associated with the Charging Energy and may retain any revenue from the discharge of such Energy (adjusted for efficiency losses) pursuant to a valid Discharging Notice; provided that Seller shall pay the costs associated with the Charging Energy if (i) Seller initiates the tests in accordance with Exhibit N or (ii) a Buyer-initiated test indicates that the Storage Capacity is two percent (2%) or more lower

than the then-current Storage Capacity. If, during the Contract Term, Seller (i) discharges the Facility to a Stored Energy Level less than the Stored Energy Level provided for in the Discharging Notice (except as permitted in the first or second sentence of this Section 4.6(f)), or (ii) discharges the Facility in violation of the first or second sentence of this Section 4.6(f), then, in addition to any other costs and charges for which Seller is responsible, including Imbalance Energy costs and other amounts specified in Section 4.3(c), and without limiting any of Buyer's other rights under this Agreement:

(i) Buyer shall retain any positive revenues received from CAISO or otherwise associated with such discharge;

(ii) Seller shall be responsible for and reimburse Buyer for all Energy costs associated with charging the Facility to the Stored Energy Level specified by Buyer before the discharge; and

(iii) the Monthly Storage Availability calculation shall be affected to the extent specified in Exhibit M.

(g) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Discharging Notices applicable to such Settlement Interval and over Charging Notices which are not consistent with such Curtailment Orders, and Seller shall have no liability for violation of this Section 4.6 or any Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the PTO unless caused by Seller's fault or negligence. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Curtailment Order consistent with the Operating Restrictions.

4.7 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Sections 3.1, 3.2, or 11.1(b):

(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 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 to the extent instructed by the CAISO.

(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.

4.8 **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 or its immediate parent, [redacted] (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. [redacted] All financial statements provided by Seller will be considered Confidential Information hereunder.

4.9 **Access to Data and Installation and Maintenance of Weather Station**

(a) Commencing on the Commercial Operation Date, and continuing throughout the Delivery Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer and consistent with Prudent Operating Practice, the data set forth below on a real-time basis; provided that Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested by Buyer, throughout the Delivery Term, which changes Buyer reasonably determines are necessary in order for Buyer to comply with Law:

(i) real time, read-only access to transformer availability, any other facility availability information;

(ii) real time, read-only access to Charging Energy, Discharging Energy, Facility state-of-charge, and battery rack and inverter status (online or offline) information collected by the supervisory control and data acquisition (SCADA) system for the Facility; provided that if Buyer is unable to access the Facility's SCADA system, then upon written request from Buyer, Seller shall provide such information to Buyer in 1 minute intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back up for each flat file submittal;

(iii) read-only access to the Storage Facility Meter and all Facility meter data at the Site; and

(iv) full, real time access to the Facility's Scheduling and Logging for the CAISO (OMS) client application, or its successor system.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Facility's monthly actual Available Storage Capacity in a form reasonably acceptable to Buyer.

(b) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 4.9, which shall be available on a minimum time interval of one hour basis or an hourly average basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(c) Installation, Maintenance and Repair.

(i) Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 4.9(a) of this Agreement.

(ii) Seller shall maintain the telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Buyer's designee to enable Buyer to meet current CAISO scheduling requirements. Seller shall promptly repair and replace as necessary such telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(iii) If Buyer notifies Seller of the need for maintenance, repair or replacement of the telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice; provided that if Seller is unable to repair or replace such equipment within five (5) days, then Seller shall make such repair or replacement as soon as reasonably practical; provided further that Seller shall not be relieved from liability for any Imbalance Energy costs incurred under Section 3.3(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 the quality of data required hereunder and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of verbal or written communication, including cellular communications from onsite personnel, facsimile, or equivalent mobile e-mail, or other method mutually agreed upon by the Parties, until the telecommunications link is re-established.

(d) Seller agrees and acknowledges that Buyer may seek and obtain from third parties any information relevant to its duties as Scheduling Coordinator for 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.

4.10 **Storage Availability and Efficiency.** The provisions of this Section 4.10 apply during the Delivery Term.

(a) Storage Availability. During the Delivery Term, the Facility shall maintain a Monthly Storage Availability (calculated in accordance with Exhibit M) during each month of no less than [redacted] (the **"Guaranteed Storage Availability"**). If, in any month after the Commercial Operation Date, the Monthly Storage Availability is less than the

Guaranteed Storage Availability, then, except as provided in Section 11.1(b)(iii), Buyer's sole and exclusive remedy for such shortfall shall be the application of the Storage Availability Adjustment to reduce the Storage Capacity Payment due for the Product as provided in Section 3.2.

(b) Round Trip Efficiency. During the Delivery Term, the Facility shall maintain a Round Trip Efficiency (calculated in accordance with Exhibit Q) during each month of no less than the Guaranteed Round Trip Efficiency. If, in any month during the Delivery Term, the Round Trip Efficiency is less than the Guaranteed Round Trip Efficiency, then, except as provided in Section 11.1(b)(iv), Buyer's sole and exclusive remedy (and Seller's sole and exclusive liability) for such shortfall shall be the reduction of the monthly Storage Capacity Payment for the Product by the RTE Shortfall Payment, if any, as provided in Section 3.2.

4.11 **Storage Capacity Tests**.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit N. Thereafter, Seller and Buyer shall have the right to conduct additional Storage Capacity Tests in accordance with Exhibit N.

(b) Buyer shall have the right to send one or more representatives to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representatives witnessing any Storage Capacity Test.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit N. If the actual capacity determined pursuant to a Storage Capacity Test deviates from the then current Storage Capacity, then the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Capacity) shall become the new Storage Capacity, effective as of the first day of the month following the completion of the Storage Capacity Test, for all purposes under this Agreement, including compensation under Section 3.2 until the next such Storage Capacity Test.

4.12 **Facility Modifications**. Seller shall not modify or replace all or any part of the Facility without Buyer's prior written consent, which consent shall be not be unreasonably withheld, conditioned or delayed; provided that Seller may, without Buyer's consent, perform routine maintenance, and undertake augmentation, improvement or modification of the Facility, including repairs and replacements of all or portions thereof with newer technology, if such work is done in accordance with Prudent Operating Practice and does not change the Facility's ability to meet the availability and performance specifications of this Agreement or the Operating Requirements and does not have any material adverse impact on Buyer's ability to receive Product from the Facility or charge or discharge the Facility in the manner provided for in this Agreement; provided, further that (i) Seller shall provide Buyer with prior written notice before undertaking any of the foregoing that would result in any reduction in the availability of the Facility, and (ii) all outages and derates associated with the foregoing shall count toward the maximum Scheduled Maintenance hours specified in Section 6.1(a).

4.13 **Ancillary Services**. Buyer shall have the exclusive rights to all Ancillary Services that the Facility is capable of providing consistent with the Operating Restrictions, with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate

and maintain the Facility throughout the Contract Term so as to be able to provide such Ancillary Services in accordance with the specifications set forth in the Facility's initial CAISO Certification associated with the Installed Storage Capacity (subject to any changes required by Law or CAISO requirements). Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services herein and without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any costs Seller incurs in connection with conducting such additional CAISO Certification.

4.14 **Workforce Agreement**. The Parties acknowledge that in connection with Buyer's energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall cause work performed in connection with construction of the Facility to be conducted using a project labor agreement, or similar agreement, providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof. Seller shall provide documentation reasonably satisfactory to Buyer demonstrating Seller's compliance with the requirements of this Section 4.14.

4.15 **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities may be subject to shared facilities and/or co-tenancy agreements entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties. If applicable, Seller agrees that any agreements regarding Shared Facilities (i) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, (ii) shall provide for separate metering of the Facility that accurately accounts for losses attributable to the Shared Facilities and other projects, (iii) shall not limit Buyer's ability to charge or discharge the Facility, (iv) shall provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource ID, and (iv) shall provide that any curtailment or restriction of Shared Facility capacity not attributable to a specific project or projects shall be allocated to all generating or storage facilities utilizing the Shared Facilities based on their pro rata allocation of the Shared Facility capacity prior to such curtailment or reduction. Seller shall not, and shall not permit any Affiliate to, allocate to other Persons a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements, minus the Guaranteed Interconnection Capacity.

ARTICLE 5
TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to delivery or making available to Buyer, including on 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). Seller shall be solely responsible for all taxes, charges or fees imposed on

the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Contract Term, but expressly excluding any taxes, charges or fees related to Greenhouse Gases imposed on Charging Energy or Discharging Energy. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event Buyer is subject to an exemption for any sale of Energy or other Product hereunder that would otherwise be subject to a Tax under applicable Law, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption. 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.

5.3 **Ownership**. Seller shall be the owner of the Facility for federal income tax purposes and, as such, Seller (or its Affiliates or Lenders) shall be entitled to all depreciation deductions associated with the Facility and to any and all tax benefits associated with the Facility, including any such tax credits or tax benefits under the Internal Revenue Code of 1986, as amended. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended. The Parties will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of the Product from the Seller or that this agreement is anything other than a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

(a) Seller shall provide to Buyer no later than ninety (90) days prior to the Commercial Operation Date for the period from the Commercial Operation Date through the end of the then-current calendar year, and no later than September 1 of each calendar year thereafter for the following calendar year, a schedule of all planned outages or derates of the Facility for maintenance purposes ("**Scheduled Maintenance**"). Seller may perform no more than fifty (50) hours per Contract Year of Scheduled Maintenance that involve a reduction in the Available Storage Capacity [redacted] Seller shall not conduct any Scheduled Maintenance between June 1 and October 31 of each

year. Scheduled Maintenance conducted in accordance with all requirements and limits in this Agreement is "**Permitted Scheduled Maintenance**". Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to adjusting the timing of Permitted Scheduled Maintenance. Seller may modify its schedule of Permitted Scheduled Maintenance upon reasonable advance notice to Buyer, subject to reasonable requests of Buyer and consistent with Section 4.4 and this Section 6.1.

(b) Seller shall use commercially reasonable efforts to perform during periods of Permitted Scheduled Maintenance all maintenance that will reduce the Facility's output or availability. Seller shall arrange for any necessary non-emergency maintenance that is not Permitted Scheduled Maintenance and that reduces the Available Storage Capacity of the Facility by more than ten percent (10%) to occur only between November 1 and May 31 of each year, unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through 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 Permitted Scheduled Maintenance (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer, provided that Seller shall not be required to consolidate preventative maintenance activities into a single month where such consolidation is inconsistent with vendor-recommended maintenance schedules.

6.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit 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 delivered through the same circuits as Charging Energy (as well as through separate circuits) or discharged from the Facility to serve Station Use to the extent permissible in accordance with the CAISO Tariff and subject to the following requirements and restrictions:

(i) Seller shall not bill Buyer and Buyer will not pay Seller for any Energy that serves Station Use, and Seller shall bear all costs associated with Energy that serves Station Use, including any Stored Energy or Energy discharged from the Facility that serves Station Use during periods when such service is permissible in accordance with the CAISO Tariff and/or any CAISO costs or Imbalance Energy costs incurred to serve Station Use;

(ii) Seller shall be responsible for the accurate metering and accounting for Energy used to serve Station Use to ensure that records and invoices to Buyer are accurate and do not improperly bill Buyer for Energy that serves Station Use;

(iii) Seller shall ensure that any use of Stored Energy or Energy discharged from the Facility to serve Station Use complies with and does not interfere with or impair Buyer's or the CAISO's dispatch of or schedule for the Facility, and if Seller fails to comply with such requirements, then, without prejudice to Buyer's other rights and remedies hereunder, Seller shall reimburse Buyer for (A) any charges, costs, and penalties imposed by the CAISO for the Facility's failure to comply with dispatch instructions, the CAISO schedule, or any CAISO requirements; and (B) any loss of revenue if the CAISO adjusts dispatch instructions due to the use of Stored Energy or Energy discharged from the Facility to serve Station Use, in each case only to the extent imposed or incurred as a direct result of Seller's use of Stored Energy or Energy discharged from the Facility to serve Station Use;

(iv) Any use of Energy discharged from the Facility or Stored Energy for Station Use shall not (A) reduce Seller's obligations to achieve the Guaranteed Storage Availability and Guaranteed Round Trip Efficiency, or (B) count toward limits specified in the Operating Restrictions; and

(i) Seller shall provide to Buyer upon Buyer's request all records and data, including detailed meter, charging, discharging, and state of charge data, that may be necessary or useful for Buyer to verify that service of Station Use occurred in compliance with this Section 6.4, and to calculate and verify the accuracy of invoices and amounts required to be reimbursed hereunder.

ARTICLE 7
METERING

7.1 **Metering**. Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), the Facility shall have its own CAISO Resource ID. Seller shall measure the Charging Energy, Discharging Energy and Station Use using the Storage Facility Meter and CAISO approved methodologies. The Storage Facility Meter shall be installed on the high side of the Seller's Main Power Transformer, unless and to the extent that the CAISO approves installation on the low side and documentation of such approval is provided to Buyer, and maintained at Seller's cost. Metering will be consistent with the Metering Diagram set forth in Exhibit P. The meter(s) shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller

and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter at the Facility.

7.2 **Meter Verification**. If Buyer or Seller has reason to believe there may be a meter malfunction, Seller shall test the meter. Annually, upon Buyer's reasonable request, Seller shall test the 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; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall deliver an invoice to Buyer for Product no later than ten (10) days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data to the extent available and other data sufficient to document and verify the amount of Charging Energy, Discharging Energy and Station Use for any Settlement Period during the preceding month, (b) the amount of Product and Replacement RA, if any, delivered to Buyer during the preceding month, and the Storage Rate applicable to such Product and Replacement RA, and (c) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount. Invoices shall be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within 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 8.1, 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 under this Agreement through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibit B, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security**. To secure Seller's obligations under this Agreement, including the obligations of Seller to pay liquidated damages to Buyer as provided in this Agreement, Seller shall deliver Development Security to Buyer in the amount set forth in the Cover Sheet within five (5) 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 set forth in the Cover Sheet. Seller shall maintain the Performance Security in full force and effect and Seller shall replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement within five (5) Business Days after such draw, other than to satisfy a Termination Payment. Seller shall maintain the Performance Security in full force and effect until the date on which the following have occurred ("**Performance Security End Date**"): (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, and indemnification payments or other damages, in each case of a determined amount, are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of the Performance Security End Date, Buyer shall promptly return to Seller the unused portion of the Performance Security. Provided that no Event of Default has occurred 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, to the extent of damages or other amounts owed by Seller to Buyer hereunder.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

ARTICLE 9
NOTICES

9.1 **Addresses for the Delivery of Notices**. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth 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; volcanic eruption; flood; epidemic [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 Storage Rate unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product at a lower price or Seller's ability to sell Product at a higher price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, [redacted] (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; (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; (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; [redacted]

[redacted]

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;

(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;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Sections 14.2 or 14.3, as applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Product that was not produced by the Facility, except with respect to Replacement RA;

(ii) the failure by Seller to achieve the Construction Start Date within [redacted] after the Guaranteed Construction Start Date, or the failure by Seller to achieve Commercial Operation by the date that is [redacted] after the Guaranteed Commercial Operation Date;

(iii) if, in the first Contract Year during the Delivery Term, the average Monthly Storage Availability is not at least fifty percent (50%), or if for any Contract Year thereafter, the average Monthly Storage Availability is not at least seventy percent (70%); provided that in the event of a failure of the Facility's Main Power Transformer: (A) no Event of Default shall occur under this Section 11.1(b)(iii) if 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 [redacted]

Capacity Payment as specified in Section 3.2, and neither the Main Power Transformer [redacted]

(iv) if, for any two (2) consecutive Contract Years, the annual average Round Trip Efficiency is not at least [redacted]

(v) if Seller fails to maintain a Storage Capacity determined pursuant to a Storage Capacity Test equal to at least seventy-five percent (75%) of the Guaranteed Storage Capacity for longer than three hundred sixty (360) days; provided that in the event of a failure of the Facility's Main Power Transformer, the foregoing period shall be extended for an additional one hundred eighty (180) days, if 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 confirming that such Main Power Transformer failure can be cured within [redacted] from the first day of such Main Power Transformer failure and Seller completes the cure of the Main Power Transformer failure within such [redacted];

(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 material equipment, facility, property or other asset, other than the Facility and other energy storage facilities located at the Site that share the Interconnection Agreement through arrangements that comply with Section 4.15, or engages in any business or activity other than the development, financing, ownership or operation of the Facility and such other energy storage facilities;

(viii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days [redacted] 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)(i)) 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/or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **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 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) 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, 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.

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.

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. 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; (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.

(c) 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 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.

(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.

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 that impacts the number or quality of Resource Adequacy Benefits 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 Resource Adequacy Benefits available to Buyer consistent with the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date, it being understood that Buyer is to receive the maximum amount of Resource Adequacy Benefits available from the Facility; [redacted] 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.

20.12 **Time is of the Essence**. The Parties agree time is of the essence in regards to this Agreement.

EXHIBIT A

DESCRIPTION OF THE FACILITY

Facility Name: Nova III

Site Name: Nova Power Bank

Site Description:

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MENIFEE IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, BEING IN THE UNINCORPORATED AREA OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL THAT LAND SHOWN WITHIN CERTIFICATE OF PARCEL MERGER NO. 1622 FILED SEPTEMBER 13, 2005 IN 2005-0753554 OFFICIAL RECORDS OF RIVERSIDE COUNTY, CA.

TOGETHER WITH ALL THAT LAND SHOWN WITHIN THAT CERTAIN CERTIFICATE OF PARCEL MERGER NO. 1624 FILED SEPTEMBER 13, 2005 IN 2005-0753556 OFFICIAL RECORDS OF RIVERSIDE COUNTY, CA.

TOGETHER WITH LOTS 746 AND 749 AS SHOWN WITHIN THAT CERTAIN MAP OF ROMOLA FARMS NO 6A AS SHOWN WITHIN A MAP FILED JULY 9, 1926 IN MAP BOOK 14, AT PAGES 63, 64 AND 65, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA

TOGETHER WITH THAT PORTION OF THE EAST HALF OF LOT HH (ANTELOPE ROAD) ADJOINING LOT 746 ON THE WEST.

TOGETHER WITH THAT PORTION OF THE WEST HALF OF LOT JJ (SAN JACINTO ROAD), ADJOINING LOT 749 ON THE EAST.

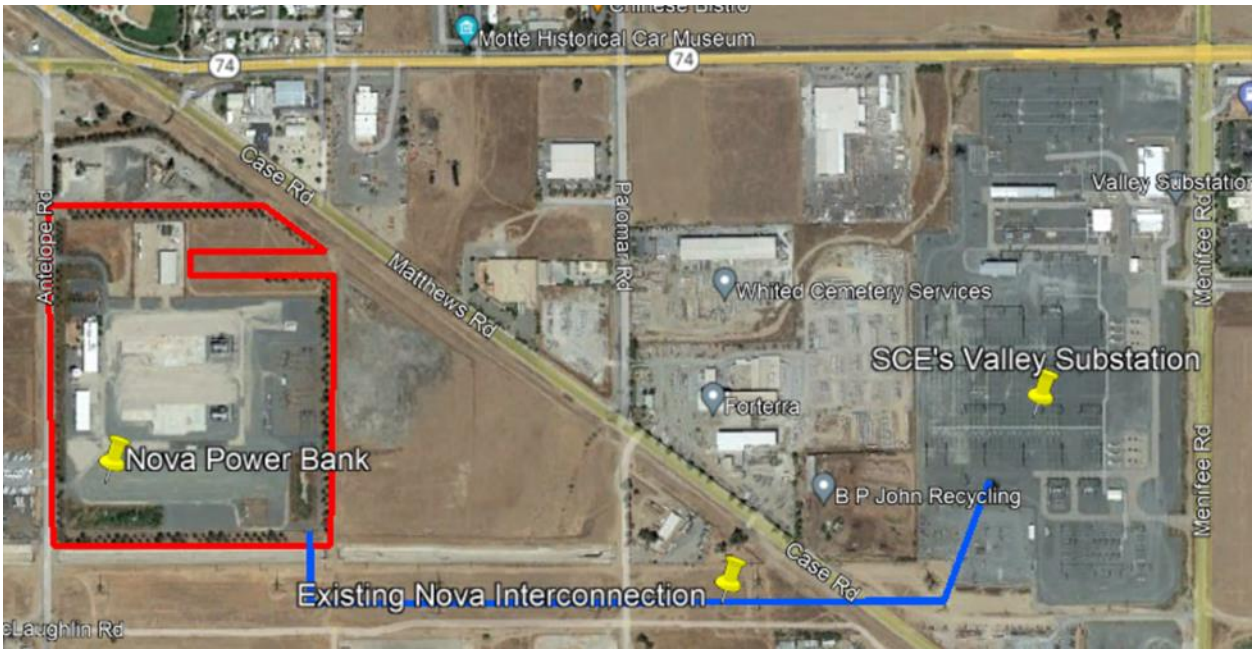
SAID LEGAL DESCRIPTION IS PURSUANT TO CERTIFICATE OF PARCEL MERGER NO. 1623, RECORDED NOVEMBER 3, 2005 AS INSTRUMENT NO. 2005-0913379, OFFICIAL RECORDS..

APN: 331-180-022

Site Address: 26226 Antelope Road, Menifee, CA 92587

GPS Coordinates: 33.73817092200062, -117.17121810982668

Site Map:



APNs: 331-180-022

County: Riverside County

CEQA Lead Agency: City of Menifee

Guaranteed Storage Capacity: 50 MW AC (net, at the Delivery Point)

Maximum Stored Energy Level at COD (MWh): 200 MWh

Maximum Charging Capacity at COD: 50 MW

Maximum Discharging Capacity at COD: 50 MW

Guaranteed Round Trip Efficiency: See the Cover Sheet

Ramp Rate: See Exhibit O

Storage Technology: Lithium-ion battery

P-node/Delivery Point: The PNode designated by CAISO for the Facility at the SCE 500kV Valley Substation

Point of Interconnection: SCE 500kV Valley Substation

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: **[*Insert description of metering, Interconnection Facilities, and other control equipment.*]** ***[NTD: Calpine is preparing]***

CAISO Queue Number: Q1645

One-Line Diagram: [*Insert one-line diagram showing electrical configuration of generation equipment, control equipment, and Interconnection Facilities.*] *[NTD: Calpine is preparing]*

Additional Information:

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

   a. Subject to the terms of this Exhibit B, 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 the physical movement of soil at the Site ("**Construction Start**"). On the date of the Construction Start (the "**Construction Start Date**"), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit H hereto.

   b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day that the Construction Start has not occurred, commencing the day after the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller [redacted] On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. The Parties agree that Buyer's receipt of Daily Delay Damages shall be Buyer's sole and exclusive remedy for the [redacted] of the delay in achieving the Construction Start Date on or before the Guaranteed 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)(i) 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 of the Facility has been achieved and specifying the "placed in service" date per Internal Revenue Service Requirements of the Facility. The "**Commercial Operation Date**" shall be the later of (x) August 1, 2024 or (y) the date on which Commercial Operation is achieved.

   a. Seller shall cause Commercial Operation for the Facility to occur by August 1, 2024 (as such date may be extended by the Development Cure

Period (defined below) [redacted], the "**Guaranteed Commercial Operation Date**"). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

b. Intentionally Omitted.

c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. [redacted] The Parties agree that Buyer's receipt of Commercial Operation Delay Damages [redacted] shall be Buyer's sole and exclusive remedy for the first [redacted] days of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall not (x) be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1, or (y) limit Buyer's right to declare an Event of Default under Section 11.1(b)(i) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

3. **Termination for Failure to Timely Achieve Construction Start or Commercial Operation**. If the Facility has not achieved Construction Start within [redacted] after the Guaranteed Construction Start Date, or Commercial Operation by the date that is [redacted] after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement pursuant to Sections 11.1(b)(i) 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 to the extent that any such delay prevents achievement of Construction Start and/or Commercial Operation, as applicable:

a. a Force Majeure Event occurs;

b. [redacted]

c. Buyer has not made all necessary arrangements to receive the Discharging Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(b) and 4(c) above) shall not exceed [redacted], 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 [redacted], 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 Commercial Operation Date, or after such date, Seller must provide written notice within seven (7) Business Days of Seller becoming aware of such delay; or (iii) Seller failed, upon written request from Buyer, to provide documentation demonstrating to Buyer's reasonable satisfaction that the delay was a result of a Force Majeure Event [redacted] and did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Storage Capacity**. If, at Commercial Operation, the Installed Storage Capacity is at least [redacted] of the Guaranteed Storage Capacity but less than the Guaranteed Storage Capacity, Seller shall have [redacted] days after the Commercial Operation Date to install additional storage capacity such that the Installed Storage Capacity is increased, but not to exceed the Guaranteed Storage Capacity. If Seller installs additional storage capacity pursuant to the immediately preceding sentence, Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit G-2 hereto specifying the new Installed Storage Capacity. In the event that the Installed Storage Capacity is still less than the Guaranteed Storage Capacity as of such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [redacted] and the Guaranteed Storage Capacity and other applicable portions of the Agreement shall be reduced based on the ratio of the Installed Storage Capacity as of such date to the original Guaranteed Storage Capacity.

6. **Buyer's Right to Draw on Development Security**. If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof, and Seller shall

replenish the Development Security to its full amount within five (5) Business Days after such draw.

EXHIBIT C

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:

Attn:

Phone:

EXHIBIT D

Reserved.

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

Intentionally Omitted.

EXHIBIT G-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by [LICENSED PROFESSIONAL ENGINEER] to Peninsula Clean Energy Authority **(**"**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated _____ ("**Agreement**") by and between Nova Power, LLC ("**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.

The Licensed Professional Engineer hereby certifies and represents to Buyer the following:

(1) Seller has installed and commissioned storage equipment with a capacity of at least [redacted] of the Guaranteed Storage Capacity in accordance with Exhibit M of the Agreement.

(2) The Facility is capable of receiving Charging Energy and delivering Discharging Energy to the Delivery Point and commissioning of equipment at the Facility has been completed in accordance with the manufacturer's specifications.

(3) Authorization to parallel the Facility was obtained by the Participating Transmission Owner, [Name of Participating Transmission Owner as appropriate] on___[DATE]____

(4) The Participating Transmission Owner or Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _____[DATE]_____.

(5) The CAISO has provided notification supporting the Facility's Commercial Operation, inclusion in the Full Network Model and authorization to provide Ancillary Services, all in accordance with the CAISO tariff on _____[DATE]_____.

(6) Documentation supporting the foregoing is attached hereto.

EXECUTED by:

[LICENSED PROFESSIONAL ENGINEER]

Signature:_____

Name:_____

Title/Company:_____

Date:_____

EXHIBIT G-2

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [LICENSED PROFESSIONAL ENGINEER] to Peninsula Clean Energy Authority in accordance with the terms of that certain Energy Storage Service Agreement dated _____ ("**Agreement**") by and between Nova Power, LLC ("**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.

The initial Facility performance test under Seller's engineering, procurement and construction contract or primary energy storage system supply agreement for the Facility demonstrated peak Facility electrical output of __MW AC at the Delivery Point ("**Installed Storage Capacity**"). Supporting documentation is attached hereto.

EXECUTED by:

[LICENSED PROFESSIONAL ENGINEER]

Signature:_____

Name:_____

Title/Company:_____

Date:_____

EXHIBIT H

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification ("**Certification**") of the Construction Start Date is delivered by Nova Power, LLC ("**Seller**") to PENINSULA CLEAN ENERGY AUTHORITY ("**Buyer**") in accordance with the terms of that certain Energy Storage Service 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 _____.

NOVA POWER, LLC

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 sixty (60) 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 and governed by the International Standby Practices, International Chamber of Commerce (ICC) Publication No. 590 ("ISP98"). as to matters not addressed by the ISP98, and to the extent not inconsistent with the ISP98, this Letter of Credit shall be governed by and construed in accordance with the law of the State of New York (including, without limitation, Article 5 of the Uniform Commercial Code of the State of New York).

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. Applicant has defaulted or otherwise failed to make a payment when due under the Agreement, and Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____ which is the amount that is due and owing to Beneficiary under the Agreement beyond any applicable notice or grace periods and remains unpaid at the time of this drawing.

   or

3. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____, which equals the full available amount under the Letter of Credit, because the Bank has provided notice of its intent to not extend the expiry date of the Letter of Credit and Applicant failed to provide acceptable replacement security to Beneficiary at least thirty (30) days prior to the expiry date of the Letter of Credit.

4. The undersigned is a duly authorized representative of Peninsula Clean Energy and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Peninsula Clean Energy Authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Peninsula Clean Energy Authority

_____
Name and Title of Authorized Representative

Date_____

EXHIBIT J

INSURANCE

Liability Insurance

To the fullest extent allowable by law, Seller shall purchase and maintain such insurance as will protect it from the claims set forth below which may arise out of or result from Seller's operations under this Agreement whether such operations be by itself or by anyone directly or indirectly employed by them, or by anyone for whose acts any of them may be liable. Seller shall maintain the minimum limits as required herein.

General Conditions

Seller shall maintain completed operations liability insurance for the entire Contract Term plus the period of time Seller may be held legally liable for.

Seller shall maintain policies of insurance in full force and effect, at all times during the performance of the Agreement, plus any statute of repose or statute of limitations applicable to the jurisdiction where any work is performed.

All insurance companies shall have a Best's rating of A-VII or better.

In addition, Seller shall provide Buyer with 30 days' notice in case of cancellation or non- renewal, except 10 days for non-payment of premium.

Certificates of Insurance Acord Form 25 or its equivalent and all required Endorsements shall be filed with Buyer prior to commencement of any work performed.

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 form (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
- $2,000,000 Products/Completed Operations Aggregate

Business Auto Liability – Coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) form CA 00 01, written on an occurrence basis to apply to "any auto" or at a minimum "all owned, hired and non-owned autos", with policy limits of not less than $1,000,000 per accident for bodily injury and property damage.

If applicable, Broadened Pollution for Covered Autos shall apply. This requirement may also be satisfied by providing proof of separate Pollution Liability that includes coverage for transportation exposures.

Workers' Compensation and (b) employers' liability – Sellers shall provide coverage for industrial injury to their employees (or leased employees as applicable) in strict accordance with the provisions of the State or States in which project work is performed or where jurisdiction is deemed to be applicable. Workers' Compensation shall be provided in a statutory form on either a state or, where applicable, federal (U.S. Longshore & Harbor Workers Act, Maritime- Jones Act, etc.) basis as required in the applicable jurisdiction.

Such insurance shall be in an amount of not less than:

- Workers Compensation: Statutory
- Employers Liability
    - $1,000,000 Bodily Injury by Accident – Each Accident
    - $1,000,000 Bodily Injury by Disease – Total Limit
    - $1,000,000 Bodily Injury by Disease – Each Employee

Commercial Umbrella or Excess Liability Insurance over Seller's primary Commercial General Liability, Business Auto Liability and Employers Liability. All coverage terms required under the Commercial General Liability, Business Auto Liability and Employers Liability above must be included on the Umbrella or Excess Liability Insurance.

Coverage shall be written on an occurrence form with policy limits not less than:

- $5,000,000 Each Occurrence
- $5,000,000 Personal & Advertising Injury
- $5,000,000 Aggregate (where applicable, following the terms of the underlying)

Pollution liability – Seller shall provide evidence prior to the Construction Start Date of Pollution Liability; covering all operations necessary or incidental to the fulfillment of all contract obligations hereunder. Such insurance shall provide coverage for bodily injury, property damage (including loss of use of damaged property or of property that has not been physically injured), clean- up costs and remediation expenses (including costs for investigation, sampling, characterization, and monitoring), legal costs, defense costs, natural resource damage, transportation of pollutants on and off the project site, and non-owned disposal site liability if Seller's scope of work (or Seller's consultants) includes the responsibility of manifesting and disposing of contaminated material or waste from its activities. Coverage shall also extend to pollution conditions arising out of the Seller's operations including coverage for sudden as well as gradual release arising from Seller's operations including operations of any of its Seller's or consultants. Such insurance shall provide coverage for wrongful acts, which may arise from all activities from the first point of Seller engagement and shall continue on a practice basis for not less than 36 months after completion, or the period of time Seller may be held legally liable for its work, whichever is longer. The retro date if any such coverage shall be prior to the commencement of Seller's work.

Such insurance shall be in an amount of not less than $5,000,000 per claim or occurrence and $5,000,000 annual aggregate.

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, but only to the extent of the liabilities assumed 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.

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.

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 K

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [ ], a [ ] ("**Seller**") to Peninsula Clean Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [_____] ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.6(b) of the Agreement, Seller hereby provides the below Replacement RA product information (to be repeated for each unit if more than one):

Name	
Location	
CAISO Resource ID	
Unit SCID	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line")	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Deliverability Period	
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Resource Category (MCC Bucket e.g., 1, 2, 3, or 4)	
Flexible Capacity Category (e.g., 1, 2, 3, or N/A)	

Month	**Unit CAISO NQC (MW)**	**Unit CAISO EFC (MW)**	**Unit Contract Quantity (MW)**	**Unit EFC Contract Quantity (MW)**
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

[SELLER]

By:_____

Its:_____

Date:_____

Whereas, the following definitions apply to the terms in the above Replacement RA product information:

"**CPUC RA Filing Guide**" means the Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings published annually by the CPUC.

"**Deliverability Period**" means the period in which the unit has rights to deliver energy to the CAISO Grid.

"**Flexible Capacity Category**" means the category of Effective Flexible Capacity, as described in the CPUC RA Filing Guide, applicable to the unit.

"**LCR Area (if any)**" means the Local Capacity Requirement area, as used in the CPUC RA Filing Guide, applicable to the unit, if any.

"**Prorated Percentage of Unit Factor**" means the percentage of the Unit CAISO NQC that is designated as Unit Contract Quantity.

"**Prorated Percentage of Unit Flexible Factor**" means the percentage of Unit CAISO EFC that is designated as Unit EFC Contract Quantity.

"**Resource Category**" means the Maximum Cumulative Capacity category, as described in the CPUC RA Filing Guide, applicable to the unit.

"**Resource Type**" means the type of storage resource.

"**Run Hour Restrictions**" means any restrictions on the ability of the unit to run during any hours of the day.

"**Unit CAISO EFC**" means the unit's Effective Flexible Capacity, as described in the CPUC RA Filing Guide, as determined by CPUC and CAISO.

"**Unit CAISO NQC**" means the NQC (as defined in the CAISO Tariff) for the unit, as determined by CPUC and CAISO.

"**Unit Contract Quantity**" means the amount of Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Guaranteed RA Amount.

"**Unit EFC Contract Quantity**" means the amount of Flexible Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Guaranteed RA Amount.

"**Unit SCID**" means the unit's "Scheduling Coordinator ID Code", as defined in the CAISO Tariff.

EXHIBIT L

Monthly Expected Available Storage Capacity

The following table is provided for informational purposes only.

Please adjust the table for the appropriate number of days in the month for each month of the year.

Monthly Expected Available Storage Capacity (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 26																									
Day 27																									
Day 28																									
Day 29*																									
Day 30*																									
Day 31*																									

EXHIBIT M

MONTHLY STORAGE AVAILABILITY

1. Monthly Storage Availability.

(a) For each monthly period after the Commencement Operation Date, Seller shall calculate the "**Monthly Storage Availability**" using the formula set forth below:

[redacted]

where:

m = relevant monthly period for which availability is calculated;

MONTHLYHRS*m* = the total number of hours for the monthly period;

PRIMARY UNAVAILHRS*m* = the sum of the following without duplication: (i) the total number of hours in the monthly period during which the Facility was unavailable to be dispatched, in whole or in part, to deliver Product for any reason; (ii) the total number of hours in the monthly period during which the Facility failed to comply with a valid Charging Notice or Discharging Notice that complies with this Agreement, including any such failure to charge or discharge at the times, in the quantities, and at the levels specified in such Charging Notice or Discharging Notice; and (iii) the total number of hours in the monthly period during which the Facility was charged or discharged other than pursuant to a valid Charging Notice or Discharging Notice that complies with this Agreement, pursuant to a notice from the CAISO, any PTO, or any other Governmental Authority, [redacted] provided, that, notwithstanding anything therein to the contrary, the foregoing calculation shall not include any hours that are SECONDARY UNAVAILHRS*m* or in which the Facility was unavailable (on a prorated basis) to deliver the Product as a result of an Excused Event. Any partial unavailability of the Facility for a full hour and any unavailability of the Facility for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. For the avoidance of doubt when determining partial compliance with respect to this PRIMARY UNAVAILHRS*m* calculation: partial availability in part (i) will result in prorated unavailability hours based on the portion of the capacity of the Facility and/or the portion of the hour during which the Facility was not available for dispatch; partial compliance in any hour for part (ii) will result in prorated unavailability hours based on the portion of the Charging Notice or Discharging Notice with which and/or the portion of the hour during which the Facility failed to comply; and partial compliance in any hour for part (iii) will result in prorated unavailability hours based on the portion of the capacity of the Facility and/or the portion of the hour during which the Facility was charged or discharged without a valid notice or as

permitted by this Agreement.

SECONDARY UNAVAILHRS*m* = the total number of hours in the monthly period that would be PRIMARY UNAVAILHRS*m* but that are caused by Force Majeure Events or Curtailment Orders not attributable to Seller's fault or negligence. Partial SECONDARY UNAVAILHRS*m* shall be prorated in the same manner as PRIMARY UNAVAILHRS*m*.

"**Excused Event**" means any period of time during which the Facility was unavailable (on a prorated basis) to deliver Product as a result of (i) limitations contained in the Operating Restrictions, (ii) an annual Storage Capacity Test (as described in Exhibit N) or a Storage Capacity Test performed at Buyer's request, (iii) Permitted Scheduled Maintenance conducted in compliance with and not [redacted] For the avoidance of doubt, all hours of unavailability of the Facility attributable to an Excused Event are removed for purposes of the calculation of Monthly Storage Availability.

"**Primary Availability**" shall be a percentage equal to, for a monthly period, one hundred percent (100%) minus the quotient of PRIMARY UNAVAILHRSm divided by MONTHLYHRSm, each as used in the Monthly Storage Availability calculation above.

"**Secondary Availability**" shall be a percentage equal to, for a monthly period, one hundred percent (100%) minus the quotient of SECONDARY UNAVAILHRSm divided by MONTHLYHRSm, each as used in the Monthly Storage Availability calculation above.

2. Storage Availability Adjustment. The "**Storage Availability Adjustment**" shall be calculated as follows and applied to the Storage Capacity Payment due for the next month after the end of the monthly period for which the Monthly Storage Availability is calculated.

(a) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

[redacted] **(expressed as a decimal)**

(b) If (i) the Monthly Storage Availability is less than the Guaranteed Storage Availability and (ii) the Primary Availability is greater than or equal to the Guaranteed Storage Availability, then:

[redacted] **(expressed as a decimal)**

provided, that if the criteria [redacted]

(c) If (i) the Monthly Storage Availability is less than the Guaranteed Storage Availability and (ii) the Primary Availability is less than the Guaranteed Storage Availability but greater than or equal to [redacted] then:

[redacted] **(expressed as a decimal)**

(d) If (i) the Monthly Storage Availability is less than the Guaranteed Storage Availability, and (ii) the Primary Availability is less than [redacted] then:

[redacted]

3. <u>Sample Calculations</u>. For illustrative purposes only, below are sample calculations of the Storage Availability Adjustment under each of the potential scenarios in Section 2(a) through (d) above. [*NTD: To be added*.]

EXHIBIT N

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days' Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit N and shall establish the initial Storage Capacity hereunder based on the actual capacity of the Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, but not more than once per Contract Year, upon no less than ten (10) Business Days' Notice to Seller, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test and to update the Facility's PMax and other relevant information and values in the CAISO's Master Data File and Resource Data Template (or successor data systems). In addition, Buyer shall have the right to require a retest of the most recent Storage Capacity Test (and to update the Facility's PMax and other relevant information and values as specified above) at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test or any other guaranteed operational characteristics are not being met. Seller shall have the right to perform a Storage Capacity Test or run a retest of any Storage Capacity Test at any time during any Contract Year upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Capacity. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.11(c) of this Agreement and Part II(I) below, the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Capacity, as such Guaranteed Storage Capacity may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Capacity, effective as of the first day of the month following completion of the Storage Capacity Test for calculating the payment for the Product and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test, each subsequent Storage Capacity Test, and all re-tests thereof permitted under paragraph B above) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit N. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit N as a "**SCT**". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Test Elements. Each SCT shall include the following test elements:

- Electrical output at Maximum Discharging Capacity at the Storage Facility Meter (MW);
- Electrical input at Maximum Charging Capacity at the Storage Facility Meter (MW);
- Amount of time between the Facility's electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Facility's electrical input going from 0 to Maximum Charging Capacity;
- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

B. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Facility, at ten (10) minute intervals:

(1) Time;

(2) Charging Energy;

(3) Discharging Energy;

(4) Stored Energy Level (MWh);

(5) Station Use.

C. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg) near the horizontal centerline of the Facility; and

(3) Ambient air temperature (°F).

D. Test Showing. Each SCT must demonstrate that the Facility:

(1) successfully started;

(2) operated for at least [four (4)] consecutive hours at Maximum Discharging Capacity;

(3) operated for at least [four (4)] consecutive hours at Maximum Charging Capacity;

(4) is able to ramp upward and downward at the contract Ramp Rate;

(5) has a Storage Capacity of an amount that is, at least, equal to the Maximum Stored Energy Level (as defined in Exhibit A); and

(6) is able to deliver Discharging Energy to the Delivery Point as measured by the Storage Facility Meter for [four (4)] consecutive hours at a rate equal to the Maximum Discharging Capacity.

E. Test Conditions.

(i) General. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity.

(ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Part II.F below.

(iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

(iv) Ambient Temperature. For tests requested by Buyer (and not for any CAISO-initiated test, which shall occur when directed by CAISO), the average ambient temperature, based on an aggregate of 1-minute resolution data collected throughout the SCT, must be within the range of 8 – 33 degrees Celsius. [redacted]

F. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

(1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;

(3) the level of Installed Storage Capacity, charging capacity, discharging capacity, charging ramp rate, discharging ramp rate, and Stored Energy Level determined by the SCT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.F.

H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit N with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("**Supplementary Storage Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit N.

I. Adjustment to Storage Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first four hours of discharge (up to, but not in excess of, the product of (i) the Guaranteed Storage Capacity, as such Guaranteed Storage Capacity may have been adjusted (if at all) under this Agreement, multiplied by (ii) 4 hours) shall be divided by four hours to determine the Storage Capacity, which shall be expressed in MW AC, and shall be the new Storage Capacity in accordance with Section 4.11(c) of this Agreement.

J. Following the initial Storage Capacity Test conducted prior to the Commercial Operation Date, upon request of Seller, Buyer shall consider in good faith an alternate methodology for conducting a Storage Capacity Test by reference to the

operational data reflecting the net output of the Facility from the point of interconnection. Upon Seller's request, Seller and Buyer shall work in good faith to establish a mutually acceptable methodology for demonstrating the Storage Capacity through such operational data. If Buyer and Seller mutually agree in writing on an alternate methodology, such alternate methodology shall become the Storage Capacity Test used to establish the Storage Capacity for all purposes of this Agreement, including compensation under Section 3.2.

EXHIBIT O

OPERATING RESTRICTIONS

Maximum Cycle Limits: Number of times Buyer may fully charge and discharge the Facility. A full charge will be deemed to have occurred when the cumulative amount of energy added to the Facility over the course of a calendar year equals the Maximum Stored Energy Level (as defined in Exhibit A). This could occur in one continuous charge or over multiple charges, even if some energy is discharged in between. The inverse is true for a full discharge.

Annual: [redacted]

Ramp Rates: [redacted]

System Response Time: [redacted]

Note: System response times apply only when the Facility is an on-line state. System response times are also subject to adjustment if CAISO limits the Facility's ramp rate.

Maximum Stored Energy Level:	[redacted] MWh, number in MWh representing maximum amount of energy that may be discharged from the Facility
Minimum Stored Energy Level:	[redacted] number in MWh representing the lowest level to which the Facility may be discharged
Maximum Average Annual Stored Energy Level;	[redacted], calculated based on the average daily Stored Energy Level over a Contract Year
Maximum Charging Capacity:	[redacted] MW, number in MW representing the highest level to which the Facility may be charged
Minimum Charging Capacity:	[redacted] number in MW representing the lowest level at which the Facility may be charged
Maximum Discharging Capacity:	[redacted] MW, number in MW representing the highest level at which the Facility may be discharged
Minimum Discharging Capacity:	[redacted] MW, number in MW representing the lowest level at which the Facility may be discharged
Maximum State of Charge (SOC) during Charging:	[redacted] MWh
Minimum State of Charge (SOC) during Discharging:	[redacted]MWh

EXHIBIT P

METERING DIAGRAM

EXHIBIT Q

RTE SHORTFALL PAYMENTS

In the event that the RTE_M is less than the GRTE, the portion of the monthly Storage Capacity Payment calculated under Section 3.2(a)(i) shall be reduced (but not below zero) by the "**RTE Shortfall Payment**", calculated as follows:

$$(GRTE - RTE_M) \times \text{Average Monthly T4B5 Price} \times RTEF_M \times TCE_M$$

where:

GRTE = the Guaranteed Round-Trip Efficiency

RTE_M = the "**Round-Trip Efficiency**", as calculated by dividing (a) the total Discharging Energy for the applicable month by (b) the total Charging Energy for the applicable month.

The "**Average Monthly T4B5 Price**" means, for the applicable month, the monthly average of the following calculated for each day of the month: the average of the four (4) highest hourly Day-Ahead Market LMPs during each day of such month, and the five (5) lowest hourly Day-Ahead Market LMPs during each day of such month. For clarity, the Average Monthly T4B5 Price is the monthly average of the four highest (4) hourly average prices, and the five (5) lowest hourly average prices, for each day of the applicable month.

The "**Round-Trip Efficiency Factor**" or "$RTEF_M$" for each month is determined as follows:

If RTE_M [redacted]

If RTE_M [redacted]

If RTE_M [redacted]

If RTE_M [redacted]

If RTE_M [redacted]

TCE_M = the total Charging Energy charged to the Storage Facility in the applicable month.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: October 21, 2022
BOARD MEETING DATE: October 27, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer
Sara Maatta, Senior Renewable Energy and Compliance Analyst

SUBJECT: Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase and Sale Agreement for Renewable Supply with Whitegrass No. 2, LLC, and any necessary ancillary documents with a Power Delivery Term of 20 years starting at the Commercial Operation Date on or about December 31, 2024, in an amount not to exceed $109 million.

RECOMMENDATION:
Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase Agreement for Renewable Supply with Whitegrass No. 2, LLC, and any necessary ancillary documents with a Power Delivery Term of 20 years starting at the Commercial Operation Date on or about December 31, 2024, in an amount not to exceed $109 million.

BACKGROUND:
The Board set a goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy by 2025, and to align that renewable supply with customer demand on a 24x7 basis. In addition, in December 2017 the Board approved Peninsula Clean Energy's Strategic 2018 Integrated Resource Plan, which outlines procurement targets for Peninsula Clean Energy to build a diverse, low-cost power portfolio. One of the technologies that will help Peninsula Clean Energy to meet these goals is geothermal, which provides clean baseload, generating electricity each and every hour of the day. The Whitegrass No. 2 Project would be the fifth geothermal contract to be added to Peninsula Clean Energy's supply portfolio.

CPUC MTR Procurement Mandate

On June 24, 2021, the California Public Utilities Commission (CPUC) adopted D.21-06-035. This decision is commonly known as the mid-term reliability (MTR) procurement

mandate. It directs load serving entities (LSEs) to collectively procure 11,500 MW[1] of new resources between 2023 to 2026 to meet mid-term grid reliability needs. The decision requires that contracts made pursuant to this requirement have a term of at least 10 years and that resources are zero-emission or eligible under the California renewable portfolio standard (RPS). Specific category requirements were assigned to 4,500 MW of the requirement, for example, 2,500 MW are required to be zero-emissions generation, generation paired with storage, or demand response resources, 1,000 MW are required to be firm zero-emitting resources, and 1,000 MW are required to be long-duration storage resources.

State-Wide MTR Procurement Requirements (MW NQC)

Procurement Category	2023	2024	2025	2026	Total
Zero-emissions generation, generation paired with storage, or demand response resources[2]	-	-	2,500	-	2,500
Firm zero-emitting resources	-	-	-	1,000	1,000
Long-duration storage resources	-	-	-	1,000	1,000
Remaining New Capacity Required			-	-	7,000
Total Annual Net Qualifying Capacity (NQC) Requirements	***2,000***	***6,000***	***1,500***	***2,000***	***11,500***

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

Procurement Category	2023	2024	2025	2026	Total
Zero-emissions generation, generation paired with storage, or demand response resources[3]	-	-	47	-	47
Firm zero-emitting resources	-	-	-	19	19

[1] Requirement measured as net qualifying capacity (NQC) rather than nameplate capacity. The CPUC issued a report identifying what percent of a technology's nameplate capacity would count toward this requirement. This means that each LSE's nameplate capacity is higher than the requirement identified in the decision.
[2] Zero-emissions resources required to replace Diablo Canyon must be procured by 2025 but may occur in any of the years 2023-2025; therefore, the columns do not add to the total.
[3] Zero-emissions resources required to replace Diablo Canyon must be procured by 2025 but may occur in any of the years 2023-2025; therefore, the columns do not add to the total.

Long-duration storage resources	-	-	-	19	19
Remaining New Capacity Required			-	-	132
Total Annual Net Qualifying Capacity (NQC) Requirements	***38***	***113***	***28***	***38***	***217***

One of the categories identified in the decision was firm zero-emitting resources, required to be online by 2026, which may include geothermal. Once this decision was issued, Peninsula Clean Energy soon issued a request for offers to focus on meeting the various tranches of the decision's procurement mandate.

The requirements were allocated to each LSE based on load share. Under the decision, Peninsula Clean Energy was allocated a requirement to bring online a total of 19 MW of firm zero-emitting resources by 2026. Peninsula Clean Energy plans for the Whitegrass No. 2 project to satisfy approximately 5.7 MW of this total obligation, which is the estimated amount of NQC that a 6 MW geothermal project such as Whitegrass No. 2 qualifies for under the MTR.

2021 Renewable Request for Offers

Peninsula Clean Energy launched a request for offers (RFO) in late-2021 targeting procurement of renewable energy and energy storage resources to satisfy the MTR procurement mandate and contribute to its 24/7 100% renewable goal. Additionally, the RFO sought long-term contracts which provide better value than short-term contracts and expand the amount of renewable energy serving California.

Peninsula Clean Energy received a robust response to the RFO from 43 participants for 70 different projects for renewable, renewable plus storage, and standalone storage. Staff evaluated these projects based on value to Peninsula Clean Energy, development status, project viability, project team experience, compliance with workforce policy and environmental impact.

Staff conducted extensive analysis to identify the top projects to shortlist. Staff's analysis has indicated that Peninsula Clean Energy should procure renewable baseload supply such as form geothermal. Geothermal provides for steady power generation 24 hours per day and throughout the year. There is some slight season variation with higher generation in the winter months than the summer, which complements Peninsula Clean Energy's load and generation portfolio.

Specifically, the Whitegrass Number 2 Geothermal Project (Project) offered by Whitegrass No. 2, LLC has been identified as a beneficial project to help us meet our

24x7 renewable energy goals. Furthermore, the Project qualified as a Firm Clean Resource under the CPUC Decision 21-06-035, and would contribute to meeting our requirements in that category.

Staff reviewed shortlisted projects with the CEO and then entered into exclusive negotiations with the shortlisted projects. Throughout 2022, Peninsula Clean Energy has worked with the project developer on negotiating the power contract.

Additionally, staff met with the Procurement Board subcommittee in October 2022 to review the shortlisted projects from the RFO including the Whitegrass No. 2 project.

Per Peninsula Clean Energy's Policy 15 Energy Supply Procurement Authority[4], any power procurement contracts greater than 5 years must be approved by the Board of Directors.

Overview of Project

Project Name	Whitegrass Number 2 Geothermal Project
Technology	Geothermal
Project Capacity	6 MW
Delivery Commencement Date	12/31/2024
Owner	Whitegrass No. 2, LLC
Location	Lyon County, NV

The project is 6 MW geothermal facility located approximately 10 miles north of Yerington, NV in Lyon County. The Commercial Operation Date is December 31, 2024. The project is expected to deliver enough energy to meet approximately 1.4% of Peninsula Clean Energy's energy needs and will provide Portfolio Content Category (PCC) 1 energy to meet Peninsula Clean Energy's RPS requirements.

The project has an executed interconnection agreement with NV Energy and firm transmission service rights to deliver at the CAISO intertie of Mona. The project is being built adjacent to an existing geothermal facility on land zoned variously for geothermal development, industrial, commercial, agricultural, mining, and recreational use.

Under the contract, Peninsula Clean Energy will pay for the output at a fixed-price rate per MWh with no escalation, for the full term of the contract (20 years). Peninsula Clean Energy is entitled to all product attributes from the facility, including energy, renewable energy, ancillary services, and resource adequacy.

Owner

[4] 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

The project is owned by Whitegrass No. 2, LLC, which is owned by Open Mountain Energy and ultimately owned by Zhejiang Kaishan Compressor Co., Ltd (Kaishan), located in China. Kaishan has installed and is operating over 150MW of similar equipment in geothermal projects globally, including 15.5MW in the United States.

Environmental Review

Peninsula Clean Energy staff worked with several environmental non-profits to develop a system for evaluating the environmental impact of projects. Specifically, we asked each bidder to provide a geospatial footprint of their project. During the evaluation period, staff studied the geospatial footprint of the project to evaluate whether the project is located in a restricted or high conflict area for renewable energy development. These areas include but are not limited to:

- Protected areas at the federal, state, regional, local level (e.g. County-designated conservation areas, BLM Areas of Critical Environmental Concern, critical habitat for listed species, national, state, county parks, etc.).
- Identified and mapped important habitat and habitat linkages, especially for threatened and endangered species (either state or federally listed).

Further, projects that are located in areas designated for renewable energy development or in areas that are not suitable for other developmental activities, such as EPA re-power sites, receive positive environmental scores.

For this project, the analysis showed that the project is partially located in a protected area based on the USGS Protected Areas Database[5] (PAD-US). The project wellheads and pipelines have been sited to avoid environmental impacts.

Workforce Requirements

Whitegrass No. 2, LLC has committed to using a Project Labor Agreement or similar agreement for the construction of the project, to the extent that union labor is available to supply the type and quantity of skilled labor necessary to perform work in connection with construction of the Facility.

DISCUSSION:

The Board set a goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy by 2025, and to align that renewable supply with customer demand on a 24x7 basis.

This project will help Peninsula Clean Energy meet its customers' large renewable energy demand, aligned on a time-coincident basis, while maintaining competitiveness. To date, Peninsula Clean Energy has entered into fourteen long-term renewable

[5] USGS PAD-US: https://www.usgs.gov/core-science-systems/science-analytics-and-synthesis/gap/science/protected-areas

contracts, which make up approximately 65% of overall load, as shown in the table below:

Long-Term Renewable Contracts Contributing to Peninsula Clean Energy's Load

Project	RE MW	Status	Commercial Operation Date	Term (Yrs)	County	Approx. % of Load Served in 2025
Wright Solar	200	Operating	January-2020	25	Merced	14.7%
Mustang 2 Solar	100	Operating	November-2020	15	King	7.9%
Chaparral Solar	102	Development	December-2023	15	Kern	8.1%
Arica Solar	100	Development	April-2024	15	Riverside	8.3%
Gonzaga Ridge Wind Farm	76.35	Development	December-2024	15	Merced	4.9%
Geysers Geothermal	35	Operating	July-2022	10	Sonoma & Lake	8.4%
Second Imperial Geothermal	26	Development	January-2023	15	Imperial	5.8%
Sky River Wind	30	Operating	September-2021	20	Kern	3.1%
Ormat Geothermal (CC Power Project)	11.39 (min)	Development	Project Specific, no earlier than June-2024	20	CA and NV	2.4%
Fish Lake Geothermal (CC Power Project)	2.3	Development	6/1/2024	20	Esmeralda, NV	0.5%
Hatchet Small Hydro	7.5	Operating	March-2017	20	Shasta	0.5%
Bidwell Small Hydro	2	Operating	March-2017	17	Shasta	0.3%
Roaring Small Hydro	2	Operating	March-2017	17	Shasta	0.2%
Clover Small Hydro	1	Operating	April-2018	15	Shasta	0.1%
Total Contracted						***65.0%***
Whitegrass 2 Geothermal	6	Development	December-2024	20	Lyon, NV	1.4%
Total With Pending						***66.4%***

The Whitegrass No. 2 Geothermal Project is a 6 MW renewable generating resource, covering an additional 1.4% of Peninsula Clean Energy's overall demand. This contract will enable Peninsula Clean Energy to come closer to reaching its internal goal to be 100% renewable on an annual basis and provide 24x7 renewable energy, as well as its regulatory obligations under SB 100 and SB 350, which requires that 65% of Renewables Portfolio Standard (RPS)-compliance related renewable energy supply be sourced from long-term contracts beginning in the 2021-2024 compliance period.

FISCAL IMPACT:

The financial impact of adding this project to Peninsula Clean Energy's portfolio of supply resources is net neutral in expected supply costs. The fiscal impact of the project will not exceed $109 million over the 20-year term of the Agreement.

STRATEGIC PLAN:

The project supports 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:

Whitegrass No. 2 Renewable 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 WHITEGRASS NO. 2 LLC, AND ANY NECESSARY ANCILLARY DOCUMENTS WITH A POWER DELIVERY TERM OF TWENTY YEARS BEGINNING AT THE COMMERCIAL OPERATION DATE ON OR ABOUT DECEMBER 31, 2024, IN AN AMOUNT NOT TO EXCEED $109 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, 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 Whitegrass No. 2, LLC (Contractor), to procure 6 MW of power generation from the project, based on Contractor's desirable offering of products, pricing, and terms; and

WHEREAS, the project will contribute toward Peninsula Clean Energy's goal to procure 100% of its energy supply from renewable energy by providing renewable generation for a term of twenty years starting at the Commercial Operation Date on or about December 31, 2024; and

WHEREAS, staff presents 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 Agreement and any other ancillary documents required for said purchase of power from the Contractor.

WHEREAS, the Board's delegation to the Chief Executive Officer of the authority to execute the Agreements is contingent on the Whitegrass No. 2, LLC Board approving the Agreements' terms as presented to this Board.

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

Execute the Agreement 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 $109 million.

* * * * * *

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Whitegrass No. 2, LLC, a Nevada limited liability company

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

Description of Facility: Whitegrass No. 2 Geothermal Project, a 6 MW geothermal power plant, located in Lyon County, in the State of Nevada, as further described in Exhibit A.

Guaranteed Commercial Operation Date: December 31, 2024

Milestones:

Milestone	Completion Date
Site Control	Effective Date
Conditional Use Permit	September 30, 2023
Phase II Interconnection Study Results	Effective Date
Executed Interconnection Agreement	Effective Date
Procure Major Equipment	January 1, 2024
Financial Close	June 30, 2024
Construction Start	March 31, 2024
Initial Synchronization	November 30, 2024
Commercial Operation Date	December 31, 2024
Network Upgrades completed	November 30, 2024
Obtain Full Capacity Deliverability Status (or equivalent)	December 31, 2024

Delivery Term: Twenty (20) Contract Years

Guaranteed Capacity: 6 MW at the Delivery Point

Delivery Term Expected Energy: [redacted] [*To be based on the P50 value provided by the Facility's resource study.*]

Contract Year	Expected Energy (MWh)
1	[redacted]
2	[redacted]
3	[redacted]
4	[redacted]
5	[redacted]
[*Through N*]	[redacted]

Monthly Expected Energy:[1]

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

Contract Price:

Contract Years	Contract Price ($/MWh)
1 – 20	[redacted]

Product:

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

Scheduling Coordinator: Buyer or Buyer's Agent

Development Security: [redacted]

Performance Security: [redacted]

Damage Payment: [redacted]

Notice Addresses:

Seller:

Company Name: Whitegrass No. 2, LLC
Address: 3451 N. Triumph Blvd., Suite 201, Lehi, UT 84043

Attention: Manager
Phone No.: [redacted]
Email: [redacted]

With a copy to:

Company Name: Whitegrass No. 2, LLC
Address: 3451 N. Triumph Blvd., Suite 201, Lehi, UT 84043

Office of the General Counsel
Phone No.: [redacted]
Email: [redacted]

Scheduling:

Company Name: Whitegrass No. 2, LLC
Address: 3451 N. Triumph Blvd., Suite 201, Lehi, UT 84043

Attention: Manager
Phone No.: [redacted]
Email: [redacted]

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
[*Name of Seller*]	Peninsula Clean Energy Authority
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 intends to develop, design, construct, own or otherwise have control over, and operate the 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, all Energy generated by the Facility, all Green Attributes related to the generation of such Energy, and all 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
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.

"**Ancillary Services**" has the meaning set forth in the CAISO Tariff.

"**Approved Maintenance Outage**" 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 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 the Facility was able to produce for that period of time, as determined based upon the lesser of (A) the arithmetic average of the Facility's metered output rate, in MW, for the twenty-four (24) hour periods immediately before and after the related Buyer Curtailment Period, or (B) the Guaranteed Capacity;

(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 or as a result of a (i) Buyer Bid Curtailment or (ii) Buyer Curtailment Order.

"**Buyer Default**" means a failure by Buyer or its agents to perform Buyer's obligations hereunder, and includes an Event of Default of Buyer.

"**Buyer'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 Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

"**California Renewables Portfolio Standard**" or "**RPS**" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015) and 100 (2018) 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/or deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

"**Capacity 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 [redacted] 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, 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 [redacted]) or any assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

Notwithstanding the foregoing, 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 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 (b) sixty (60).

"**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 end on the last day of the twelfth (12th) full month thereafter and each subsequent twelve-month period during the Delivery Term thereafter will be a Contract Year.

"**Control**" (including, with correlative meanings, the terms "Controlled by" and "under common Control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast more than fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of more than fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

"**Cover Sheet**" means the cover sheet to this Agreement.

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

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

"**CPUC System RA Penalty**" means the Tier 1 System RA Penalties assessed against LSEs by the CPUC for RA deficiencies that are not replaced or cured, as established by the CPUC in the Resource Adequacy Rulings. For example, as reflected in the "2022 Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings," the Tier 1 System RA Penalties applicable as of the Effective Date are 8.88/kW-month for the months of May through October and $4.44/kW-month for the months of November to April.

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

"**Curtailment Order**" means any of the following:

(a) CAISO or the Transmission Provider 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 Transmission Provider 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 Transmission Provider's or distribution operator's electric system integrity or the integrity of other systems to which the or Transmission Provider is connected;

(c) a curtailment ordered by the Transmission Provider due to scheduled or unscheduled maintenance on Transmission Provider'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 Transmission Provider 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 current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order; *provided*, the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"**Daily Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) 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 calculated as the difference between (a) the product of (i) the lesser of (A) the arithmetic average of the Facility's metered output rate, in MW, for the twenty-four (24) hour periods immediately before and after such Curtailment Period or other applicable event, or (B) the Guaranteed Capacity, multiplied by (ii) the duration of such Curtailment Period or other applicable event, less (b) the amount of Delivered Energy delivered to the Delivery Point during the Curtailment Period or other applicable event, if any; provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

"**Deemed Delivered RA**" means the amount of Net Qualifying Capacity expressed in MW that the Facility would have delivered to Buyer, but for (i) Buyer's failure to obtain and maintain Import Capability sufficient to allow for the importation of such capacity into the CAISO in accordance with Section 3.8(c) and (ii) a Force Majeure event as provided in Section 4.6(d); provided that Seller complies with its obligations under Article 10 in respect of such Force Majeure event.

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

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

"**Delivered Energy**" means for each hour, the electric Energy generated by the Facility, net of Electrical Losses and Station Use, and delivered to the Delivery Point.

"**Delivery Point**" means, as of the Effective Date, [redacted] as adjusted pursuant to Section 3.8(c).

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

"**Development Cure Period**" has the meaning set forth in Exhibit B.

"**Development Security**" means (i) cash or (ii) a Letter of Credit in the amount specified on the Cover Sheet, deposited with Buyer in conformance with Section 8.7.

"**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 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, [redacted]

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

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

"**Firm Clean Resource**" means a resource that meets the requirements of CPUC Decision 21-06-035, including that such resource (i) has at least an eighty percent (80%) capacity factor and zero on-site emissions or otherwise qualifies under the RPS program eligibility rules as PCC1, (ii) is incremental to the CPUC's baseline list, and (iii) is a Resource Adequacy Resource that is eligible to provide RA Capacity as set forth in the Resource Adequacy Rulings.

"**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 13.5.

"**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.

[redacted]

"**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 the amount set forth on the Cover Sheet.

"**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 Net Qualifying Capacity**" means, at any point in time, [redacted]

"**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.

"**Import Capability**" means a portion of the Maximum Import Capability allocated by the CAISO that is necessary to support the importation of Resource Adequacy Benefits from the Facility into the CAISO market.

"**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 Participating Transmission Owner'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.

"**LADWP Transmission Agreement**" has the meaning set forth in Section 3.8(c).

"**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.

"**Local Capacity Area Resource**" has the meaning set forth in the CAISO Tariff.

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

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

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

"**Main Power Transformer Failure**" means a failure of the Facility's Main Power Transformer for any reason other than Seller's gross negligence or willful misconduct.

"**Maximum Import Capability**" has the meaning set forth in the CAISO Tariff.

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

[redacted]

"**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 at the Delivery Point is less than zero dollars ($0).

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

"**NERC**" means the North American Electric Reliability Corporation or any successor entity performing similar functions.

"**Net Qualifying Capacity**" or "**NQC**" has the meaning set forth in the CAISO Tariff.

"**Network Upgrades**" means any upgrades required for the Facility to deliver the Guaranteed Capacity at the Point of Interconnection Point, which are located any point on the NV Energy transmission system other than any Interconnection Facilities that Seller is responsible to construct..

"**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.

"**Participating Transmission Owner**" 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 NV Energy.

"**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.

[redacted]

"**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.

"**Pseudo-Tie Resource**" means a generating facility that is party to a FERC-approved Pseudo-Tie Participating Generator Agreement with the CAISO which allows for Capacity Attributes from the generating facility to be imported into the CAISO as "unit-specific" or "resource specific" import RA Capacity pursuant to applicable decisions of the CPUC.

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

"**Qualified Transferee**" means an entity that (a) [redacted] 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

three (3) years of experience operating two (2) or more electricity generating facilities of the same technology and with at least as much Installed Capacity as the Facility.

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

"**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 3.9(b).

"**RA Guarantee Date**" means sixty (60) days after the Commercial Operation Date.

"**RA Plan**" has the meaning set forth for "Resource Adequacy Plan" in the CAISO Tariff.

"**RA Shortfall**" means the positive difference between [redacted]

"**RA Shortfall Month**" means for purposes of calculating an RA Deficiency Amount under Section 3.9(b), any Showing Month during which there is an RA Shortfall.

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

"**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.

"**Replacement RA**" means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer and located within NP 15 or SP 15. Replacement RA shall not be provided from any generating facility or unit that utilizes coal or coal materials as a source of fuel.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in CPUC

Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 19-10-021, and any subsequent CPUC ruling or decision or by any other entity including CAISO, and shall include System Resource Adequacy Benefits, Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits associated with the Facility.

"**Resource Adequacy Capacity**" or "**RA Capacity**" has the meaning set forth in the CAISO Tariff.

"**Resource Adequacy Resource**" shall have the meaning used in Resource Adequacy Rulings.

"**Resource Adequacy Rulings**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

"**Resource Category**" means the maximum cumulative capacity and resource categories (commonly known as "MCC buckets") for system and local resource adequacy as well as categories of must-offer for flexible resource adequacy described in the most recent filing guide for system, local, and flexible resource adequacy compliance filings issued or published on the CPUC's website by the CPUC or its staff specifying the guidelines, requirements, and instructions for load serving entities to demonstrate compliance with the CPUC's resource adequacy program.

"**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.

"**Showing Deadline**" means the initial deadline that a Scheduling Coordinator must meet to submit its RA Plan, as established by CAISO or any other Governmental Authority. For illustrative purposes only, the CAISO monthly Showing Deadline is approximately 45 days prior to the RA delivery month.

"**Showing Month**" means each calendar month of the Delivery Term, commencing with the month that contains the RA Guarantee Date.

"**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; upon such update the revised Site shall be considered the "Site" hereunder. "Site" does not include any land rights or interests in the real property constituting the Site to the extent that they are used by Other Facilities.

"**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 Transmission Provider(s), 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.

"**System Resource Adequacy Benefits**" means the attributes, however defined, of a resource that can be used to satisfy the resource adequacy obligations of a load serving entity, other than Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits.

"**Tangible Net Worth**" means the tangible assets (for example, not including intangibles such as goodwill and rights to patents or royalties) that remain after deducting liabilities as determined in accordance with generally accepted accounting principles.

"**Tax**" or "**Taxes**" means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

"**Technology Factor**" means then-applicable monthly percentage published by the CPUC used to establish QC for non-dispatchable geothermal resources that have less than three years of historical production and bidding data. The Parties acknowledge and agree that the Technology Factors vary from year to year and month to month.

"**Terminated Transaction**" has the meaning set forth in Section 11.2.

"**Termination Payment**" has the meaning set forth in Section 11.3.

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

"**Transmission Provider**" means any entity or entities transmitting or transporting the Delivered Energy on behalf of Seller or Buyer to or from the Delivery Point. For purposes of this Agreement, the Transmission Providers are set forth in Exhibit A.

"**Transmission System**" means the transmission facilities operated by the Transmission Provider, now or hereafter in existence, which provide energy transmission service to or downstream from the Delivery Point.

"**Ultimate Parent**" means the entity that Controls, directly or indirectly, Seller and that is not Controlled by any other entity. As of the Effective Date, the Ultimate Parent is Open Mountain Energy, LLC.

"**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 terms "include" and "including" mean "include or including without limitation" (as applicable) and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(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 Pseudo-Tie Participating Generator Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect and Seller shall have provided Buyer a CAISO Resource ID and a PMAX, if applicable, for the Facility;

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

(d) An Interconnection Agreement between Seller and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement, including all modifications and amendments thereto, delivered to Buyer;

(e) Authorization to parallel the Facility was obtained by the Participating Transmission Owner prior to the Commercial Operation Date;

(f) The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by the Commercial Operation Date;

(g) The CAISO has provided notification supporting Commercial Operation;

(h) Buyer, or its designee, is the Scheduling Coordinator for the Facility; provided that if this requirement is not met because of Buyer's (or its designee's) actions or failure to take actions, and this is the only requirement for 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;

(i) Seller shall have (i) obtained all applicable regulatory authorizations, approvals and permits for Commercial Operation of the Facility and such documents shall be in full force and effect and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied, (ii) 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 (iii) delivered to Buyer 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 for the Facility;

(j) Seller has received CEC Precertification;

(k) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements (that are reasonably capable of being completed prior to the Commercial Operation Date under WREGIS rules and reasonably expects to complete all other applicable requirement thereafter), including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, 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;

(l) 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;

(m) Seller has delivered to Buyer any geothermal resource report prepared by a third-party consultant or (ii) any report by an independent engineer in connection with the financing of the construction or permanent operation of the Facility;

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

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

(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; [redacted]

(q) Seller has obtained firm transmission rights sufficient to deliver 6 MW to the Delivery Point and has provided reasonable documentation of the same to Buyer.

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 agrees to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation 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, except with respect to Replacement RA.

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 Delivered Energy that qualifies as PCC1 (except as otherwise provided in Section 3.13) 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 Delivered Energy plus the amount of Deemed Delivered Energy for such Contract Year exceeds [redacted] of the Expected Energy for such Contract Year, the Contract Price applicable to such Delivered Energy and Deemed Delivered Energy, notwithstanding anything to the contrary in this Agreement, shall be [redacted]. If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy for such Contract Year exceeds [redacted] of the Expected Energy for such Contract Year, the Contract Price applicable to such Delivered Energy and Deemed Delivered Energy, notwithstanding anything to the contrary in this Agreement, shall be zero dollars per MWh ($0/MWh).

(c) If during any Settlement Interval, Seller delivers Product in amounts, as measured by the amount of Delivered Energy, in excess of the product of the Installed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times the number of such Excess MWh ("**Negative LMP Costs**").

3.4 **Imbalance Energy**.

(a) 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.

(b) If Seller is not in compliance with 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 the final sentence of this Section 3.6(a), and Sections 3.6(b) and 3.13, 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 [redacted]

(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) [redacted];

provided, 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 such Test Energy, and associated Product, Buyer shall pay Seller an amount equal to fifty percent (50%) of the Contract Price. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.7.

3.8 **Capacity Attributes**.

(a) Prior to the Delivery Term, Seller shall qualify the Facility as a Pseudo-Tie Resource with the CAISO pursuant to the CAISO's New Resource Implementation process. Seller shall provide periodic progress reports to Buyer on the status of these efforts. Seller shall comply with all CAISO Tariff requirements applicable to Pseudo-Tie Resources, including Appendix N to the CAISO Tariff, throughout the Delivery Term.

(b) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to provide to Buyer all of the Capacity Attributes and Resource Adequacy Benefits, including Flexible Capacity, available from the Facility. Subject to Section 3.13, Seller shall take all commercially reasonable actions during the Delivery Term to ensure that the Facility remains qualified to provide Resource Adequacy Benefits to Buyer, including complying with all applicable registration and reporting requirements, and executing all documents or instruments necessary to enable Buyer to use all the Capacity Attributes and Resource Adequacy Benefits committed by Seller to Buyer pursuant to this Agreement.

(c) (i) Buyer shall use commercially reasonable efforts to obtain and maintain Import Capability necessary, and in amount sufficient, to import Guaranteed Net Qualifying Capacity from the Facility into the CAISO at the Delivery Point (as it may change hereunder). Seller shall use commercially reasonable efforts to support Buyer's efforts to obtain and/or maintain such Import Capability. [redacted]

(ii) Buyer may, at any time and for any reason, and from time to time, elect to change the Delivery Point to [redacted] (or any other CAISO scheduling point acceptable to Seller) upon thirty (30) days' advance notice to Seller. If Buyer changes the Delivery Point to [redacted] (or any other CAISO scheduling point acceptable to Seller), the Contract Price [redacted]

[redacted]

(iii) [redacted]

(iv) Notwithstanding anything to the contrary herein, the Parties' rights and obligations under this Section 3.8(c) shall apply and may be exercisable in respect of the entirety of the Guaranteed Net Qualifying Capacity, or in respect of discrete portions of the Guaranteed Net Qualifying Capacity, such that, at any time, there may be more than one Delivery Point and more than one Contract Price applicable to deliveries at the respective Delivery Point(s). Unless the Parties agree otherwise, Buyer shall only divide the Guaranteed Net Qualifying Capacity between Delivery Points in whole MW numbers and in no event will there be more than two Delivery Points.

(d) For the duration of the Delivery Term and subject to Section 3.13, Seller shall take all actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(e) For the duration of the Delivery Term, Seller shall maintain interconnection capacity under its Interconnection Agreement of at least the amount of the Guaranteed Capacity plus the capacities of any Other Facilities.

(f) If, as a result of Scheduled Maintenance or otherwise, CAISO requires RA Substitute Capacity in connection with Seller's provision of Resource Adequacy Benefits to Buyer from the Facility, Seller shall provide such RA Substitute Capacity in accordance with applicable CAISO requirements. Seller acknowledges and agrees that any failure by Seller to provide such RA Substitute Capacity may result in CAISO rejecting or cancelling Scheduled Maintenance or other outage of the Facility. Buyer 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.

3.9 **Determination of Capacity Attributes; Resource Adequacy Failure**.

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer as liquidated damages the RA Deficiency Amount and/or provide Replacement RA, as set forth in Section 3.9(b), in each case, as the sole remedy for Capacity Attributes that Seller fails to convey to Buyer from the Facility.

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the sum of [redacted] provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA up to the RA Shortfall; so long as (A) Seller provides Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit K at least seventy-five (75) days before the applicable CPUC operating month, (B) such notice is delivered to Buyer at least ten (10) Business Days before the CPUC and CAISO Showing Deadline for the operating month for the purpose of annual and monthly RA Plan reporting, and (C) Replacement RA shall not exceed ten percent (10%) of the Resource Adequacy Benefits provided during the applicable Contract Year.

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 throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for CEC Final Certification and Verification. Seller shall respond to inquiries from the CEC related to its application for CEC Final Certification and Verification within five (5) Business Days of receipt of such inquiry. Within

one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the CEC Final Certification and Verification, [redacted]. 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. 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.

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), (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 twenty five thousand dollars ($25,000.00) per MW of Guaranteed Capacity cumulatively during the Delivery Term ("**Compliance Expenditure Cap**"):

(a) CEC Certification and Verification;

(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 3.13 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.

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 Delivered 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. [redacted]

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Facility as part of the Product being delivered and purchased by Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility. 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 Delivered 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 and through the end of the Delivery Term, 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**. Unless the parties mutually agree to modified forecasting requirements, 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 Delivered 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 Delivered 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 Delivered Energy, by hour, for the following calendar year in the form attached hereto as Exhibit L-1 or as reasonably requested by Buyer.

(b) Monthly Forecast of Available Capacity and Delivered Energy. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly expected Available Capacity and expected Delivered Energy, for each day of the following month in a forms attached hereto as Exhibits L-2 and L-3, respectively.

(c) Daily Forecast of Available Capacity. By 5:30 a.m. 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

Delivered 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 Delivered 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 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. Seller shall use commercially reasonable efforts to maximize production of Energy from the Facility at all times except when and to the extent that Seller is required to reduce generation during a Curtailment Period or a Buyer Curtailment Period.

(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 Delivered 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 Delivered 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 resulting from 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 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 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 or the Transmission Provider determines that there is or may be an imminent need for Energy supplies on the CAISO Grid or

Transmission System, Seller shall use reasonable efforts to make the Product fully available, including by cancelling or deferring any Facility maintenance. [redacted]

(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 Delivered 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 single Contract Year ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means an amount of Product, as measured in MWh, equal to [redacted] of the Expected Energy for the first Contract Year (i.e., Performance Measurement Period), and [redacted] of the Expected Energy for each Contract Year for the remainder of the Delivery Term. 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. 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 Delivered 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. Seller shall be deemed to have satisfied the warranty in Section 4.8(g) provided that Seller fulfills its obligations under Sections 4.8(a) through (f) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of 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 Delivered 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 Delivered Energy invoiced by Seller to Buyer for the same calendar month ("**Deficient Month**"). If any WREGIS Certificate Deficit occurs, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that Buyer shall pay Seller for any Delivered 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 4.8, 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 Delivered 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**. Seller shall provide to Buyer, within 60 days of the end of Seller's first, second, and third fiscal quarters, and within 120 days of the end of the Seller's fiscal year, as applicable, unaudited quarterly and annual audited financial statements of the Seller (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

4.10 **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; and

(v) net plant electrical output at the CAISO revenue meter.

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 Owner or Transmission Provider. 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 Owner or Transmission Provider

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; (ii) elevation, latitude and longitude of the weather station; and (iii) any other data reasonably requested by Buyer.

4.11 **Ancillary Services**. If, at any time during the Contract Term, Buyer requests Seller to provide any Ancillary Services that are or may become recognized from time to time in the CAISO market (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including any obligation to incur more than *de minimis* costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including any obligation to incur more than *de minimis* costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall only be required to provide such product if Buyer agrees to compensate Seller for such adverse effect. Upon such agreement by the Parties, the Parties will either amend this Agreement or enter into a separate agreement providing for such compensation. For avoidance of doubt, provision of any Ancillary Services that results in a reduction to the Energy output of the Facility shall be deemed a material adverse effect on Seller's obligations or liabilities under this Agreement.

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 to the extent union labor is available to supply the type and quantity of skilled labor necessary to perform work in connection with construction of the Facility, such work will be conducted using a project labor agreement or similar agreement providing for terms and conditions of employment with applicable labor organizations, and Seller shall remain compliant with such agreement in accordance with the terms thereof. For the avoidance of doubt, if, in Seller's reasonable discretion, there are no labor organizations that are able to supply the type and quantity of skilled labor necessary to complete a particular job related to the construction of the Facility, Seller shall not be deemed in breach of this Section 4.12 if such job is completed without the use of union labor.

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 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 Guaranteed Capacity.

ARTICLE 5
TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to delivery or making available to Buyer, including on 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 to evidence such exemption or exclusion within thirty (30) days after Buyer makes such claim. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, *however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All 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) within one-hundred twenty (120) days of providing Notice to Buyer, (iii) within the time-period determined by the CAISO for the Facility to qualify for an Approved Maintenance Outage under the CAISO Tariff, if applicable, and (iv) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer; provided that Buyer shall notify Seller upon becoming aware that substitute Capacity Attributes are required, and the provisions of Section 3.8(f) will apply; and; provided further 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, to the extent reasonably necessary, 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 (and any other amounts due hereunder) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within [redacted] days after Buyer's receipt of the Seller's invoice, provided if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable

due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on 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 of [redacted] 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 that 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; [redacted] Except to the extent Seller elects to apply the Development Security to the Performance Security, upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. Seller may at its option exchange one permitted form of Development Security for another permitted form of Development Security.

8.8 **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 specified on the cover sheet. 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. Seller may at its option exchange one permitted form of Performance Security for another permitted form of Performance Security.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral**. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on

(and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

In the event that Seller provides Development Security or Performance Security in the form of a Letter of Credit, Seller shall not seek to amend or agree to amend such Letter of Credit without the consent of Buyer. Upon or any time after the occurrence and continuation of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the 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), at the time

indicated by the time stamp upon delivery and, if after 5:00 p.m. Pacific Prevailing Time (PPT), on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including new governmental restrictions that are first imposed related to COVID-19 after the Effective Date; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Energy or any other Product at a lower price, or Seller's ability to sell Energy or any other Product 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**.

(a) 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 ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional thirty (30) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof [redacted]

(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;

(ii) failure by Seller to achieve the Construction Start Date by the Guaranteed Construction Start Date as may be extended by Seller's payment of Daily Delay Damages pursuant to Exhibit B, and /or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) failure by Seller to achieve Commercial Operation by the Guaranteed Commercial Operation Date as may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Exhibit B, and /or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iv) failure by Seller to timely obtain CEC Final Certification and Verification in accordance with Section 3.10;

(v) if, in the first six (6) months or the second six (6) months of any Contract Year, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for that Contract Year, and Seller fails to demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason, [redacted], for the failure to meet the ten percent (10%) minimum;

(vi) if the Adjusted Energy Production amount is not at least sixty-five percent (65%) of the Expected Energy amount in any Contract Year, provided, it will not be an Event of Default under this Section 11.1(b)(vi) if (a) the failure to meet the respective standard results from a Main Power Transformer Failure, (b) during the [redacted] 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 [redacted] day period, and (c) Seller completes the cure of such Main Power Transformer Failure within such [redacted] day period;

(vii) 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;

(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 (iii) the Termination Payment for all other Events of Default, 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/or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Damage Payment; Termination Payment**.

(a) [redacted]

[redacted]

(b) For all other Events of Default, the Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; 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.

[redacted]

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 or the Damage Payment as applicable, and if applicable, 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 or Damage 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 [redacted] for any reason other than a Buyer 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, 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 in its reasonable discretion.

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, A THIRD-PARTY INDEMNITY PROVISION, INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, 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 Nevada, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility will be located in the State of Nevada.

(f) Except as otherwise provided in Section 3.13, all Energy and associated Green Attributes sold and delivered to Buyer hereunder, qualify as PCC1.

(g) Seller shall maintain Site Control throughout the Contract Term.

(h) Seller shall maintain firm transmission rights sufficient to deliver 6 MW to the Delivery Point throughout the Contract Term.

(i) Seller has not received notice from or been advised by any existing or potential supplier or service provider for the Facility that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

(j) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement, subject to Section 3.1.3, the Facility is eligible to qualify as a Firm Clean Resource.

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 **Additional Seller Covenant**. Seller covenants that commencing on the Effective Date and continuing throughout the Contract Term, (a) Seller limits and will limit its activities to developing, owning, holding, selling, financing, leasing, transferring, exchanging, managing and operating the Facility, the Interconnection Facilities and the Shared Facilities, entering into this Agreement with Buyer and related documents and agreements to perform Seller's obligations hereunder and transacting lawful business that is incident, necessary and appropriate to the foregoing, and (b) Seller is not and will not be engaged in any business other than relating to its purpose as set forth in clause (a) of this Section 13.4.

13.5 **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. Seller shall comprehensively implement due diligence procedures for its and its Affiliates suppliers, subcontractors and other participants in its supply chains, to comply with this prohibition on the use of Forced Labor. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 13.5.

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, conditioned or delayed.

14.3 **Permitted Assignment; Change of Control of Buyer**. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided*, that in each of the foregoing situations, the assignee (a) has a Credit Rating of Baa2 or higher by Moody's or BBB or higher by S&P, and (b) is a community choice aggregator or publicly-owned electric utility with retail customers located in the state of California; *provided*, *further*, that in each such case, no fewer than fifteen (15) Business Days before such assignment Buyer (x) notifies Seller of such assignment and (y) provides to Seller a written agreement, reasonably acceptable to Seller, signed by the Person to which Buyer wishes to assign its interests stating that such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b). Any assignment by Buyer, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller. Upon any assignment by Buyer in accordance with this Section 14.3, Seller shall, with respect to any outstanding Letter of Credit provided hereunder as Development Security or Performance Security, either (i) cause the issuing bank of such Letter of Credit to transfer such Letter of Credit to Buyer's assignee, or (ii) provide a new Letter of Credit meeting the requirements hereof to Buyer's assignee; provided that, if Seller provides a new Letter of Credit, Buyer shall promptly return the original Letter of Credit to 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 material subcontractors to carry: (i) comprehensive general liability insurance in amounts equal to those set forth for Seller in Exhibit J; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage, in each case, in amounts equal to those set forth for Seller in Exhibit J. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(b).

(c) Evidence of Insurance. Within [redacted] days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(d) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, 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.

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 their respective agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound, or is otherwise bound, by confidentiality obligations at least as restrictive as 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 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: **Whitegrass No. 2**

Site Name: **Whitegrass No. 2**

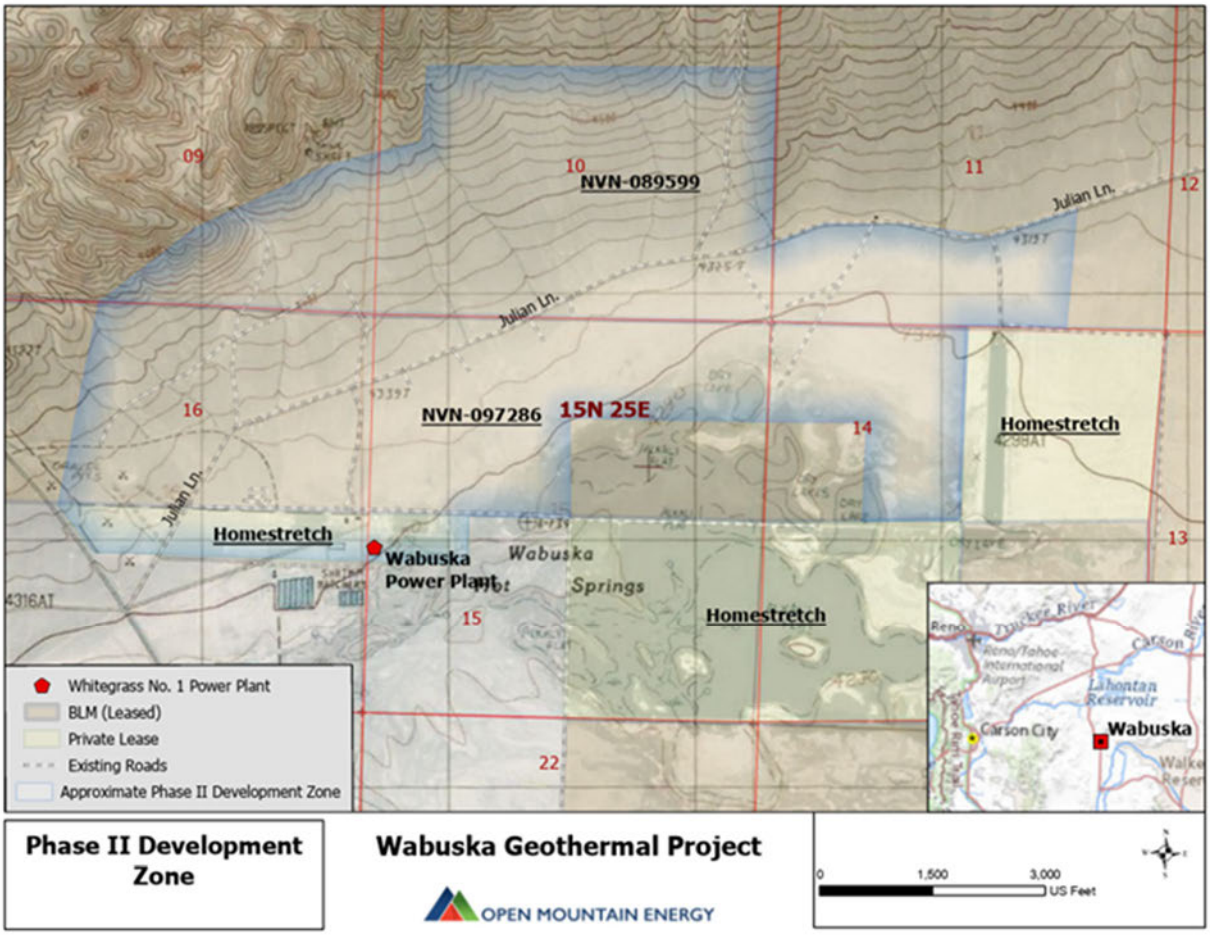
Site Description: **See Map**

Site Address: **21 Julian Lane, Yerington, NV 89447**

GPS Coordinates: 39°10'1.66"N

119°10'51.97"W

Site Map:



APNs: [redacted]

County: Lyon County, Nevada

CEQA (or Equivalent) Lead Agency: **BLM, Carson City Office**

Guaranteed Capacity: 6 MW AC (net, at the Interconnection Point)

Generation Technology: Geothermal

Delivery Point: [redacted], subject to Section 3.8(c)

Point of Interconnection: NV Energy North System (#210 Distribution Line)

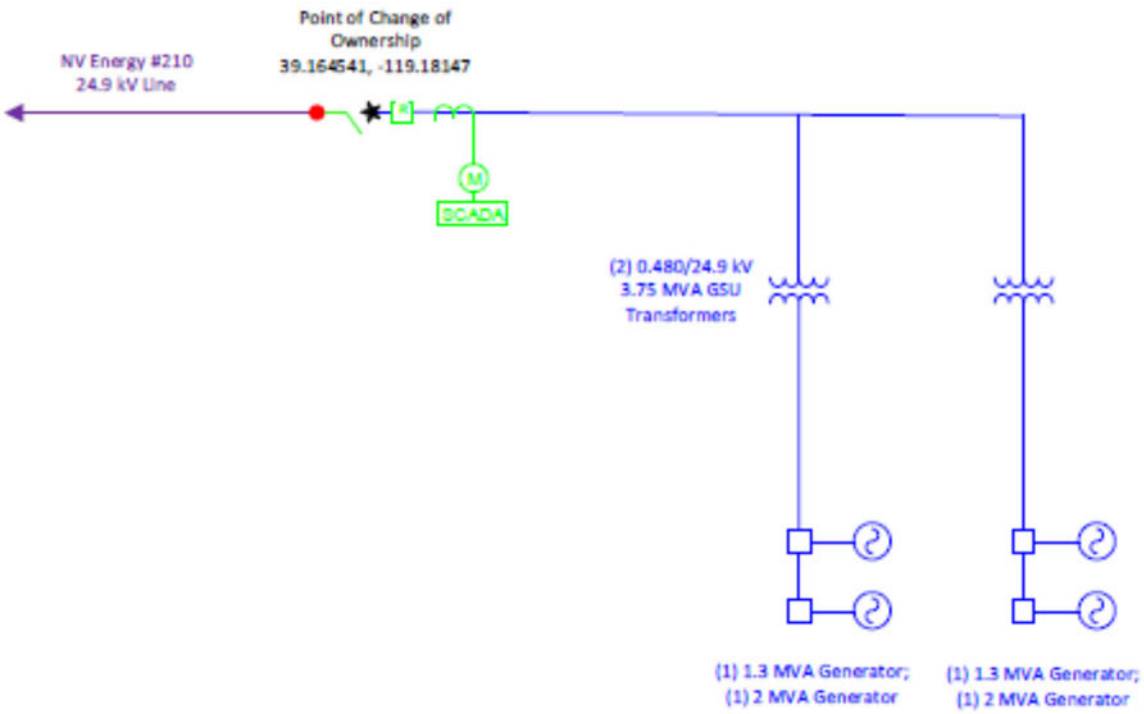
Description of Interconnection Facilities and Metering: The Facility will use the Interconnection Facilities and metering configuration set forth below as required by NV Energy.

[redacted]

[redacted]

Transmission Provider: NV Energy and LADWP

One-Line Diagram:





Metering Diagram: To be provided prior to COD once finalized with NV Energy and CAISO

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

   a. Seller shall cause construction to begin on the Facility by March 31, 2024, (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. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of [redacted] days of extensions by such payment of Daily Delay Damages. If Seller elects to pay Daily Delay Damages, Daily Delay Damages shall be payable for each day for which Seller extends the Guaranteed Construction Start Date. If Seller elects to extend the Guaranteed Construction Start Date, 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. Daily Delay Damages shall be refundable to Seller pursuant to Section 3(b) of this Exhibit B. The Parties agree that Buyer's receipt of Daily Delay Damages shall be Buyer's sole and exclusive remedy for the first [redacted] days of the delay in achieving the Construction Start Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a 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) [redacted] days prior to the Guaranteed Commercial Operation Date or (y) the date on which Commercial Operation is achieved. [redacted]

[redacted]

a. Seller shall cause Commercial Operation for the Facility to occur by December 31, 2024 (as such date may be extended by the Development Cure Period (defined below), the "**Guaranteed Commercial Operation Date**"). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after the Commercial Operation Date.

c. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of [redacted] days of extensions by such payment of Commercial Operation Delay Damages. If Seller elects to extend the Guaranteed Commercial Operation Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days 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 [redacted] 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. [redacted]

[redacted]

3. **Termination for Failure to Timely Achieve Construction Start or Commercial Operation**. If the Facility has not achieved Construction Start within [redacted] days after the Guaranteed Construction Start Date, or Commercial Operation within [redacted] days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement pursuant to Sections 11.1(b)(ii) and 11.2(a), which termination shall become effective as provided in Section 11.2(a).

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of each of the following delays:

   a. a Force Majeure Event occurs;

   b. [redacted]

   c. 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(c) above) shall not exceed [redacted] 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 ninety-five percent (95%) 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 Two Hundred Fifty Thousand Dollars ($250,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity, Expected Energy and other applicable portions of the Agreement shall be reduced to an amount equal to the product of (a) the amount in effect prior to such adjustment, multiplied by (b) the ratio of the Installed Capacity as of such date to the original Guaranteed Capacity.

6. [redacted]

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:

Whitegrass No. 2, LLC
3451 N. Triumph Blvd., Suite 201
Lehi, UT 84043
Attn: Manager

Phone: [redacted]
E-mail: [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:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes [redacted]

D = the average 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.

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: Delivered 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 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 Attributes**" means Green Attributes associated with PCC1 Renewable Energy Credits created during the relevant Performance Measurement Period and otherwise materially similar to Green Attributes that were not provided by Seller.

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

OPERATIONAL CHARACTERISTICS

Each calendar month of the Delivery Term, the minimum Adjusted Energy Production ("AEP") during the hours of 4-9pm (HE17-HE21) in a quantity no less the following:

Month of Delivery Term	Minimum AEP during HE17-HE21 (in MWh)
JAN	[redacted]
FEB	[redacted]
MAR	[redacted]
APR	[redacted]
MAY	[redacted]
JUN	[redacted]
JUL	[redacted]
AUG	[redacted]
SEP	[redacted]
OCT	[redacted]
NOV	[redacted]
DEC	[redacted]

No later than thirty (30) days after the end of the first Contract Year, Seller may, but is not obligated to, provide an update to the foregoing table based on the actual operations of the Facility during the first Contract Year.

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 _____.

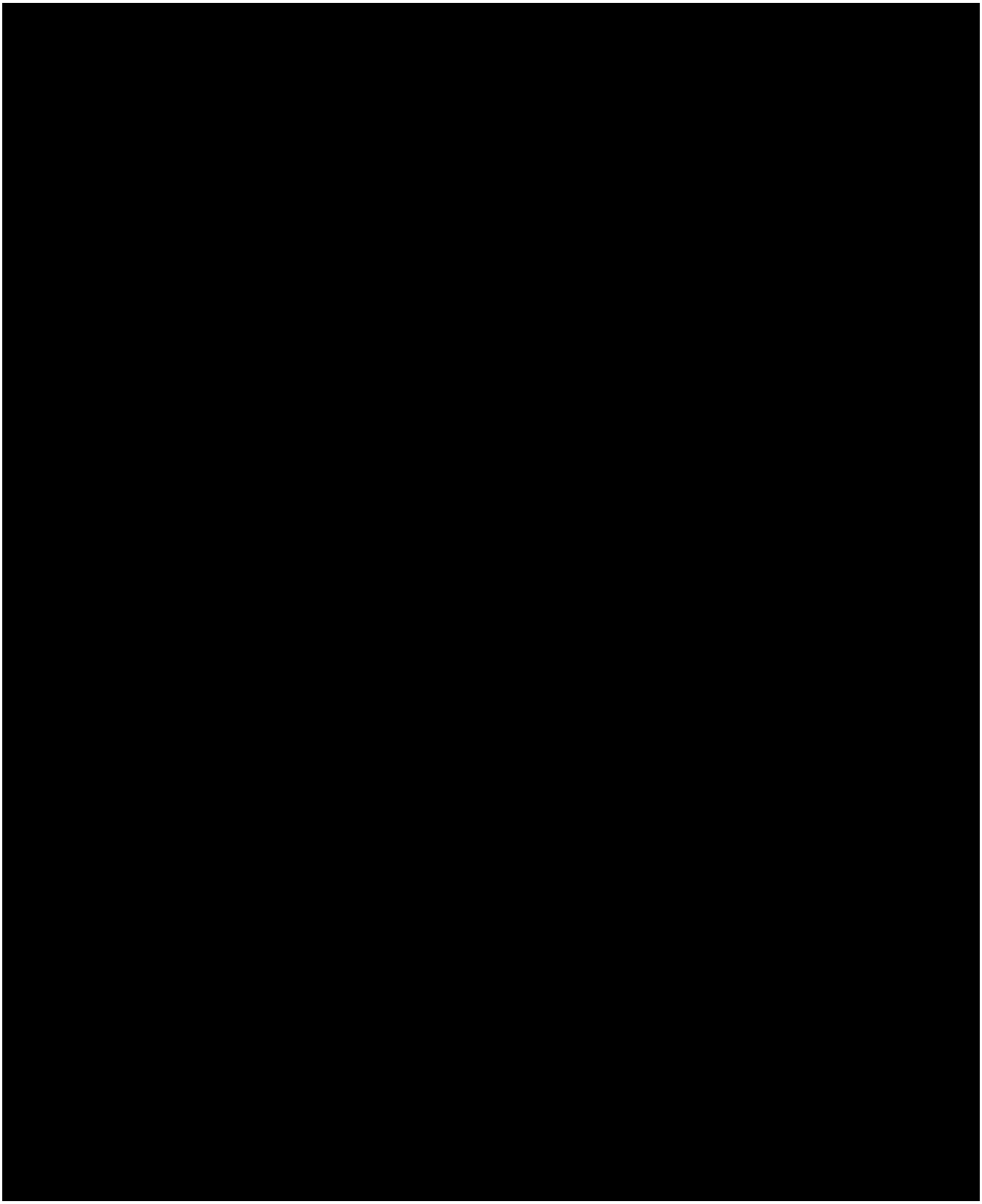
[SELLER ENTITY]

By:_____
Its:_____

Date:_____

EXHIBIT I

FORM OF LETTER OF CREDIT



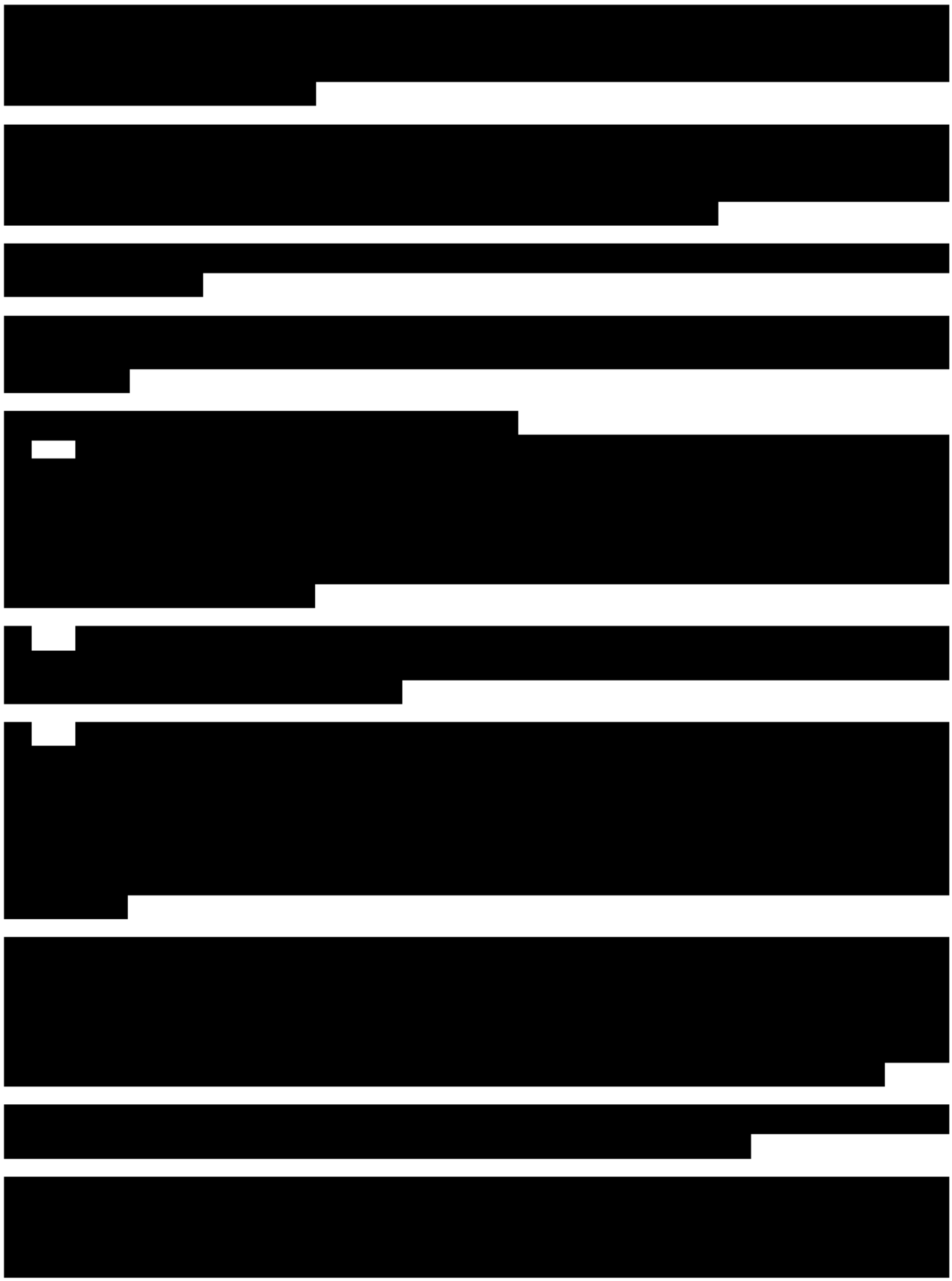


Exhibit I - 2



Exhibit I - 3



Exhibit I - 4

EXHIBIT J

INSURANCE

Liability Insurance

To the fullest extent allowable by law, Seller shall purchase and maintain such insurance as will protect it from the claims set forth below which may arise out of or result from Seller's operations under this Agreement whether such operations be by itself or by anyone directly or indirectly employed by them, or by anyone for whose acts any of them may be liable. Limits shall be all the Insurance Coverage and/or limits carried by or available to the Seller, the minimum limits as required herein.

General Conditions

Seller shall maintain completed operations liability insurance for the entire Contract Term plus the period of time Seller may be held legally liable for.

Seller shall maintain policies of insurance in full force and effect, at all times during the performance of the Agreement, plus any statute of repose or statute of limitations applicable to the jurisdiction where any work is performed.

All insurance companies shall have a Best's rating of A-VII or better.

In addition, Seller shall provide Buyer with 45 days' notice in case of cancellation or non-renewal, except 10 days for non-payment of premium.

Certificates of Insurance Acord Form 25 and all required Endorsements shall be filed with Buyer within (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", with policy limits of not less than a combined single limit of $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) 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. Seller may choose any combination of primary, excess or umbrella liability policies to meet the insurance requirements under Sections 17.1(a), (b) and (d) above.

Coverage shall be written on an occurrence form with policy limits not less than:

- $5,000,000 Each Occurrence

- $5,000,000 Personal & Advertising Injury
- $5,000,000 Aggregate (where applicable, following the terms of the underlying)

Pollution liability – Seller shall provide evidence prior to the Construction Start Date of Pollution Liability; covering all operations necessary or incidental to the fulfillment of all contract obligations hereunder. Such insurance shall provide coverage for bodily injury, property damage (including loss of use of damaged property or of property that has not been physically injured), clean- up costs and remediation expenses (including costs for investigation, sampling, characterization, and monitoring), legal costs, defense costs, natural resource damage, transportation of pollutants on and off the project site, and non-owned disposal site liability if Seller's scope of work (or Seller's consultants) includes the responsibility of manifesting and disposing of contaminated material or waste from its activities. Coverage shall also extend to pollution conditions arising out of the Seller's operations including coverage for sudden as well as gradual release arising from Seller's operations including operations of any of its Seller's or consultants. Such insurance shall provide coverage for wrongful acts, which may arise from all activities from the first point of Seller engagement and shall continue on a practice basis for not less than 36 months after completion, or the period of time Seller may be held legally liable for its work, whichever is longer. The retro date if any such coverage shall be prior to the commencement of Seller's work.

Such insurance shall be in an amount of not less than $5,000,000 per claim or occurrence and $5,000,000 annual aggregate.

If Seller maintains Pollution Liability limits greater than what is required herein, such limits carried become what we require under this contract.



[redacted]

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 K

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [ ], a [ ] ("**Seller**") to Peninsula Clean Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Power Purchase and Sale Agreement dated [_____] ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.9(b) of the Agreement, Seller hereby provides the below Replacement RA product information (to be repeated for each unit if more than one):

Name	
Location	
CAISO Resource ID	
Unit SCID	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line")	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Deliverability Period	
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Resource Category (MCC Bucket e.g., 1, 2, 3, or 4)	
Flexible Capacity Category (e.g., 1, 2, 3, or N/A)	

Month	Unit CAISO NQC (MW)	Unit CAISO EFC (MW)	Unit Contract Quantity (MW)	Unit EFC Contract Quantity (MW)
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

[SELLER]

By:_____

Its:_____

Date:_____

Whereas, the following definitions apply to the terms in the above Replacement RA product information:

"**CPUC RA Filing Guide**" means the Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings published annually by the CPUC.

"**Deliverability Period**" means the period in which the unit has rights to deliver energy to the CAISO Grid.

"**Flexible Capacity Category**" means the category of Effective Flexible Capacity, as described in the CPUC RA Filing Guide, applicable to the unit.

"**LCR Area (if any)**" means the Local Capacity Requirement area, as used in the CPUC RA Filing Guide, applicable to the unit, if any.

"**Prorated Percentage of Unit Factor**" means the percentage of the Unit CAISO NQC that is designated as Unit Contract Quantity.

"**Prorated Percentage of Unit Flexible Factor**" means the percentage of Unit CAISO EFC that is designated as Unit EFC Contract Quantity.

"**Resource Category**" means the Maximum Cumulative Capacity category, as described in the CPUC RA Filing Guide, applicable to the unit.

"**Resource Type**" means the type of generating or storage resource.

"**Run Hour Restrictions**" means any restrictions on the ability of the unit to run during any hours of the day.

"**Unit CAISO EFC**" means the unit's Effective Flexible Capacity, as described in the CPUC RA Filing Guide, as determined by CPUC and CAISO.

"**Unit CAISO NQC**" means the NQC (as defined in the CAISO Tariff) for the unit, as determined by CPUC and CAISO.

"**Unit Contract Quantity**" means the amount of Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Guaranteed RA Amount.

"**Unit EFC Contract Quantity**" means the amount of Flexible Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Guaranteed RA Amount.

"**Unit SCID**" means the unit's "Scheduling Coordinator ID Code", as defined in the CAISO Tariff.

EXHIBIT L - 1

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

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
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows]																								
Day 26																								
Day 27																								

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
Day 28																								
Day 29*																								
Day 30*																								
Day 31*																								

*Include these rows if needed for each month.

EXHIBIT L - 3

Monthly Expected Delivered 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 Delivered 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
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows]																								

	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
Day 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: October 21, 2022
BOARD MEETING DATE: October 27, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer
Sara Maatta, Senior Renewable Energy and Compliance Analyst

SUBJECT: Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase and Sale Agreement for Renewable Supply with Snow Mountain Hydro LLC, and any necessary ancillary documents with a Power Delivery Term of 15 years starting on January 1, 2024, in an amount not to exceed $13 million.

RECOMMENDATION:
Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase Agreement for Renewable Supply with Snow Mountain Hydro LLC, and any necessary ancillary documents with a Power Delivery Term of 15 years starting on January 1, 2024, in an amount not to exceed $13 million.

BACKGROUND:
The Board set a goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy by 2025, and to align that renewable supply with customer demand on a 24x7 basis. Furthermore, in December 2017 the Board approved Peninsula Clean Energy's Strategic 2018 Integrated Resource Plan, which outlines procurement targets for Peninsula Clean Energy to build a diverse, low-cost power portfolio. Peninsula Clean Energy Staff have conducted an analysis of potential resources to help us meet our 24x7 renewable energy and procurement diversity goals.

2021 Renewable Request for Offers

Peninsula Clean Energy launched a request for offers (RFO) in late-2021 targeting procurement of renewable energy and energy storage resources to satisfy regulatory procurement mandates and contribute toward its 24/7 100% renewable goal. Additionally, the RFO sought long-term contracts which provide better value than short-term contracts and expand the amount of renewable energy serving California.

Peninsula Clean Energy received a robust response to the RFO from 43 participants for 70 different projects for renewable, renewable plus storage, and standalone storage. Staff evaluated these projects based on value to Peninsula Clean Energy, development status, project viability, project team experience, compliance with workforce policy and environmental impact.

Staff conducted extensive analysis to identify the top projects to shortlist. The Burney Creek Hydro Project (Project) offered by Snow Mountain Hydro LLC (SMH) was identified as a beneficial project to help us meet our 24x7 renewable energy goals in Staff's analysis. Furthermore, the Project contributes towards Peninsula Clean Energy's procurement diversity targets. The Project would be the fifth small hydroelectric project to be added to Peninsula Clean Energy's supply portfolio.

Staff reviewed shortlisted projects with the CEO and then entered into exclusive negotiations with the shortlisted projects. Throughout 2022, Peninsula Clean Energy has worked with the project owner on negotiating the power contract.

Additionally, staff met with the Procurement Board subcommittee in October 2022 to review the shortlisted projects from the RFO including the Burney Creek project.

Per Peninsula Clean Energy's Policy 15 Energy Supply Procurement Authority[1], any power procurement contracts greater than 5 years must be approved by the Board of Directors.

Overview of Project

Project Name	Burney Creek Hydro Project
Technology	Small Hydroelectric
Project Capacity	3 MW
Delivery Commencement Date	1/1/2024
Owner	Snow Mountain Hydro LLC
Location	Shasta County, CA

The project is an existing 3 MW small hydroelectric facility located near the town of Burney, CA in eastern Shasta County. The Delivery Commencement Date is January 1, 2024. The project is expected to deliver enough energy to meet approximately 0.2% of Peninsula Clean Energy's energy needs and will provide Portfolio Content Category (PCC) 1 energy to meet Peninsula Clean Energy's RPS requirements.

The project is an existing run-of-river project that is non-consumptive of water, as all of the water that is used for electric generation is returned to Burney Creek. Minimum bypass flows are maintained to ensure no significant negative environmental impacts. The water is diverted without the use of a weir.

[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

Under the contract, Peninsula Clean Energy will pay for the output at a fixed-price rate per MWh with no escalation, for the full term of the contract (15 years). Peninsula Clean Energy is entitled to all product attributes from the facility, including energy, renewable energy, ancillary services, and resource adequacy.

Owner

The project is owned by SMH, an Idaho limited liability company. SMH is owned by Ida-West Energy Company (IWE) and the Public Employee Retirement System of Idaho (PERSI). IWE manages the Project, along with four other small run-of-river hydro projects in California. IWE and its affiliate companies have developed, owned and operated small hydro projects in the US since 1989. IWE has extensive expertise in operating and optimizing hydropower generation.

Environmental Review

Peninsula Clean Energy staff worked with several environmental non-profits to develop a system for evaluating the environmental impact of projects. Specifically, we asked each bidder to provide a geospatial footprint of their project. During the evaluation period, staff studied the geospatial footprint of the project to evaluate whether the project is located in a restricted or high conflict area for renewable energy development. These areas include but are not limited to:

- Protected areas at the federal, state, regional, local level (e.g. County-designated conservation areas, BLM Areas of Critical Environmental Concern, critical habitat for listed species, national, state, county parks, etc.).
- Identified and mapped important habitat and habitat linkages, especially for threatened and endangered species (either state or federally listed).

Further, projects that are located in areas designated for renewable energy development or in areas that are not suitable for other developmental activities, such as EPA re-power sites, receive positive environmental scores.

For this project, the analysis showed that the project was not located in a protected area based on the USGS Protected Areas Database[2] (PAD-US). The project is inspected from time to time by Federal Energy Regulatory Commission representatives to ensure compliance with environmental requirements, and has been found to be in compliance in all recent inspections.

Workforce Requirements

The Project is an existing project. The Project is relatively small and does not require a full-time, on-site operator, but the Project does provide some local jobs and some local

[2] USGS PAD-US: https://www.usgs.gov/core-science-systems/science-analytics-and-synthesis/gap/science/protected-areas

purchases in the Burney and Redding areas. Workers and suppliers are sourced primarily in the local Shasta County area and the Redding area.

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% renewable energy by 2025 that aligns supply and consumer demand on a 24x7 basis".

This project will help Peninsula Clean Energy meet its customers' large renewable energy demand, while maintaining competitiveness. To date, Peninsula Clean Energy has entered into fourteen long-term renewable contracts, which make up approximately 65% of overall load, as shown in the table below:

Long-Term Renewable Contracts Contributing to Peninsula Clean Energy's Load

Project	**RE MW**	**Status**	**Commercial Operation Date**	**Term (Yrs)**	**County**	**Approx. % of Load Served in 2025**
Wright Solar	200	Operating	January-2020	25	Merced	14.7%
Mustang 2 Solar	100	Operating	November-2020	15	King	7.9%
Chaparral Solar	102	Development	December-2023	15	Kern	8.1%
Arica Solar	100	Development	April-2024	15	Riverside	8.3%
Gonzaga Ridge Wind Farm	76.35	Development	December-2024	15	Merced	4.9%
Geysers Geothermal	35	Operating	July-2022	10	Sonoma & Lake	8.4%
Second Imperial Geothermal	26	Development	January-2023	15	Imperial	5.8%
Sky River Wind	30	Operating	September-2021	20	Kern	3.1%
Ormat Geothermal (CC Power Project)	11.39 (min)	Development	Project Specific, no earlier than June-2024	20	CA and NV	2.4%
Fish Lake Geothermal (CC Power Project)	2.3	Development	6/1/2024	20	Esmeralda, NV	0.5%
Hatchet Small Hydro	7.5	Operating	March-2017	20	Shasta	0.5%
Bidwell Small Hydro	2	Operating	March-2017	17	Shasta	0.3%
Roaring Small Hydro	2	Operating	March-2017	17	Shasta	0.2%
Clover Small Hydro	1	Operating	April-2018	15	Shasta	0.1%
Total Contracted						***65.0%***
Burney Small Hydro	3	Operating	January-2024	15	Shasta	0.2%
Total With Pending						***65.2%***

The Burney Creek Hydro Project is a 3 MW renewable generating resource, covering an additional 0.2% of Peninsula Clean Energy's overall demand. This contract will enable Peninsula Clean Energy to come closer to reaching its internal goal to be 100% renewable on an annual basis and provide 24x7 renewable energy, as well as its regulatory obligations under SB 100 and SB 350, which requires that 65% of Renewables Portfolio Standard (RPS)-compliance related renewable energy supply be sourced from long-term contracts beginning in the 2021-2024 compliance period.

FISCAL IMPACT:

The financial impact of adding this project to Peninsula Clean Energy's portfolio of supply resources is net neutral in expected supply costs. The fiscal impact of the project will not exceed $13 million over the 15-year term of the Agreement.

STRATEGIC PLAN:

The project supports 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:

Burney Creek Hydro Renewable 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 SNOW MOUNTAIN HYDRO LLC, AND ANY NECESSARY ANCILLARY DOCUMENTS WITH A POWER DELIVERY TERM OF 15 YEARS BEGINNING ON JANUARY 1, 2024, IN AN AMOUNT NOT TO EXCEED $13 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, 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 Snow Mountain

Hydro LLC (Contractor), to procure 3 MW of power generation from the project, based on Contractor's desirable offering of products, pricing, and terms; and

WHEREAS, the 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 fifteen years starting on January 1, 2024; 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 Agreement and any other ancillary documents required for said purchase of power from the Contractor.

WHEREAS, the Board's decision to delegate to the Chief Executive Officer the authority to execute the Agreements is contingent on the Snow Mountain Hydro, LLC Board approving the Agreements' terms consistent with those presented to the Board.

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

Execute the Agreement 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 fifteen years, in an amount not to exceed $13 million.

* * * * * *

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Snow Mountain Hydro, an Idaho limited liability company

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

Description of Facility: A 3.447 MW hydroelectric generating facility with 3.0 MW maximum output located in Shasta County, California.

Guaranteed Delivery Commencement Date: January 1, 2024

Delivery Term: Fifteen (15) Contract Years

Guaranteed Capacity: 3.0 MW at the Delivery Point

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
All	[redacted]

Peak Energy: (Based on the sum of individual historical peak monthly output in MWh)

Contract Year	Peak Energy (MWh)
All	[redacted]

Monthly Expected Energy:[1]

Month	Expected Energy (MWh)	Peak Energy (MWh)
January	[redacted]	[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)	Peak Energy (MWh)
February	[redacted]	[redacted]
March	[redacted]	[redacted]
April	[redacted]	[redacted]
May	[redacted]	[redacted]
June	[redacted]	[redacted]
July	[redacted]	[redacted]
August	[redacted]	[redacted]
September	[redacted]	[redacted]
October	[redacted]	[redacted]
November	[redacted]	[redacted]
December	[redacted]	[redacted]

Contract Price:

Contract Year	Contract Price ($/MWh)
All	[redacted]

Product:

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

Deliverability:

- ☐ Energy Only Status

X Full Capacity Deliverability Status

Scheduling Coordinator: Buyer or Buyer's Agent

Pre-Delivery Term Security: [redacted]

Performance Security: [redacted]

Damage Payment: [redacted]

Notice Addresses:

Seller:

Company Name: Snow Mountain Hydro, LLC
Address: c/o Ida-West Energy Company
Delivery: PO Box 7867, Boise, ID 83707
Street: 205 N 10th Str, STE 510, Boise, ID 83702

Attention: Doug Dockter
Phone No.:208-388-2987
Email: DDockter@ida-west.com

With a copy to:

Company Name: Ida-West Energy Company
Address: PO Box 70, Boise, ID 83707

Attn: Ida-West Energy Co General Counsel
Phone No.:
Email:

Scheduling:

Company Name: Snow Mountain Hydro, LLC
Address: PO Box 7867, Boise, ID 83707

Attention: David Gray
Phone No.: 208-388-5360
Email: dmgray@ida-west.com

Invoices and Payments:

Company Name; Snow Mountain Hydro, LLC
Address: PO Box 7867, Boise, ID 83707

Attention: Alyson Heyer
Phone No.: 208-388-5533
Email: aheyer@ida-west.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
Snow Mountain Hydro, LLC	Peninsula Clean Energy Authority
By: _____	By: _____
Name: Douglas J. Dockter	PCE Executive Officer
Title: President, Ida-West Acquisition Co. The administrative agent for Snow Mountain Hydro, LLC	

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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 or otherwise has control over, and operates the 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, all Energy generated by the Facility, all Green Attributes related to the generation of such Energy, and all 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
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.

"**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.

[redacted]

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

[redacted]

[redacted]

"**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.

[redacted]

"**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 the Facility was able to produce for a period of time, as determined based upon the lesser of (A) the arithmetic average of the Facility's metered output rate, in MW, for the twenty-four (24) hour periods immediately before and after the related Buyer Curtailment Period, or (B) the Guaranteed Capacity;

(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 Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

"**California Renewables Portfolio Standard**" or "**RPS**" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015) and 100 (2018) 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/or deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits. Capacity Attributes shall also

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

"**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.

"**Change of Control**", in the case of Seller, means any circumstance in which either of Seller's Ultimate Parents ceases to own, directly or indirectly through one or more intermediate entities, 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 an 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.

Notwithstanding the foregoing, (a) so long as the Ultimate Parents Control Persons owning at least 300 MW of operating renewable electricity generating projects, a change in the Control of an 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 an 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.

"**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.

"**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 Commencement Date, and each subsequent Contract Year shall commence on the anniversary of the Delivery Commencement 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:

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.

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 current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order.

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

"**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 calculated as the difference between (a) the product of (i) the lesser of (A) the arithmetic average of the Facility's metered output rate, in MW, for the twenty-four (24) hour periods immediately before and after such Curtailment Period or other applicable event, or (B) the Guaranteed Capacity, multiplied by (ii) the duration of such Curtailment Period or other applicable event, less (b) the amount of Metered Energy delivered to the Delivery Point during the Curtailment Period or other applicable event, if any; 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).

"**Delay Liquidated Damages**" means an amount equal to [redacted]

"**Delivery Commencement**" means that Seller has fulfilled all of the conditions set forth in Section 2.2 and has begun delivering Product to the Delivery Point pursuant to this Agreement.

"**Delivery Commencement Date**" means the date on which Seller actually delivers Product to the Delivery Point.

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

"**Delivery Term**" means the period of Contract Years specified on the Cover Sheet, beginning on the Delivery Commencement 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.

"**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 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 13.4.

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

"**Full Capacity Deliverability Status**" has the meaning set forth in the CAISO Tariff.

"Full Network Model" has the meaning set forth in the CAISO Tariff.

"**Future Environmental Attributes**" shall mean any and all emissions, air quality or other environmental attributes (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 3.0 MW AC capacity measured at the Delivery Point.

"**Guaranteed Delivery Commencement Date**" is the date set forth on the Cover Sheet, upon which Seller shall begin delivering Product to the Delivery Point pursuant to this Agreement.

"**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.

"**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 D.

"**Licensed Professional Engineer**" means an independent, professional engineer (a) reasonably acceptable to Buyer, (b) who has been retained by, or for the benefit of, the Lenders, as their "independent engineer" for the purpose of financing the Facility, or (c) who (i) is licensed to practice engineering in the State of California, (ii) has training and experience in the power industry specific to the technology of the Facility, (iii) is licensed in an appropriate engineering discipline for the required certification being made, and (iv) unless otherwise approved by Buyer, is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility.

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

"**Local Capacity Area Resource**" has the meaning set forth in the CAISO Tariff.

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

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

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

"**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.

"**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).

"**Net Qualifying Capacity**" or "**NQC**" has the meaning set forth in the CAISO Tariff.

"**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.

"**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.

"**Peak Energy**" means, for any Contract Year, the amount of Peak Energy set forth in the Cover Sheet.

"**Performance Security**" means (i) cash, (ii) a Letter of Credit, [redacted] 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.

"**Pre-Delivery Term Security**" means cash or a Letter of Credit in the amount specified on the Cover Sheet, deposited with Buyer in conformance with Section 8.7.

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

"**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 [redacted] (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 two (2) or more electricity generating facilities of the same technology and comparable size as the Facility.

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

"**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 3.9(b).

"**RA Guarantee Date**" means the Delivery Commencement Date.

"**RA Plan**" has the meaning set forth for "Resource Adequacy Plan" in the CAISO Tariff.

"**RA Shortfall**" means the difference, expressed in kW, of (i) the Guaranteed RA Amount minus (ii) the Resource Adequacy Benefits of the Facility for such month able to be shown on Buyer's monthly or annual RA Plan to the CAISO and CPUC and counted as Resource Adequacy Benefits.

"**RA Shortfall Month**" means the applicable calendar month following the RA Guarantee Date during which Seller fails to provide Resource Adequacy Benefits in an amount equal to or greater than the Guaranteed RA Amount as required hereunder for purposes of calculating an RA Deficiency Amount under Section 3.9(b).

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

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

"**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.

"**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. Replacement RA shall (i) include, if applicable, Flexible Resource Adequacy Benefits that are of the same system or local designation, Flexible Capacity Category, and Resource Category as the Facility; (ii) be from a resource located in the same Transmission Access Charge Area (as described in the CAISO Tariff) as the Facility and, (iii) to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, be located in the same Local Capacity Area as the Facility. Replacement RA shall not be provided from any generating facility or unit that utilizes coal or coal materials as a source of fuel.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 19-10-021, and any subsequent CPUC ruling or decision or by any other entity including CAISO, and shall include System Resource Adequacy Benefits, Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits associated with the Facility.

"**Resource Category**" means the maximum cumulative capacity and resource categories (commonly known as "MCC buckets") for system and local resource adequacy as well as categories of must-offer for flexible resource adequacy described in the most recent filing guide for system, local, and flexible resource adequacy compliance filings issued or published on the CPUC's website by the CPUC or its staff specifying the guidelines, requirements, and instructions for load serving entities to demonstrate compliance with the CPUC's resource adequacy program.

"**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.

"Showing Deadline" means the initial deadline that a Scheduling Coordinator must meet to submit its RA Plan, as established by CAISO or any other Governmental Authority. For illustrative purposes only, the CAISO monthly Showing Deadline is approximately 45 days prior to the RA delivery month.

"**Site**" means the real property on which the Facility is 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**" 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).

[redacted]

"**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.

"System Resource Adequacy Benefits" means the attributes, however defined, of a resource that can be used to satisfy the resource adequacy obligations of a load serving entity, other than Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits.

"**Tangible Net Worth**" means the tangible assets (for example, not including intangibles such as goodwill and rights to patents or royalties) that remain after deducting liabilities as determined in accordance with generally accepted accounting principles.

"**Tax**" or "**Taxes**" means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

"**Terminated Transaction**" has the meaning set forth in Section 11.2.

"**Termination Payment**" has the meaning set forth in Section 11.3.

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

"**Ultimate Parent(s)**" means each entity that Controls, directly or indirectly, Seller. As of the Effective Date, the Ultimate Parents are IDACORP, Inc. and Public Employee Retirement System of Idaho.

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

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

"**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 Exhibit C;

(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 Delivery Commencement by the Delivery Commencement Date.

(f) The CAISO has provided notification supporting Delivery Commencement.

(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 Final Certification and Verification;

(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) Reserved.

(m) Seller has delivered to Buyer a report showing meter data of the Energy output for the Facility between the Effective Date and the Delivery Commencement Date;

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

(o) Seller has paid Buyer for all Delay Liquidated Damages owing under this Agreement, if any; and

(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 **Delay in Achieving Delivery Commencement**. The Parties agree time is of the essence in regards to the Agreement. If Delivery Commencement is not achieved by the Guaranteed Delivery Commencement Date, Seller shall pay Delay Liquidated Damages to Buyer on account of such delay. Delay Liquidated Damages shall be payable to Buyer for each day until the earlier of [redacted], but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

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, except with respect to Replacement RA.

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.

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 one hundred fifteen percent (115%) of [redacted] 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 one hundred fifteen percent (115%) of [redacted] 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 the lesser of (i) seventy-five percent (75%) of the Contract Price or (ii) the Day-Ahead LMP 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 one hundred and twenty percent (120%) of [redacted] for such Contract Year, no payment shall be owed by Buyer for any additional Metered Energy or Deemed Delivered Energy.

(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 Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times the number of such Excess MWh ("**Negative LMP Costs**").

3.4 **Imbalance Energy**.

(a) 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.

(b) If Seller is not in compliance with 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 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 **Changes to Interconnection Capacity.** In the event that the Interconnection Agreement is modified or Seller otherwise obtains the ability to deliver Energy in excess of the Guaranteed Capacity under the Interconnection Agreement, the Parties shall amend this Agreement to increase the Guaranteed Capacity, provided that in no event shall the Guaranteed Capacity exceed 3.447 MW. Upon any such amendment, the Parties shall also amend (i) the Delivery Term Expected Energy, Peak Energy and monthly Expected Energy set forth on the Cover Sheet, and (ii) the Pre-Delivery Term Security, Performance Security, and Damage Payment on a pro-rata basis consistent with the increase in the Guaranteed Capacity.

3.8 **Capacity Attributes**. The Facility has been designated by the CAISO as having Full Capacity Deliverability Status.

(a) Subject to Section 3.13, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility throughout the Delivery Term.

(b) Subject to Section 3.13, 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 3.13, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) Subject to Section 3.13, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) For the duration of the Delivery Term, Seller shall maintain interconnection capacity under its Interconnection Agreement of at least the amount of the Guaranteed Capacity plus the capacity of any Other Facilities that take interconnection service under its Interconnection Agreement, if any.

(e) If, as a result of Scheduled Maintenance or otherwise, CAISO requires RA Substitute Capacity in connection with Seller's provision of Resource Adequacy Benefits to Buyer from the Facility, Seller shall provide such RA Substitute Capacity in accordance with applicable CAISO requirements. Seller acknowledges and agrees that any failure by Seller to provide such RA Substitute Capacity may result in CAISO rejecting or cancelling Scheduled Maintenance or other outage of the Facility. Buyer 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.

3.9 **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 obtain such status for the Facility by the RA Guarantee Date, or if Seller otherwise fails to provide Resource Adequacy Benefits in an amount equal to or greater than the Guaranteed RA Amount 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 up to the RA Shortfall; so long as (A) Seller provides Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit F at least seventy-five (75) days before the applicable CPUC operating month, (B) such notice is delivered to Buyer at least ten (10) Business Days before the CPUC and CAISO Showing Deadline for the operating month for the purpose of annual and monthly RA Plan reporting, and (C) Replacement RA shall not exceed twenty-five percent (25%) of the Resource Adequacy Benefits provided during the RA Shortfall month.

3.10 **CEC Final Certification and Verification**. Subject to Section 3.13, Seller shall maintain throughout the Delivery Term the CEC Final Certification and Verification for the Facility. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Final Certification and Verification for the Facility.

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), (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] cumulatively during the Delivery Term ("**Compliance Expenditure Cap**"):

(a) CEC Final Certification and Verification;

(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 3.13 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.

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 the Delivery Commencement Date, 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 sixty (60) days prior to the Delivery Commencement Date, (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 Section 3.4(b), 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 G-1 or as reasonably requested by Buyer.

(b) Monthly Forecast of Available Capacity and Metered Energy. No less than thirty (30) days before the beginning of Delivery Commencement, 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 expected Available Capacity and expected Metered Energy, for each day of the following month in the forms attached hereto as Exhibits L-2 and L-3, respectively.

(c) Weekly 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 day of the immediately succeeding week, and more frequently as requested ("**Week-Ahead Forecast**"). A Week-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 Week-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 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 or expected Metered Energy, the expected end date and time of such event, the expected Available Capacity in MW or Metered Energy in MWh, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. 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 or expected Metered Energy 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, 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 resulting from 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 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 Sections 3.1, 11.1(b)(iv), or 11.1(b)(v):

(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**. 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**"). Buyer acknowledges that Seller does not guarantee that the Facility will generate the Expected Energy in any Contract Year.

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 Delivery Commencement Date, Seller shall ensure that the Facility is registered and has an established account with WREGIS (**"Seller's WREGIS Account"**), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause 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; 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 the lesser of (i) the Contract Price, or (ii) the Day-Ahead LMP. 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.** Seller shall provide to Buyer, within 60 days of the end of Seller's first, second, and third fiscal quarters, and within 120 days of the end of the Seller's fiscal year, as applicable, unaudited quarterly and annual audited financial statements of the Seller (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

4.10 **Access to Data**

(a) Commencing on the Delivery Commencement 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 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 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;

(ii) read-only access to the Facility's CAISO revenue meter and all Facility meter data at the Site;

(iii) full, real-time access to the Facility's Scheduling and Logging for the CAISO (OMS) client application, or its successor system; and

(iv) net plant electrical output at the CAISO revenue meter.

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) Commencing on the Delivery Commencement Date, and continuing on a weekly basis throughout the Delivery Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, information concerning the availability of water to power the Facility.

(c) 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. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(d) Installation, Maintenance and Repair.

(i) Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 4.10(a) of this Agreement.

(ii) Seller shall maintain any telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Buyer's designee to enable Buyer to meet current CAISO scheduling requirements. Seller shall promptly repair and replace as necessary such telecommunications path, hardware and software and shall notify Buyer as soon

as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(iii) If Buyer notifies Seller of the need for maintenance, repair or replacement of the telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice; provided that if Seller is unable to repair or replace such equipment within five (5) days, then Seller shall make such repair or replacement as soon as reasonably practical; provided further that Seller shall not be relieved from liability for any 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.

(e) 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.

(f) No later than ninety (90) days before the Delivery Commencement Date, Seller shall deliver to Buyer in a form reasonably acceptable to Buyer, one (1) year of recorded data related to the availability of water to power the Facility, if available.

4.11 **Ancillary Services**. If the Facility is eligible to provide Ancillary Services (as defined in the CAISO Tariff) and Buyer desires to receive any such Ancillary Services from the Facility, Seller shall upon request from Buyer, take all commercially reasonable actions required to provide such Ancillary Services to Buyer; provided that Seller shall not be required to make material changes to the Facility and Buyer shall reimburse Seller for any and all out-of-pocket costs incurred by Seller to provide such Ancillary Services in excess of de minimus administrative costs.

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.

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 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 Delivery Commencement Date for the period from the Delivery Commencement 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 shall plan to conduct Scheduled Maintenance between June 1 and October 31 of each year and make commercially reasonably efforts to adjust Scheduled Maintenance within that time window to avoid any outage when water is available and the Facility might otherwise generate. 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 June 1 and October 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 November through May, 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.

6.3 **Permits and Approvals**. As between Buyer and Seller, Seller has or 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 or Shared Facilities' 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 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 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 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 Delay Liquidated Damages, 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 Pre-Delivery Term Security**. To secure Seller's obligations under this Agreement, including the obligations of Seller to pay Delay Liquidated Damages to Buyer as provided in this Agreement, Seller shall deliver Pre-Delivery Term Security to Buyer in the amount of [redacted] within five (5) Business Days after the Effective Date. Buyer will have the right to draw upon the Pre-Delivery Term Security if Seller fails to pay a Termination Payment owed to Buyer pursuant to Section 11.2. Seller shall maintain the Pre-Delivery Term Security in full force and effect and Seller shall replenish the Pre-Delivery Term Security in the event Buyer collects or draws down any portion of the Pre-Delivery Term Security for any reason permitted under this Agreement other than to satisfy 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 Pre-Delivery Term 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 Delivery Commencement Date, in the amount of [redacted]. Upon mutual agreement of the Parties, the Pre-Delivery Term Security can be rolled over and applied to Seller's obligation to provide Performance Security. 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 Pre-Delivery Term 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 Pre-Delivery Term 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 Pre-Delivery Term 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 Pre-Delivery Term Security or Performance Security; and

(c) Liquidate all Pre-Delivery Term 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; volcanic eruption; flood; severe drought; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the 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, precipitation, and insolation, within one in fifty (1 in 50) year occurrence; or (ix) any interruption of interconnection service (including in connection with the arrangements between Seller and Sierra Pacific Industries or Burney Biomass Cogen, including those described in Exhibit A) for the Facility except to the extent such interruption is caused by a Force Majeure Event of the kind specifically described in Section 10.1(b); or (x) Seller's inability to achieve Delivery Commencement following the Guaranteed Delivery Commencement Date.

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. Notwithstanding any other provision of this Agreement, 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 and to the extent 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 Pre-Delivery Term 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;

(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;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Sections 14.2 or 14.3, as applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Facility;

(ii) the failure by Seller to achieve Delivery Commencement within sixty (60) days after the Guaranteed Delivery Commencement Date;

(iii) the failure by Seller to timely obtain CEC Final Certification and Verification in accordance with Section 3.10.

(iv) if, the amount of Metered Energy delivered to the Delivery Point in any Contract Year is not at least ten percent (10%) of the Expected Energy amount for that 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 ten percent (10%) minimum;

(v) [redacted]

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Pre-Delivery Term 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 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 Other Facilities it owns, operates or manages at the time of the Effective Date, or engages in any business or activity other than the development, financing, ownership or operation of the Facility or such Other Facilities that it owns, operates or manages at the time of the Effective Date;

(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; or

(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.

(x) [redacted]

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/or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **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 Delivery Commencement 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, 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 an Idaho limited liability company, duly organized, validly existing and in good standing under the laws of the State of Idaho, 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.

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 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.

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 Sections 14.2 or 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 E.

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: Burney Creek Hydro

Site Name: Burney Creek Hydro

Site Description: The entire Facility is located in privately owned rural forested lands zoned as a Timber Preserve. The penstock collects water from Burney Creek, runs about 4.0 miles to the concrete substructure, and steel frame powerhouse where the generator is located. The Project is interconnected to the PG&E owned transmission system via a 2.5-mile 12.5 kV gen tie that connects to Sierra Pacific Industries (SPI) facility on Route 299. The output is stepped up to 230 kV transmission voltage by a SPI-owned transformer to interconnect to CAISO grid. The powerhouse, penstock and intake facilities are located on the property of Fruit Growers Supply Company and SPI. Site control is by easement through a 50-year, three-party "Easement and Royalty Agreement" between Highland Hydro (now Snow Mountain Hydro), Fruit Growers and SPI, dated May 1989. The agreement also provides for interconnection to PG&E through SPI's 230 kV transformer at SPI's Burney Biomass Cogen.

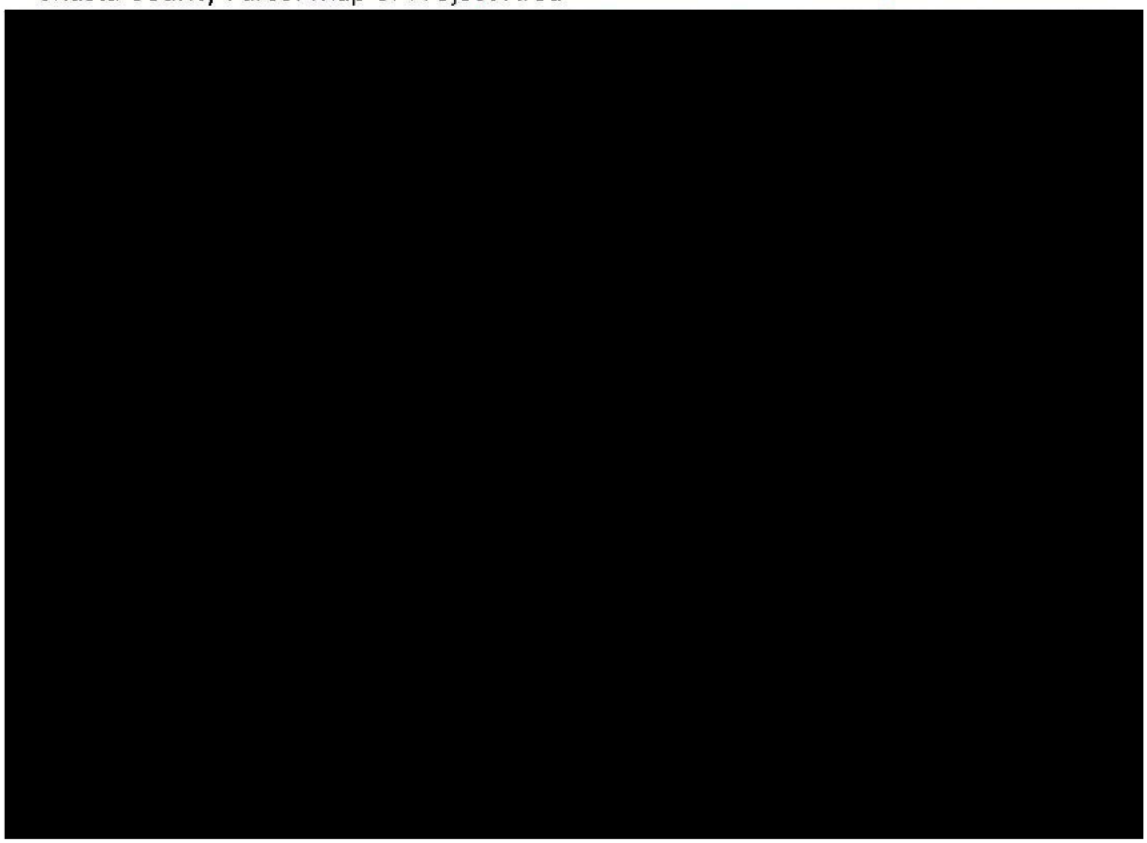
Site Address: Site address was not assigned at the time the project was permitted and constructed.

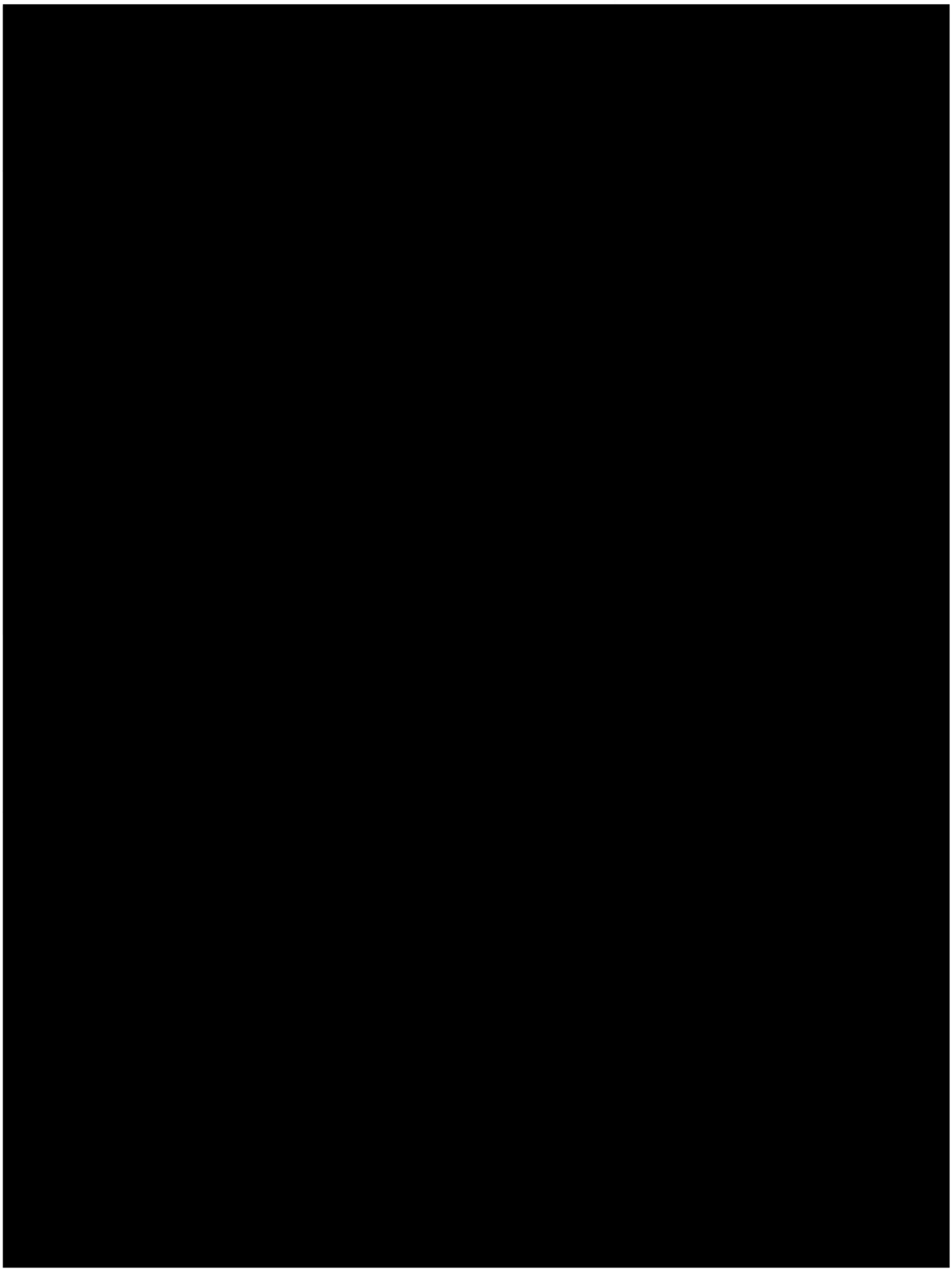
Snow Mountain Hydro LLC
38274 Hwy. 299 E.
Burney, CA 96013

GPS Coordinates: [redacted]

Site Map:

Shasta County Parcel Map of Project Area





APNs: Fee Parcel 030-090-023-000

County: Shasta County

CEQA Lead Agency: Shasta County

Guaranteed Capacity: 3.0 MW AC (net, at the Delivery Point)

Generation Technology: The turbine-generator is a horizontal shaft Turgo style turbine with a synchronous generator Single 3.447 MW synchronous generator coupled to a horizontal shaft impulse style turbine, with a maximum output limited to 3.0 MW as reflected in the Interconnection Agreement.

P-node/Delivery Point: the PNode designated by the CAISO for the Facility (SPIBURN_7_N004)

Point of Interconnection: The Point of Interconnection is the location the SPI 230 kV tap interconnects with PG&E's Pit #3 – Pit #1 230 kV line in Shasta County, CA between Tower 13/103 and Tower 13/104.



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: The Burney Creek Hydro generating facility is connected to the Sierra Pacific Industries (SPI) infrastructure at 12 kV and provides power to PG&E's transmission system through SPI's 230 kV transformer under a 50-year agreement between SPI and Snow Mountain Hydro LLC, approved by PG&E in 1990. Although SPI has a Small Generator Interconnection

Agreement with PG&E and the CAISO (SGIA1), Burney Creek Hydro is recognized as a separate entity by PG&E and is scheduled and metered under a separate Resource ID (SPBURN_7_SNOWMT).

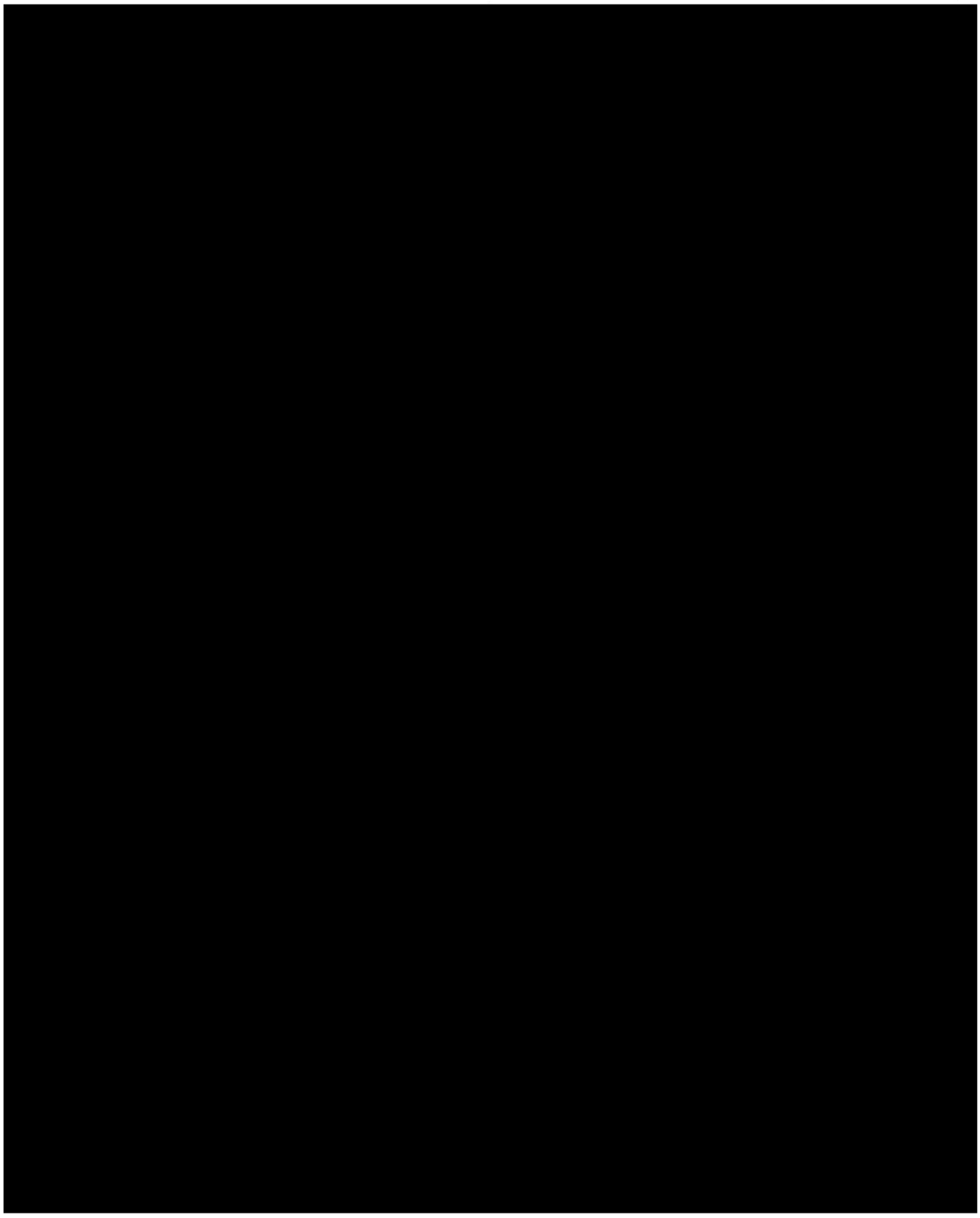
The shared generation tie consists of an approximately 0.78 mile span of gen-tie line which spans from SPI's air switch KPF SWT 201 to PG&E's SPI 230 kV tap where it interconnects with PG&E's Pit #3 – Pit #1 230 kV line in Shasta County, CA between Tower 13/103 and Tower 13/104 as shown in the single-line diagram. An approximately 200 feet long portion of the 230 kV gen-tie line identified for SPI – Burney project running from its Point of Change of Ownership to its Point of Interconnection, is also being utilized to accommodate the interconnection for Burney Creek Hydro generating facility. Burney Creek Hydro acknowledges that if SPI terminates the SGIA1 with PG&E and the CAISO, Burney Creek Hydro will be responsible for any additional costs necessary to construct and install Interconnection Facilities necessary to connect to the Point of Interconnection.

To calculate the Burney Biomass Cogen generation, a CAISO meter is installed on the high-side (230 kV) of the SPI power transformer and at the Burney Creek Hydro net metering point. The Burney Creek Hydro meter is programmed to compensate its generation data to the CAISO Point of Delivery which is on the high side of the SPI power transformer. To obtain the Burney Biomass Cogen revenue data, the CAISO has agreed to poll the compensated revenue data from the Burney Creek Hydro meter and subtract that value from the revenue data polled from the high-side connected CAISO meter which is metering the total Burney Biomass Cogen and Burney Creek Hydro generation.

To determine the losses to be applied to the Burney Creek Hydro meter, a spreadsheet has been developed to determine the total project losses and the point of delivery generation values for the Burney Biomass Cogen and Burney Creek Hydro projects. The losses are calculated and allocated based on both sites generating at full capacity. Once the losses for each project are calculated, an equivalent per-phase resistance is reverse-engineered for the Burney Creek Hydro project and is the value programmed into the Burney Creek Hydro meter for point of delivery calculations. This ensures that the CAISO Point of Receipt values are as accurate as possible.

CAISO Queue Number: N/A. CAISO Resource ID: SPBURN_7_SNOWMT

One-Line Diagram:



Metering Diagram: Burney Creek Hydro is the "Snow Mtn. CAISO Meter" in the diagram below.



Additional Information:

N/A

EXHIBIT B

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:

Attn: Doug Dockter
Snow Mountain Hydro
c/o Ida-West Energy Company
P.O Box 7867
Boise, ID 83707

Phone: [redacted]
Email: [redacted]

EXHIBIT C

FORM OF DELIVERY COMMENCEMENT CERTIFICATE

This certification ("**Certification**") of Delivery Commencement 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,.

(3) Authorization to parallel the Facility was obtained by the Participating Transmission Owner, Pacific Gas and Electric Company on___3/20/2020____.

(4) The Participating Transmission Owner, Pacific Gas and Electric Company, has provided documentation supporting full unrestricted release for commercial operation on ____3/20/2020____.

(5) The CAISO has provided notification supporting the Facility's commercial operation, inclusion in the Full Network Model in accordance with the CAISO tariff on ___3/20/2020___.

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**

By:_____

Its:_____

Date:_____

EXHIBIT D

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 E

INSURANCE

Failure to Comply with Insurance Requirements. Failure of the Seller to secure and maintain the insurance required by this Article shall constitute a material breach of the agreement entitling Buyer, in its discretion, to terminate the Agreement for cause.

Insurance

Seller shall purchase and maintain such insurance as will protect it from claims 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.

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 Business Days' notice in case of cancellation or non- renewal, except 10 days for non-payment of premium.

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; contractual; advertising/personal injury.

Coverage shall be on an occurrence form with policy limits of not less than:

- [redacted] Each Occurrence Bodily Injury & Property Damage
- [redacted] Personal & Advertising Injury
- [redacted] General Aggregate to apply on a Per Project basis
- [redacted] Products/Completed Operations Aggregate

Business Auto Liability – Coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) form CA 00 01, written on an occurrence basis to apply to "any auto" or at a minimum "all owned, hired and non-owned autos", with policy limits of not less than [redacted] per accident for bodily injury and property damage.

Workers' Compensation and (b) employers' liability – Sellers shall provide coverage for industrial injury to their employees (or leased employees as applicable) in strict accordance with the provisions of the State or States in which project work is performed or where jurisdiction is deemed to be applicable. Workers' Compensation shall be provided in a statutory form on either a state or, where applicable, federal (U.S. Longshore & Harbor Workers Act, Maritime- Jones

Act, etc.) basis as required in the applicable jurisdiction.

Such insurance shall be in an amount of not less than:

- Workers Compensation: Statutory
- Employers Liability
  - [redacted] Bodily Injury by Accident – Each Accident
  - [redacted] Bodily Injury by Disease – Total Limit
  - [redacted] 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:

- [redacted] Each Occurrence
- [redacted] Personal & Advertising Injury
- [redacted] Aggregate (where applicable, following the terms of the underlying)

Additional Insured / Primary-Noncontributory Buyer shall be an additional insured on a primary and non-contributory basis for all required lines of coverage except Statutory Workers Compensation, 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.

General Conditions

Seller shall maintain Commercial General liability insurance for the entire Contract Term.

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.

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.

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 should any of the above-described policies be cancelled before

the expiration date thereof, notice will be delivered in accordance with the policy provisions. 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.

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.

Seller shall be fully and financially responsible for all deductibles or self-insured retentions.

Waiver of Subrogation – Seller shall provide a Waiver of Subrogation Endorsement to Buyer for Commercial General Liability, Auto Liability and Workers' Compensation lines of coverage.

EXHIBIT F

Exhibit E

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [ ], a [ ] ("**Seller**") to Peninsula Clean Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Power Purchase and Sale Agreement dated [_____] ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.9(b) of the Agreement, Seller hereby provides the below Replacement RA product information (to be repeated for each unit if more than one):

Name	
Location	
CAISO Resource ID	
Unit SCID	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line")	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Deliverability Period	
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Resource Category (MCC Bucket e.g., 1, 2, 3, or 4)	
Flexible Capacity Category (e.g., 1, 2, 3, or N/A)	

Month	**Unit CAISO NQC (MW)**	**Unit CAISO EFC (MW)**	**Unit Contract Quantity (MW)**	**Unit EFC Contract Quantity (MW)**
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

[SELLER]

By:_____

Its:_____

Date:_____

Whereas, the following definitions apply to the terms in the above Replacement RA product information:

"**CPUC RA Filing Guide**" means the Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings published annually by the CPUC.

"**Deliverability Period**" means the period in which the unit has rights to deliver energy to the CAISO Grid.

"**Flexible Capacity Category**" means the category of Effective Flexible Capacity, as described in the CPUC RA Filing Guide, applicable to the unit.

"**LCR Area (if any)**" means the Local Capacity Requirement area, as used in the CPUC RA Filing Guide, applicable to the unit, if any.

"**Prorated Percentage of Unit Factor**" means the percentage of the Unit CAISO NQC that is designated as Unit Contract Quantity.

"**Prorated Percentage of Unit Flexible Factor**" means the percentage of Unit CAISO EFC that is designated as Unit EFC Contract Quantity.

"**Resource Category**" means the Maximum Cumulative Capacity category, as described in the CPUC RA Filing Guide, applicable to the unit.

"**Resource Type**" means the type of generating or storage resource.

"**Run Hour Restrictions**" means any restrictions on the ability of the unit to run during any hours of the day.

"**Unit CAISO EFC**" means the unit's Effective Flexible Capacity, as described in the CPUC RA Filing Guide, as determined by CPUC and CAISO.

"**Unit CAISO NQC**" means the NQC (as defined in the CAISO Tariff) for the unit, as determined by CPUC and CAISO.

"**Unit Contract Quantity**" means the amount of Resource Adequacy Benefits to be provided to

Buyer from the unit in the form of Replacement RA, not to exceed the Guaranteed RA Amount.

"**Unit EFC Contract Quantity**" means the amount of Flexible Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Guaranteed RA Amount.

"**Unit SCID**" means the unit's "Scheduling Coordinator ID Code", as defined in the CAISO Tariff.

EXHIBIT G - 1

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 G - 2

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)

	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
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
Insert additional rows as needed																								
Day 26																								

	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
Day 27																								
Day 28																								
Day 29*																								
Day 30*																								
Day 31*																								

*Include these rows if needed for each month.

EXHIBIT G - 3

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)

	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
Day 1																							
Day 2																							
Day 3																							
Day 4																							
Day 5																							
Insert additional rows as needed																							
Day 26																							

	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
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: October 14, 2022
BOARD MEETING DATE: October 27, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Peninsula Clean Energy Board of Directors

FROM: Jan Pepper, CEO
Shawn Marshall, COO
Shayna Barnes, Operations Specialist
Kirsten Andrews-Schwind, Senior Manager of Community Relations
Cora Dino, Director of Human Resources

SUBJECT: Diversity, Equity, Accessibility, and Inclusion (DEAI) Policy Adoption

RECOMMENDATION

Adopt Peninsula Clean Energy Diversity, Equity, Accessibility, and Inclusion (DEAI) Policy

BACKGROUND:

In July 2020, the Citizens Advisory Committee (CAC) formed an Equity Working Group with the primary task of "ensur[ing] [that] equity is a priority across all working groups and built into PCE strategic priorities." The CAC's equity working group created a draft equity statement and brought the draft statement to Peninsula Clean Energy's Board of Directors at their January 28, 2021 meeting. The draft equity statement is provided below:

In light of the community's focus on anti-racism and the Black Lives Matter Movement following the death of George Floyd in May of 2020 and other continuing instances of systemic racism and institutional violence against black people, the Peninsula Clean Energy CAC Equity Working Group has worked over the past few months on a statement that would embody the commitment of the organization to ensure equity and inclusion in their work. The working group recognizes that there are many forms of discrimination that impact people from different backgrounds but the growing awareness of significant violence and discrimination against people of color (BIPOC) is our current focus, and we are committed to developing a framework that will eventually address discrimination in all its forms.

Peninsula Clean Energy Citizens Advisory Committee Draft Statement on Equity and Inclusion

- *Peninsula Clean Energy commits to making anti-racism top of mind during decision making.*
- *Will follow best practices in hiring, vendor selection and project selection*

- *Will use a racial equity lens when developing the community impact report*
- *Develop a means of tracking revenue and formulating a mechanism (qualitative and quantitative) that ensures accountability.*
- *Current board goals - 20% of programs funding going to low-income communities (working on definition)*
- *Pursue equity in energy generation and programs*
- *Low-income households, as well as Black, Hispanic, and Native American households, pay a much larger share of their income on energy bills, straining budgets and putting them at heightened risk of utility shutoffs during the COVID-19 pandemic and recession (https://www.aceee.org/press-release/2020/09/report-low-income-households-communities-color-face-high-energy-burden)*

At the Board of Directors Meeting on January 28, 2021, the Board accepted the above draft equity statement and formed a Diversity, Equity, Accessibility, and Inclusion Subcommittee to build on the statement and create a DEAI organizational policy and action plan for Peninsula Clean Energy. Board members on this subcommittee include Directors Donna Colson, Sam Hindi, Carlos Romero, Roderick Daus-Magbual, and former Director Michael Smith.

Senate Bill 255 and Utility Supplier Diversity

In addition to the CAC Draft Statement on Equity and Inclusion serving as a catalyst for undertaking the DEAI work, Peninsula Clean Energy has new regulatory compliance reporting obligations regarding DEAI under Senate Bill (SB) 255 (Bradford). SB 255 is a bill signed by Governor Newsom in October 2019 that amended the Public Utilities Code Sections 366.2 and 8283 and brought Community Choice Aggregators into the California Public Utilities Commission's (CPUC's) Utility Supplier Diversity Program. The Utility Supplier Diversity Program's framework and guidelines are laid out in the CPUC's General Order (GO) 156. To comply with SB 255 and GO 156, CCAs like Peninsula Clean Energy must annually submit a detailed and verifiable plan for increasing procurement from small, local, and diverse business enterprises, and a report that details our activities supporting diverse business enterprises and the amount of our procurement spend going towards these businesses in the prior year. This program focuses on the positive downstream economic effects of including diverse suppliers in utilities' supply chains. Compliance with SB 255 and GO 156 is another consideration that staff and the Board subcommittee contemplated when drafting the Request for Proposals and selecting the consultant team to carry out the DEAI work.

Selection of DEAI Consultant

To create the DEAI organizational policy and action plan, Peninsula Clean Energy staff drafted a Request for Proposals (RFP) for DEAI consulting services under direction from the DEAI subcommittee to be released as a competitive solicitation. The Request for Proposals was released in early May 2021 with responses due in mid-June 2021. Staff received eight responses to this RFP and interviewed three top consultants with the Board subcommittee in early July. The Board subcommittee recommended that the consultant team from GCAP Services, Inc. be selected to carry out the DEAI work as they were the best fit for Peninsula Clean Energy's range of needs, including regulatory compliance with SB 255 and GO 156. The full Peninsula Clean Energy Board approved the contract with GCAP Services, Inc. at the Board meeting on October 28, 2021.

DEAI Needs Assessment
The DEAI work began in mid November 2021, with a kickoff meeting with the selected consultant, GCAP, on November 15, 2021. GCAP and Peninsula Clean Energy staff covered the following items in the kickoff meeting:

- Introductions
- Data Collection and Discovery Process
- Project Management Meetings/Calls Schedule
- Project Schedule

Task 1 of the Scope of Work called for GCAP to conduct a regulatory review of General Order 156, Senate Bill 255, and Proposition 209 and to identify best practices to improve performance on required metrics. At the kickoff meeting, staff and the consultant team agreed that it made sense to conduct this regulatory review in conjunction with subsequent tasks on the project schedule (allowing us to proceed to other tasks before the regulatory review was complete). Staff also agreed to move the deliverable for Task 1 (brief report identifying organization-specific areas for improvement and recommendations, and best practices), to later in the project schedule so that the recommendations could be informed by the DEAI needs assessment phase of the project (the survey and interview phase). With these considerations in mind, staff and the consultant team met on November 17, 2021 to start brainstorming a list of stakeholders to whom we would send the DEAI survey. The initial list of stakeholders was further built out by staff over the following month and a half and ultimately included the following groups:

- Staff, including consultants and prior staff
- Peninsula Clean Energy Board Members and Alternates
- Peninsula Clean Energy Citizens Advisory Committee Members
- City Managers and City Sustainability Staff
- Outreach Grantees, Applicants, and Contractors
- Business Organizations, including Ethnic Chambers of Commerce
- Trade Organizations
- Other key community stakeholders (including core social service agencies, other nonprofit organizations, county contacts)

In the first month of the project (mid-November to mid-December, 2021), GCAP started their review of Proposition 209, Senate Bill 255, and General Order 156. They also started their initial review of other Peninsula Clean Energy policies and documents that would be updated as part of Task 4 of the project. These documents include Peninsula Clean Energy's Strategic Plan, Employee Handbook, and Policy #9 Ethical Vendor Standards, and Policy #10 Inclusive and Sustainable Workforce Policy. They also started drafting questions for the survey in Task 2, the organizational needs assessment phase of the project.

The majority of the second month of the project (mid-December 2021 to mid-January 2022) was spent on development of the DEAI needs assessment survey. GCAP provided the initial draft of survey questions for internal and external stakeholders to Peninsula Clean Energy staff on January 4, 2022. Staff and the consultant team decided to have two survey types: internal (for staff, former staff, and contractors), and external (all other stakeholders). Peninsula Clean Energy staff conducted an internal review of the questions and provided comments to GCAP. GCAP and Peninsula Clean Energy then reviewed the survey questions and feedback together on January 7, 2022. Peninsula Clean Energy staff asked GCAP to add in more questions about environmental justice to the external-facing survey. Staff provided GCAP with the report *Building*

a Just Energy Future: A Framework for Community Choice Aggregators to Power Equity and Democracy in California from the California Environmental Justice Alliance (CEJA) to use as a resource when coming up with questions that centered environmental justice and energy equity.

In the third month of the project (mid-January to mid-February 2022), Peninsula Clean Energy staff and the consultant team continued working on refining the survey questions. GCAP provided another draft of the survey questions that included assessment questions from the CEJA report mentioned above. Peninsula Clean Energy staff then added additional questions from this report. The questions added from the CEJA report focused on the following five subject areas:

1. Coordination with Local Community-Based Organizations (CBOs)
2. Accessible Information and Outreach
3. Community-Driven Local Program Design
4. Transparent Decision-Making
5. Local and State Accountability

Staff and the consultant team also started to prepare to meet with the DEAI subcommittee to review the survey. The team met with the Board DEAI subcommittee on January 27, 2022 to review the definitions of Diversity, Equity, Accessibility, and Inclusion, the survey questions, and survey stakeholder groups to be interviewed. At this meeting, the consultant team also reviewed the survey goals, objectives, design, format, and process. GCAP and Peninsula Clean Energy staff incorporated feedback from the Board subcommittee into the survey definitions and questions. Peninsula Clean Energy staff did two more reviews of the survey: one with GCAP on February 4, 2022, and one with just internal staff on February 8, 2022. GCAP incorporated final comments from staff and the survey went live on February 9, 2022. The survey was open until mid-March 2022.

After the survey closed, GCAP started analyzing the survey responses and drafting a survey report and appendices. There was a total of 34 submissions for the internal survey and 117 submissions for the external survey. The consultant team also started preparing for the second part of the needs assessment phase of the project: interview of key stakeholder groups. Peninsula Clean Energy staff suggested several stakeholders to interview and then asked GCAP to suggest the remainder based off the open text responses to the survey. Ultimately, 13 stakeholders were chosen for interviews: 5 internal (staff and former staff) and 8 external (Board members, CAC members, program participants and outreach grantees). Stakeholders were interviewed in April and May 2022. GCAP provided a draft survey report to Peninsula Clean Energy staff in early May 2022 and presented the preliminary key findings from the survey to the Citizens Advisory Committee at their meeting on May 12, 2022. GCAP incorporated comments from both staff and the CAC into the final survey report and disaggregated the survey responses for each key finding by demographics at Peninsula Clean Energy's staff suggestion. The final survey report and appendices were provided to the Board DEAI subcommittee on June 30, 2022 and the subcommittee met on July 7, 2022. GCAP provided a project status update to the Board subcommittee at the July 7 meeting and Peninsula Clean Energy staff asked for any questions or comments from the Board subcommittee on the survey report, appendices, and key observations from the survey at that meeting. At that meeting, subcommittee members decided to have staff share the survey report and appendices with the full Board. The survey report and its 6 appendices were included in the Board packet for the July 28, 2022 Board meeting. At the Board meeting on July 28, the consultant team from GCAP presented a status update on the DEAI project and PCE Staff member Shayna Barnes presented on the high-level takeaways from the needs assessment phase of the project.

Legislative and Regulatory Review

With the needs assessment phase of the project complete, GCAP and the Peninsula Clean Energy project team progressed to completing other project tasks. GCAP provided Peninsula Clean Energy staff with a first draft of the regulatory and legislative analysis of Proposition 209, Senate Bill 255, and General Order 156 as Task 1 of the project. When conducting this legislative and regulatory review, GCAP reviewed Peninsula Clean Energy's prior two supplier diversity reports, solicitation documents for RFOs and RFPs, our standard contract, and our supplier diversity questionnaire to determine areas for improvement. The initial draft report was reviewed by PCE staff and counsel and returned to GCAP for final edits. Peninsula Clean Energy staff received the final version of this report in late August 2022 and plans to implement its recommendations as part of the DEAI Action Plan starting early next calendar year.

DEAI Policy Development and Stakeholder Review Process

Task 3 of the DEAI scope of work called for the consultant to create a DEAI policy for Peninsula Clean Energy. GCAP completed the first draft of Peninsula Clean Energy's DEAI policy in early August, incorporating edits from Peninsula Clean Energy executives and the DEAI project team. The draft DEAI policy used the CAC's equity statement as a foundation and included themes gleaned from the DEAI needs assessment phase of the project (survey and interviews), and incorporated industry best practices. Peninsula Clean Energy staff and GCAP scheduled 3 workshops during the months of August and September to get stakeholder feedback on the draft DEAI policy.

1. Peninsula Clean Energy staff, August 16
2. Peninsula Clean Energy Board DEAI Subcommittee, August 19
3. Citizens Advisory Committee, Community Based Organizations and the broader community, September 8

The three workshop groups were provided with the draft DEAI policy in advance along with the following discussion prompts to consider:

1. Conceptual / High Level Feedback
    a. Is the purpose of the policy clear and complete?
    b. Is the scope of the policy accurate and complete?
    c. Is the content relevant?
    d. Are all known audiences/customers/users of the policy described thoroughly and accurately?

2. Detailed / Low-level feedback
    a. Is the flow and structure of the policy logical to follow?
    b. Is the document concise and clear?
    c. Is the terminology understandable by all audiences/customers/users of the policy?
    d. What relevant content is missing and should be added?
    e. What content is inaccurate, incomplete, or unclear and should be modified?
    f. What content is inappropriate and should be removed?

For the community workshop (workshop 3 above), Peninsula Clean Energy staff conducted outreach with our community partners to help ensure robust participation in the workshop. Staff also created a temporary webpage: https://www.peninsulacleanenergy.com/deai/ where written

feedback on the policy could be received in different languages to allow people who could not attend to provide comments in an inclusive way.

The PCE DEAI project team and the consultant team received substantive, valuable, feedback from all three workshops. GCAP incorporated the comments from the workshops into a redlined version of the draft policy and grouped the feedback by theme for the PCE project team to consider. The DEAI project team met twice more with Peninsula Clean Energy leadership to consider the feedback received and ultimately developed the final draft policy that is now included in the Board packet for this October meeting.

Other Project Tasks in Progress
GCAP has delivered initial drafts of other project deliverables. This includes a DEAI Action Plan for Peninsula Clean Energy that will be used to operationalize the DEAI policy and create and implement DEAI practices and metrics throughout our organization. GCAP has also suggested edits to the organizational policies and documents mentioned above (Strategic Plan, employee handbook, policies #9 and #10) in addition to our standard contract, supplier diversity questionnaire and solicitation documents. PCE staff are working on reviewing and editing these deliverables and will bring final versions to the Board for approval at a future date.

DISCUSSION:

Peninsula Clean Energy staff recommend the adoption of the Diversity, Equity, Accessibility, and Inclusion (DEAI) Policy as written and provided in the Board packet for this meeting. The policy has been through a thorough stakeholder review and feedback process as described earlier in this memo. In addition, staff brought this final draft version of the DEAI policy back to the most recent CAC meeting for consideration of a recommendation on the policy to the Board of Directors. At their October 13, 2022 Citizens Advisory Committee Meeting, Committee members voted unanimously to recommend approval of the DEAI policy as drafted. Staff are enthused by this endorsement as Peninsula Clean Energy's DEAI journey started with the CAC. Staff are confident that this policy will serve the organization well as a guiding document as we continue to make progress on DEAI initiatives.

STRATEGIC PLAN:
The DEAI Initiative supports the Organizational Excellence pillar of the strategic plan to *ensure organizational excellence by adhering to sustainable business practices and fostering a workplace culture of innovation, diversity, transparency, and integrity*. This initiative seeks to support the following objectives and key tactics under this pillar:

Objective A: Culture and People: Foster a workplace culture that attracts and develops exceptional talent and values all people

- Key Tactic 3: Ensure that our recruitment processes are designed to attract high caliber and diverse applicants

Objective D: External Vendor Partners: Implement Vendor Policies that embrace diversity and inclusion and that optimize engagement results

- Key Tactic 1: Develop methods to ensure adherence to the organization's Inclusive and Sustainable Workforce Policy
- Key Tactic 2: Develop methods to ensure adherence to the organization's Ethical Vendor Standards Policy

This initiative also supports the Community Energy Programs pillar of the strategic plan to *implement robust energy programs that reduce greenhouse gas emissions, align energy supply and demand, and provide benefits to community stakeholder groups.* The DEAI initiative seeks to support the following objectives and key tactics under this pillar:

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

ATTACHMENTS:

Peninsula Clean Energy Diversity, Equity, Accessibility, and Inclusion (DEAI) Policy

RESOLUTION NO. _____

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

* * * * * *

RESOLUTION ADOPTING PENINSULA CLEAN ENERGY'S DIVERSITY, EQUITY, ACCESSIBILITY, AND INCLUSION (DEAI) POLICY

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, the Board approved the creation of a Citizens Advisory Committee ("Committee" or "CAC") on. February 23, 2017, to be appointed by the PCE Board,

WHEREAS, the Citizens Advisory Committee formed an Equity Working Group in July 2020 with the primary task of "ensur[ing] equity is a priority across all working groups and built into PCE strategic priorities,"

WHEREAS, the CAC's Equity Working Group created a draft equity statement and brought it to the Board of Directors at their January 28, 2021 meeting for consideration and adoption; and

WHEREAS, at that meeting the Board of Directors accepted the draft equity statement and formed a Diversity, Equity, Accessibility, and Inclusion ("DEAI")

Subcommittee to create a DEAI organizational policy and action plan for Peninsula Clean Energy,

WHEREAS, to create the DEAI organizational policy and action plan Peninsula Clean Energy staff drafted a Request for Proposals (RFP) for DEAI consulting services under direction from the DEAI subcommittee,

WHEREAS, the RFP was released as a competitive solicitation and eight responses were received,

WHEREAS, GCAP Services, Inc. was deemed best fit by staff and the DEAI Subcommittee to meet Peninsula Clean Energy's range of DEAI needs,

WHEREAS, the Board of Directors approved a contract with GCAP Services, Inc. at their meeting on October 28, 2021,

WHEREAS, the Peninsula Clean Energy DEAI project team has worked with GCAP Services, Inc. over the past year on a DEAI needs assessment, regulatory and legislative review, and policy development for Peninsula Clean Energy

WHEREAS, GCAP Services, Inc. and the Peninsula Clean Energy DEAI project team drafted a DEAI policy in early August 2022 and conducted stakeholder review of the policy in August and September 2022 in three workshops,

WHEREAS, GCAP Services, Inc. and the Peninsula Clean Energy DEAI project team incorporated feedback from all three workshops into a final draft version of the DEAI Policy that is included in the Board packet for the October 27, 2022 meeting,

WHEREAS, the Peninsula Clean Energy DEAI project team believes the DEAI policy is well-drafted, comprehensively addresses Peninsula Clean Energy's DEAI action plan, and is responsive to our stakeholder groups' input,

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board adopts the Diversity, Equity, Accessibility, and Inclusion (DEAI) Policy.

* * * * * *

PENINSULA CLEAN ENERGY

Policy Number: 22
Board Adoption: October 27, 2022

Diversity, Equity, Accessibility, and Inclusion (DEAI) Policy

1. Commitment to DEAI

Peninsula Clean Energy has a vision of a sustainable world with clean energy for everyone. We recognize there are longstanding systemic barriers that impede the advancement of fair and inclusive policies and limit the full participation of historically underserved and disadvantaged communities. This includes our stakeholders that face the most adverse impacts from economic, health, and environmental burdens. Peninsula Clean Energy recognizes that we have an obligation to maximize our efforts to eliminate disparities and ensure that our programs, policies, and practices are inclusive and accessible for everyone in the geographic markets we serve.

Peninsula Clean Energy commits to making diversity, equity, accessibility, and inclusion a priority during decision making. We firmly uphold anti-racism, anti-discrimination, diversity, equity, accessibility, and inclusion as core values. The Peninsula Clean Energy team, including all staff, Board of Directors, committees, and community groups, is committed to this DEAI Policy. This policy is a foundation for operating our business and Peninsula Clean Energy's goals as detailed in the Strategic Plan 2020-2025.

The Peninsula Clean Energy DEAI Policy 22 will help guide our work in the DEAI space. This document outlines the definitions, application, details, responsibility, administration, and communication of the policy. As the DEAI Policy explains what the agency will do in terms of DEAI initiatives, the DEAI Action Plan will cover how the agency will integrate DEAI initiatives into our programs, policies, and practices and strive towards our mission to reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions. Both the DEAI Policy and Action Plan are in compliance with Peninsula Clean Energy's operational policies.

2. Definitions

a. **Diversity:** Diversity is the presence of differences in people within any community that may include, but is not limited to race, gender, religion, sexual orientation, ethnicity, nationality, neurodiversity, socioeconomic status, language, (dis)ability, age, or veteran status. An intersectional approach to diversity goes beyond merely counting different kinds of representation in a group, but also recognizes differences in power dynamics between different identities, and how to equitably include and empower individuals from different backgrounds to participate within groups, decision making processes, and social justice movements.

b. **Equity:** Equity acknowledges historical factors that created oppressive societal structures and recognizes that we do not all start from the same place and must make adjustments to imbalances by providing power or resources to historically oppressed

groups and persons. Equity promotes justice, impartiality, and fairness within the procedures, processes, and distribution of resources by institutions or systems.

c. **Accessibility:** Accessibility means persons with disabilities are provided with equal opportunity to acquire the same information, visit the same places, engage in the same interactions, and enjoy the same services as persons without disabilities. Accessibility means a commitment to removing a variety of barriers, including institutional, physical, informational, communication, attitudinal, and cultural.

d. **Inclusion:** Inclusion outcomes are met when your institution, your programs, and you personally are genuinely inviting to all. It is based on the degree to which diverse individuals can participate as appropriate in the decision-making processes and development opportunities within an organization or group thus empowering them.

3. Application

This policy applies to all Peninsula Clean Energy Leadership and Staff, Board of Directors, and Citizens Advisory Committee (CAC) members, and is in compliance with the specifications of Peninsula Clean Energy's operational policies.

a. Roles and Responsibilities

- **Peninsula Clean Energy Leadership and Staff:** Both leadership and staff will be responsible for utilizing the DEAI Policy when implementing the activities and initiatives listed in the DEAI Action Plan.
- **Board of Directors:** The role of the Board of Directors is to provide oversight of policy compliance and ensure that Peninsula Clean Energy staff follow and integrate the DEAI policy within the agency's programs, policies, and practices.
- **Citizens Advisory Committee (CAC):** The role of CAC is to provide comments, advice, and recommendations to improve or enhance DEAI initiatives.

4. Details of Policy

a. <u>DEAI Commitment</u>

Peninsula Clean Energy has established this policy as a commitment to making diversity, equity, accessibility, and inclusion a priority within the organization. The organization commits to developing and supporting equity fluent leadership. This policy will also support the goals and objectives as stated in the DEAI Action Plan, which is a separate strategic document that outlines actions to implement reasonable and achievable DEAI initiatives throughout the organization.

b. <u>Recruitment, Promotions, and Retention</u>

Peninsula Clean Energy will aim to recruit, promote, and retain a qualified diverse workforce that is reflective of the communities we serve, especially workforce populations that are underserved and underrepresented.

Recruitment, promotions, and retention practices should be transparent and in compliance with Peninsula Clean Energy's human resources and operational policies.

c. Onboarding

Peninsula Clean Energy will expand the onboarding process to communicate the organization's commitment to DEAI and support all employees to feel welcome and have the needed information to thrive at the organization. Additionally, during the onboarding process, Peninsula Clean Energy will inform incoming employees of how they can be involved in the agency's DEAI efforts.

d. Compensation and Employee Performance Reviews

Peninsula Clean Energy supports fairness in employee compensation and performance reviews.

Peninsula Clean Energy will develop human resource practices to competitively compensate incoming and current employees through salary, benefits, and other amenities that appeal to a diverse workforce.

Additionally, Peninsula Clean Energy will enhance employee performance reviews and include DEAI metrics to measure employee accountability and development. These metrics will be tied to key performance indicators in the Strategic Plan and will be taken into consideration during compensation adjustments.

e. DEAI Learning and Development

Peninsula Clean Energy understands the importance of involving employees in discussions regarding DEAI and ensuring that all employees have access to develop their knowledge, skills, and abilities. All Peninsula Clean Energy leadership, employees, Board, and Citizen Advisory Committee members will participate in formal DEAI learning and development opportunities to expand their knowledge and awareness in the DEAI space.

f. Professional Development

All Peninsula Clean Energy staff will be provided equitable professional development opportunities, including DEAI specific learning, to maintain, improve and strengthen their knowledge, expertise, and competence to perform their job duties and execute on the Strategic Plan.

g. Leadership and Staff Accountability

Peninsula Clean Energy leadership and staff are expected to support the DEAI Policy and be held accountable for upholding DEAI values throughout the agency.

Through the DEAI Action Plan, Peninsula Clean Energy leadership and staff will establish a list of DEAI priorities and how best to measure results to improve the agency's programs, policies, and practices. By doing this, Peninsula Clean Energy will be able to collect data to drive and assess the DEAI impact on the organization internally and externally. Peninsula Clean Energy will ensure that the priorities align with the Strategic Plan and ensure leaders are involved in setting DEAI goals. Peninsula Clean Energy staff will provide a semi-annual progress update to the Board of Directors on DEAI initiatives, and an annual report during the annual Strategic Plan update.

h. Supplier Diversity

Peninsula Clean Energy will make best efforts to encourage the participation and utilization of a diversity of suppliers and vendors on contracts and procurements within the parameters of applicable state and federal law. Peninsula Clean Energy will track and report on its progress regarding small, local, and diverse business entities spend amounts in its annual Supplier Diversity reports to the California Public Utilities Commission (CPUC). Additionally, Peninsula Clean Energy will conduct reasonable research to ensure that the companies that Peninsula Clean Energy works with are also committed to advancing and promoting equity.

This is in compliance with Peninsula Clean Energy's operational policies and California Proposition 209.

In compliance with Proposition 209, Peninsula Clean Energy does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Peninsula Clean Energy encourages minority-owned, women-owned, veteran-owned, small, and local businesses to respond to solicitations. Peninsula Clean Energy supports the CPUC's efforts to create supplier diversity and encourages contractors who may qualify to register with the CPUC Supplier Clearinghouse and the Department of General Services Small Business and Disabled Veteran Business Enterprises programs.

i. Accessibility

Peninsula Clean Energy is committed to providing equitable access and opportunity to individuals with disabilities in all programs, services, and activities. Peninsula Clean Energy recognizes that in order to have equally effective opportunities and benefits, individuals with disabilities may need reasonable accommodations made to practices and procedures.

- **Training:** Peninsula Clean Energy leadership will be required to participate in DEAI learning and development that includes education on how to hire and create an inclusive culture for people with disabilities as well as

respond to accommodation requests made by internal and external stakeholders.

- **Accommodation Requests:** Peninsula Clean Energy will respond to internal and external accommodation requests by providing equitable access to staff and the public. For internal requests, Peninsula Clean Energy will ensure reasonable accommodations are made for employees with disabilities so that they are able to perform the essential duties of their jobs without physical or procedural barriers. For external requests, Peninsula Clean Energy will make a good faith effort to address accommodations by removing barriers to ensure stakeholders have access to public participation in Peninsula Clean Energy programs, services, and activities. Accommodation requests may include, access to public meetings, interpretation/translation language services, large print outreach/program materials, closed captioning/live transcriptions, and accessible public facilities.

- **Website:** Peninsula Clean Energy websites must follow and be compliant with Americans with Disability Act (ADA) and Web Content Accessibility Guidelines (WCAG). The websites should be accessible to people with disabilities and audited at least annually to ensure accessibility.

j. Communication & Outreach

Peninsula Clean Energy will utilize an equity lens when developing and distributing communication and outreach materials for programs and projects to improve informational awareness and increase inclusion and accessibility throughout the communities we serve.

Some examples of ensuring equity in Peninsula Clean Energy communications and outreach include, but are not limited to, providing outreach materials in languages needed to reach target populations, using imagery that mirrors the diversity of the communities we serve, using terminology that is gender neutral and respectful, and providing accommodations for people with disabilities and other accessibility needs.

k. Energy Programs

Peninsula Clean Energy will adopt policies, programs, and practices to achieve energy equity for low-income and disadvantaged households. These groups may include a disproportionate number of households on fixed incomes and people of color as they utilize a larger share of their income on energy bills, straining budgets and putting these households at a heightened risk of utility shutoffs during times of economic hardships.

Peninsula Clean Energy will seek input and gain feedback from a wide and diverse set of community members when developing policies, programs, and practices. Peninsula Clean Energy will also ensure that programs are designed and evaluated through an

equity lens to give underserved and underrepresented communities (all rate payers and program participants) equitable access to Peninsula Clean Energy programs.

These efforts will be in compliance with Peninsula Clean Energy's operational policies.

5. Party Responsible for Policy

Every part of the organization is responsible for implementing this policy as described in Section 3a, Roles and Responsibilities. In addition, Peninsula Clean Energy will establish a staff-led DEAI Council that will be responsible for operationally implementing this policy throughout the organization.

6. Policy Administration

a. Monitor and Measure

The DEAI Council will monitor and measure all DEAI commitments and initiatives through the DEAI Action Plan and will be responsible for identifying areas of progress and areas needing improvement.

The DEAI Council will also oversee the implementation of the DEAI initiatives and report progress to the Peninsula Clean Energy Board of Directors and leadership team on a semi-annual basis.

b. Implementation

All employees are expected to understand and share the responsibility of upholding the Peninsula Clean Energy DEAI Policy. If an employee or community stakeholder notes that a section of the policy is not being upheld, they should bring it to the attention of Peninsula Clean Energy's Human Resources Director or one of the members of the DEAI Council. After review by the Human Resources Director or a member of the DEAI Council, concerns will be brought to the attention of Peninsula Clean Energy executive leadership and appropriate action will be taken.

c. Policy Review

The Peninsula Clean Energy DEAI Council will be responsible for performing an annual review of the DEAI Policy and modifying and updating the document if there are any major changes needed. The DEAI Council will present proposed updates to executive leadership and the Board of Directors for their approval.

7. Communication of Policy

The Peninsula Clean Energy DEAI Policy will be posted and available on the Peninsula Clean Energy public website.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: October 17, 2022
BOARD MEETING DATE: October 27, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Leslie Brown, Director of Account Services

SUBJECT: Approval of Addition of "E-ELEC" Rate Tariff for Peninsula Clean Energy Residential Customers

RECOMMENDATION:

Approve a Resolution to implement a new Residential rate tariff, "E-ELEC", which will be an optional rate effective December 1, 2022 for customers that implement home electrification measures. The "E-ELEC" implementation coincides with the availability of PG&E's own E-ELEC rate. Peninsula Clean Energy E-ELEC rates will reflect a net 5% discount relative to PG&E Generation Rates for E-ELEC.

BACKGROUND:

On September 1, 2022, PG&E issued Advice Letter 6690-E implementing a new optional Time of Use rate option, E-ELEC, for residential customers pursuing home electrification. E-ELEC is a voluntary, non-tiered, TOU rate with a fixed charge. E-ELEC will be rolled out to customers in phases over the next 12 months with Phase 1 going live on December 1, 2022. To be eligible for this rate customers will need to have at least one of the following technologies deployed at their home:

- Electric Vehicle
- Energy Storage
- Electric Heat Pump Water Heater or HVAC

Phase 1 of the program will only be available to non-NEM (non net energy metering) customers while PG&E continues to complete IT upgrades to incorporate NEM customers by the fourth quarter of 2023.

PG&E has not yet published a final Advice Letter with updated tariff documents for E-ELEC,. PG&E has stated that an update will be published mid-November ahead of the December 1, 2022 launch. PCE staff will work with our data manager Calpine to prepare

rate tables based on the illustrative rates currently available with the intent that they will be updated before going live on December 1, 2022 once PG&E publishes the final Advice Letter.

FISCAL IMPACT:

The financial impact of this new rate is unknown at this time. PG&E is projecting slow initial uptake as the rate will not initially be available to NEM customers.

STRATEGIC PLAN:

Mirroring PG&E rate structures and offering comparable Peninsula Clean Energy Generation rates with a net 5% discount value proposition is consistent with PCE's goal to provide customers with cleaner electricity at a lower cost than what would otherwise be provided by PG&E.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO,

STATE OF CALIFORNIA

*** * * * * ***

RESOLUTION AUTHORIZING A NEW PENINSULA CLEAN ENERGY RATE, "E-ELEC" FOR RESIDENTIAL CUSTOMERS EFFECTIVE DECEMBER 1, 2022 TO MIRROR NEW E-ELEC RATE OFFERING BY PG&E

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

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

WHEREAS, on October 1, 2016 Peninsula Clean Energy began offering service to residents and businesses throughout San Mateo County;

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

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

WHEREAS, on December 1, 2022, PG&E will launch a new residential rate "E-ELEC"; and

WHEREAS, PG&E's new E-ELEC rate necessitates changes to PCE's rate offerings to match PG&E's offerings; and

WHEREAS, PCE intends to maintain a net 5% discount in generation charges from what is otherwise available from PG&E.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board authorizes the Chief Executive Officer to implement a new Peninsula Clean Energy ECOplus rate for residential customers, E-ELEC, for San Mateo County and the City of Los Banos, with a net 5% discount in generation charges compared to PG&E, effective December 1, 2022.

* * * * * *

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: October 17, 2022
BOARD MEETING DATE: October 27, 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.

Updated Electric Home Page
The All-Electric Homes page on our website has been updated with an interactive graphic, enhanced content and links to new and increased heat pump rebates.

Zero Percent Loan Program
This program was announced on October 17. The program will be featured in our next Energy Programs Bulletin and featured in digital media outreach. Planning is underway for more extensive promotion.

Heat Pump (HPWH) Rebates

Heat pump rebates, including the increase and other changes in the HPWH rebate and a new rebate for heat pump Heating, Ventilation and Air Conditioning (HVAC) systems were announced on October 17. The HPWH page on our website has been updated to include the increased rebate and other program changes that now provide rebates for the use of non-BayREN contractors or do-it-yourself installation.

Heating Ventilation and Air Conditioning (HVAC) rebates are now available and described on this web page. Initial promotion of these rebates includes features in our highly effective Energy Programs Bulletin, digital media outreach and partner media kits. Planning is underway for more extensive promotion.

Electrification Messaging and Campaign Support of Decarbonization
Marketing is developing new messaging centered on encouraging electrification. Messaging is being refined for a campaign that is planned to start this fall. 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. In September, the campaign achieved about 38,500 impressions and brought about 1,970 visits to our EV web pages. Results in October so far are showing an average cost-per-click of $1.85.

Green Homes Tour
Peninsula Clean Energy sponsored a "Green and Electrified Home Tour" organized by Project Green Home and the Campaign for Fossil Free Buildings in Silicon Valley on September 24. Over 800 people registered for the tour, which featured seven homes located in our service territory.

Outreach Grants
We have launched another round of this highly successful program of providing grants to local community-based non-profit organizations that reach out to diverse and hard-to-reach segments of our population. Leveraging trusted relationships with their constituencies, they help decipher utility bills, help residents avoid PG&E disconnection, educate residents and influencers about electrification, and promote Peninsula Clean Energy programs. Grants will be awarded in amounts up to $45,000 per project for work to be completed within one year. We received a total of 15 proposals. Awards will be finalized by the end of this calendar year. The grant period is the 2023 calendar year.

Los Banos Update
Our local Los Banos representative Sandra Benetti continues providing information and answering customer questions. She is tabling twice monthly on bill pay dates at Los Banos City Hall and participating in community events, including the October 29 community Halloween festival and movie night.

News & Media

Please see the separate memo re: Q3 Media Relations Summary contained in this board packet.

On October 4, we announced the call for submissions for our third annual All-Electric Leader Awards, "Cutting Edge All-Electric Buildings Sought for Annual Awards."

On October 17, we announced the Zero Percent Loan Program and Heat Pump Rebates, "Peninsula Clean Energy Offers New Zero Percent Loans, Rebates for Electric Home Upgrades."

Full coverage of Peninsula Clean Energy in the news can be found on our News & Media webpage.

ENROLLMENT UPDATE

ECO100 Statistics (since September report)

Total ECO100 accounts at end of September:	6,409
ECO100 accounts added in September:	87
ECO100 accounts dropped in September:	49
Total ECO100 accounts at the end of August:	6,371

Enrollment Statistics

Opt-outs during the month of September were 239, which is 1 more than the previous month of August (238). This includes 197 opt outs in our new service territory of Los Banos during the month of September and 42 from San Mateo County during this month. In October, there have been an additional 59 opt outs from Los Banos and 13 opt outs from San Mateo County as of October 14th, 2022. Total participation rate across all of San Mateo County as of October 14th was 97.00%.

In addition to the County of San Mateo, there are a total of 15 ECO100 cities. The ECO100 towns and cities as of October 14th, 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 October 14th							
TOT	RES Count	COM Count	Active Count	Eligible Count	Participation Percent	ECO100 Count	ECO100 Percent
ATHERTON INC	2413	228	2641	2725	97%	60	2%
BELMONT INC	10724	905	11629	11947	97%	174	1%
BRISBANE INC	1975	495	2470	2527	98%	89	4%
BURLINGAME INC	13415	1951	15366	15737	98%	348	2%
COLMA INC	577	290	867	883	98%	32	4%
DALY CITY INC	30977	1957	32934	34087	97%	109	0%
EAST PALO ALTO INC	7132	435	7567	7926	95%	24	0%
FOSTER CITY INC	13680	849	14529	14863	98%	333	2%
HALF MOON BAY INC	4205	628	4833	4986	97%	117	2%
HILLSBOROUGH INC	3800	145	3945	4055	97%	71	2%
LOS BANOS INC	12262	1280	13542	15275	89%	3	0%
MENLO PARK INC	14063	1697	15760	16036	98%	458	3%
MILLBRAE INC	8782	642	9424	9731	97%	112	1%
PACIFICA INC	14002	850	14852	15434	96%	177	1%
PORTOLA VALLEY INC	1463	130	1593	1692	94%	1494	94%
REDWOOD CITY INC	31320	3287	34607	35518	97%	720	2%
SAN BRUNO INC	14791	1062	15853	16530	96%	95	1%
SAN CARLOS INC	12203	2076	14279	14676	97%	333	2%
SAN MATEO INC	39750	3857	43607	44776	97%	687	2%
SO SAN FRANCISCO INC	21409	3083	24492	25458	96%	120	0%
UNINC SAN MATEO CO	20851	2972	23823	24622	97%	646	3%
WOODSIDE INC	2011	220	2231	2281	98%	63	3%

Table reflects data as of October 14th, 2022

In the above table, the participation rate for the City of Los Banos is at 89%. This number is artificially low due to us conducting a rolling enrollment for our NEM customers in Los Banos. 533 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 November 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 6.5%.

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: October 14, 2022
BOARD MEETING DATE: October 27, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: KJ Janowski, Director, Director of Marketing and Community Relations
Darren Goode, Media Relations Consultant

SUBJECT: Third Quarter (Q3) 2022 Media Relations Summary

BACKGROUND

Media Relations, a specialization within the Marketing discipline, focuses on enhancing Peninsula Clean Energy's reputation and leadership position by garnering earned media attention. This is the third of a series of quarterly reports on media relations activities and coverage for 2022.

DISCUSSION

1. Spotlighting 24/7 Renewable Power

Jan Pepper showcased our 24/7 renewables effort at a workshop hosted by the World Resources Institute, also featuring the National Renewable Energy Laboratory and National Hydropower Association.

We also accepted an invitation for Jan to speak at New Project Media's US Energy Storage Development & Finance Forum on October 26 in San Diego. We believe this is a direct result of our earned media engagement with them (see more on that below). While Jan will be speaking specifically to a crowd of developers and other experts about our storage needs and challenges, she will also address how that fits into our broader 24/7 effort.

Sara Maata participated in a panel discussion and workshop with Google's clean energy planning lead and others at the Renewable Energy Markets (REM) 2022 gathering in Minneapolis about how we have put together 24/7 renewable procurement strategies and deals.

2. 5-Year Anniversary Resolution Announcement

We issued a press release to spotlight the state legislature resolution honoring the five-year anniversary of Peninsula Clean Energy first delivering power to all of San Mateo County. The press release featured State Senator Josh Becker, Assemblymembers Kevin Mullin, Marc Berman and Phil Ting, Dave Pine, Carole Groom and Jan. Several elected officials highlighted it as well on social media, including Senator Becker.

3. Community Outreach Grants
We announced that applications are welcome from non-profit community-based organizations for grants of up to $45,000 per project to support environmental education, community outreach and other services in our San Mateo County and the city of Los Banos in 2023. CalCCA included the announcement in their daily newsletter to the Regulatory Committee.

4. Green Access Program Release
We announced our Green Access Program has so far saved more than 1,000 customers $191,000 since February, with an average monthly savings of $41.45 per customer. The Westside Express in Los Banos is planning to run an article.

5. Green Access Solar Project Joint Release
We began discussions with Renewable America about a joint release planned for Oct. 25 detailing our planned solar array project in Merced County's Dos Palos that is tied to the Green Access Program.

6. Los Banos Outreach
We held on–the-record meetings with the Los Banos Enterprise and Westside Express featuring Jan and Sandra Benetti. That led to an op-ed from Sandra that was published in the Los Banos Enterprise: Los Banos residents can now receive cleaner electricity for less (on page 6).

7. All-Electric Building Awards Joint Release
We have drafted and finalized a release with the New Buildings Institute announcing the call for entries for our third-annual joint awards program. We are also working with NBI on future media outreach to showcase past winners.

8. SECC Member Blog Spotlight
We drafted and published a blog on the Smart Energy Consumer Collaborative website as part of their monthly member spotlight series.

9. New Project Media
We worked with New Project Media regarding their follow-up coverage of CPUC's new RA framework. We also provided an interview and other information from Peter Levitt and Jeremy Waen for two New Project Media inquiries regarding CPUC Resource Adequacy and net metering, and an update on our public facilities RFP.

10. New CFO Announcement
We announced our new chief financial officer, Kristina Alagar Cordero in a release featuring both her and Jan.

11. Sharing Decarbonization Plan
We shared via Twitter our 2035 decarbonization plan as presented at the September board meeting.

12. New Climate Law Impacts
We began exploring how the new federal climate law will benefit our programs and customers. The most immediate benefit may be regarding allowing public government agencies to receive a 30-percent solar investment tax credit as a direct payment from the government. Previously, government agencies did not have access to the tax credit because public agencies do not pay taxes. We are exploring doing an announcement in the fall as we are likely to be among the first public agencies in the U.S. to announce plans to use direct pay.

13. Gilead ECO100 promotion
We have been discussing with Gilead about highlighting their ECO100 membership and broader sustainability efforts in a blog and via social media.

14. Impossible Foods ECO100 promotion
We have discussed with Impossible Foods and EBCE about potentially doing joint CCA promotion of Impossible Foods ECO100 and similar EBCE clean power memberships.

15. Phillip SFGate Call
Phillip Kobernick spoke with an SFGate reporter about e-bikes. The conversation was overarching and seemed intended more for research than a short-term article.

16. More Media
Cold feet on a warming planet, San Mateo Daily Journal letter to the editor, Sept. 26
San Mateo to reduce use of gas in homes, businesses, San Mateo Daily Journal, Sept. 22
Ebikes: A snapshot of today, Silicon Valley Bicycle Coalition, Sept. 21
14-acre biotech, mixed-use site moves ahead in South SF, San Mateo Daily Journal, Sept. 20
Love going electric, San Mateo Daily Journal letter to the editor, Sept. 19
Greener choices, greener codes - San Mateo Daily Journal op-ed, Sept. 16
Half Moon Bay e-bike survey weighing new trail use, San Mateo Daily Journal, Sept. 6
San Mateo moving to all-electric future, San Mateo Daily Journal, Aug. 29
Five candidates are running for Portola Valley Town Council, Aug. 18, The Almanac
Electric car rebates and incentives: What to know by state, Kelley Blue Book, Aug. 5
Can Californians afford electric cars?, CalMatters, Aug. 3
New rule requires solar panels in many Half Moon Bay buildings, Half Moon Bay Review, July 19
European energy crisis spurs maritime fueling innovation, Forbes, July 15
$4.5 million state grant sparks Menlo Park's conversion to all-electric buildings, The Almanac, July 7
California Aggregator Newsletter: Summer 2022 - CalCCA

STRATEGIC PLAN

This section describes how Media Relations activities relate to the overall goal and objectives laid out in the strategic plan. Media Relations 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. Media Relations' efforts relate specifically to Objectives A and B in the strategic plan.

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
Items 1, 9, 11, 15	KT1: Position leadership as experts on CCAs and the industry	
Item 6, 15	KT2: Cultivate relationships with industry media and influencers	
Items 1-8, 10-14, 16	KT3: Tell the story of Peninsula Clean Energy through diverse channels	
Item 13		KT5: Provide inspirational, informative content that spurs action to reduce emissions

* "KT" refers to Key Tactic

Item No. 23

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: October 14, 2022
BOARD MEETING DATE: October 27, 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
Zsuzsanna Klara, Regulatory Compliance 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. Zsuzsanna started building a comprehensive reference document about PCE's compliance filings and discussed compliance programs and best practices throughout the organization.

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Regulatory Compliance

On the 1st of October Zsuzsanna sent the Power Content Label and the supporting documentation to the CEC. Worked with the Marketing team and the Power Resources team to gather the necessary documentation.
On the 5th of October filed an initial remediation plan to the CPUC regarding the obligations of the CPUC decisions D-1911016, D20-12-044, and D21-06-035, detailing the source of the delay to meet certain procurement requirements, and when they can expect to have met these requirements.

In the last weeks Zsuzsanna worked with the Power Resources team on the text of the IRP Narrative and managed the timeline for the timely filing.
Zsuzsanna works on a comprehensive reference document, a checklist for PCE's compliance filings, which will help keep track of the many requirements PCE needs to meet, and create an internal knowledge base about the filing processes. This document will be a reference where teams can find information about the due dates, project charters, timelines and link to the documentations in the current and past projects. Another document Zsuzsanna works on is a Compliance Guidebook that will contain relevant and detailed information about the different compliance obligations PCE needs to meet. Zsuzsanna has discussions within the organization about compliance projects and looks for the best tools and processes to create more effective and automatized ways to handle these obligations.

Transportation Electrification

On Friday, October 14, 2022, the CPUC issued a long-awaited proposed decision in the Development of Rates and Infrastructure for Vehicle Electrification Order Instituting Rulemaking (DRIVE OIR). The DRIVE OIR was opened in December 2018 by the CPUC to address all manner of transportation electrification (TE) issues, with a particular focus on the Transportation Electrification Framework (TEF) which would serve as an overarching policy model for utility investments and rates related to TE. This included investments and customer programs related to behind the meter (BTM) equipment such as EV charging infrastructure and managing EV charging load, among others. The Joint CCAs engaged in this proceeding have long advocated that CCAs should be permitted to serve as Program Administrators (PAs) under the TEF framework which would require those CCAs to meet the same regulatory compliance standards as the IOUs but would also allow CCAs to seek CPUC-regulated ratepayer funding for their approved programs and investments.

In February 2022, the CPUC issued a new Staff Proposal which would shift the responsibility for the development and administration of these customer-facing BTM programs to a new statewide rebate program that would be administered by a third party. The Joint CCAs proposed that CCAs should be permitted to design the incentives provided for customers within our service areas, as well as perform the technical assistance (TA) that is typically required for a customer to participate in programs like these.

On October 14, 2022, the CPUC issued a new Proposed Decision (PD) which rejects the majority of the Joint CCA positions. The PD would permit CCAs to subcontract to serve in certain administrative and marketing, education, and administration (ME&O) roles. It would also permit CCAs to submit bids for local equity-focused TE pilots that are not duplicative of the statewide rebate program. Finally, the IOUs are given sole authority to provide TA for the statewide rebate program.

The Joint CCAs are meeting to discuss the PD and engagement strategy. Comments are due on November 3.

(Public Policy Objective A, Key Tactic 1, Key Tactic 2, and Key Tactic 3)

Building Decarbonization

On September 20, 2022, the CPUC issued a decision in the Building Decarbonization docket that adopted a staff proposal to eliminate all methane gas line extension allowances, 10-year refundable payment options, and 50 percent discount payment options (collectively, "line extension subsidies") for all new service applications submitted on or after July 1, 2023. These line extension subsidies are paid for by the IOUs, recorded as capital costs (meaning that the IOUs earn a rate of return on these subsidies), and then recovered from methane gas line customers through rates.

PCE and a group of Joint CCAs had filed comments in support of the staff proposal when it was issued in November 2021. The Staff Proposal clarifies that building developers that desire a new methane gas line service will continued to be permitted to do so, only without receiving any line extension subsidies. The Proposal estimates that eliminating these subsidies will save hundreds of millions of methane gas ratepayer dollars while also being more consistent with the State's GHG emission goals by encouraging more all-electric building construction and help eliminate the development of more long-lived methane gas distribution infrastructure which is likely to become a stranded asset as the building sector moves towards electrification. Finally, the Staff Proposal estimates that eliminating these subsidies will only result in a 0.32-0.36% increase in costs for residential and non-residential properties that elect to have methane gas service. The Decision does allow certain projects to receive methane line extension subsides through an annual CPUC application process. Projects will need to meet very difficult criteria, such as leading to a demonstrable reduction in GHG emissions.

(Public Policy Objective A, Key Tactic 1, Key Tactic 2, and Key Tactic 3)

Integrated Resource Planning & Resource Adequacy

The Resource Adequacy (RA) proceeding has concluded the working group workshop series earlier this month. Dr. Karpa is working with our CCA partners and CalCCA to incorporate recommendations for an hourly load obligation trading system to be tested during the 24-hour RA methodology test year in 2024.

On October 7, the CPUC proposed the next Transmission Planning Process portfolio to include a reduction of the 2030 GHG target from 38 MMT used in the 21-22 cycle to 30MMT and including a high EV load forecast.

(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 October 7, 2022, to discuss concerns the stakeholders may have with the staff options ruling exploring forward procurement programs in the Integrated Resources Planning process.

(Public Policy Objective A, Key Tactic 2)

FISCAL IMPACT

Not applicable.

PENINSULA CLEAN ENERGY AUTHORITY
Board Correspondence

DATE: October 14, 2021
BOARD MEETING DATE: October 27, 2021
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

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

FROM: Marc Hershman, Director of Government Affairs

SUBJECT: Update on PCE's September and October Legislative Activities

SACRAMENTO SUMMARY – End of 2022 Session:

The 2022 session of the California Legislature ended on August 31. The Legislature is now adjourned until December 5, 2022. September 30 was the last day on which the governor could sign, or veto, bills passed by the Legislature.

Much of the drama associated with the end-of-session concerned climate legislation

In 2022, much as we saw in 2021, supplemental budget bills and additional measures providing policy guidance to the budget act – known as trailer bills - continued to be negotiated by the Legislature and the Administration into the final days of the legislative session.

As we reported in September, the budget bills include an $859 million energy package that provides, among other spending, $162 million to support the Equitable Building Decarbonization program of which $50 million is allocated for the TECH initiative, $235 million to support zero emission vehicles and infrastructure and $45 million for offshore wind infrastructure, and $100 million to support the industrial Grid Support and Decarbonization Program at the California Energy Commission.

In early August, notably with only weeks remaining in the 2022 session, the governor set forth what he called his 2022 climate legislative proposals. With only days remaining in the legislative session, each of the governor's proposals found a legislative vehicle:

Governor Newsom's 6 Proposals and their eventual legislative vehicles:

- **AB 2133** (Quirk) – would require the California Air Resources Board to ensure that GHG emissions were reduced to at least 55% below their 1990 level by 2030 (an increase from the previous target of 40%).

- **AB 1279** (Muratsuchi) – codifies a prior Executive Order and declares it the state's policy to achieve net-zero GHG emissions by 2045, with at least an 85% reduction in GHG emissions and to achieve and maintain net zero GHG emissions thereafter.

- **SB 1137** (Gonzalez) – establishes a 3,200-foot setback requirement between new oil wells and places where people live or work, including schools.

- **SB 1020** (Laird) – sets interim clean energy targets of 90% by 2035 and 95% by 2040.

- **SB 905** (Caballero & Skinner) – established a framework for capture, utilization, and storage of compressed carbon dioxide (carbon capture and storage).

- **SB 846** (Dodd) – this bill authorizes the extension of the Diablo Canyon Nuclear Power Plant for an additional 5 years. It also authorized a loan of $1.4 billion from the state to PG&E to keep Diablo Canyon operating, with $600 appropriated immediately. The bill includes an expedited process for relicensing the facility and included specific collections from PG&E and other electric ratepayers.

Receiving far and away the most attention of the governor's bills was the legislation to extend the life of the Diablo Canyon Nuclear Power Plant. The effort to extend Diablo Canyon highlighted an estimated 1.8 GW energy shortfall by 2025. The costs associated with the extension are unknown, as are power prices. However, any costs associated with the extension will be borne by all California ratepayers, although the increase for PG&E ratepayers will be twice the amount paid by others in the state.

When the proposal was initially discussed concern was expressed regarding the size of the benefit that would be realized by PG&E shareholders. Others emphasized the need to accelerate the development of renewable energy resources and storage.

Cited as a reason to act at this time was the desire to get the process moving so that the proper approvals could be in place by 2025, when Diablo Canyon is scheduled to be fully decommissioned, and the availability of federal funding which had to be applied for by a September 6 deadline.

Opponents expressed concern that there have not been sufficient studies of the need for extending Diablo Canyon and that the draft proposal would override environmental protection laws. Further argument was made that there is sufficient time to undertake environmental and other analysis before the 2025 decommissioning deadline and it was

pointed out that there would be a high cost to ratepayers and taxpayers and a substantial benefit to PG&E and its shareholders.

Ultimately, all the governor's climate legislative proposals, including the reauthorization of Diablo Canyon, passed both houses of the Legislature except for **AB 2133**, which passed in the Senate but failed in the Assembly.

Another bill of great interest to Peninsula Clean Energy is **SB 1158 (Becker). 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 supported **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.

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 and we 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** passed both the Senate and the Assembly and now sits on the governor's desk awaiting his consideration. Peninsula Clean Energy has submitted a letter to the governor asking him to favorably consider **SB 1158.** A copy of that letter is included with this report.

In late September, Governor Newsom signed **SB 1158** into law.

RECENT DEVELOPMENTS IN SACRAMENTO:

On October 7, Governor Newsom called a special legislative session to address rebates to offset ever increasing prices for gasoline, with the rebates to be funded by a windfall profits tax on oil companies. The special session will commence on December 5, timed to coincide with the swearing-in of the new Legislature and the start of the new legislative session. The special session will run concurrent with the new legislative session.

On October 17, Governor Newsom announced that the COVID-19 State of Emergency will end on February 28, 2023. In so doing the Governor offered that this timeline would provide the healthcare system with flexibility to handle any potential surge in COVID-19 cases during the winter months and give sufficient time to prepare for the phaseout of the emergency order.

Of significance to local government, including Peninsula Clean Energy, the termination of the State of Emergency will end the suspension of the Brown Act that has enabled virtual attendance at meetings by elected officials from undisclosed, remote locations.

A LOOK AHEAD AT 2023 LEGISLATIVE ACTIVITY IN SACRAMENTO:

While the legislative calendar for the year ahead has yet to be announced, the Legislature is scheduled to meet on Monday, December 5 to convene the 2023-24 legislative session. At that time, the members of the Legislature who are beginning new terms are sworn into office, there is an opportunity to introduce some legislation and the leadership team in each house is established. In addition to the special session, of particular interest this year is the possible contest for Speaker of the Assembly.

Once the legislative leadership is in place, committee chairs and members are appointed. It is anticipated that there will be many freshman legislators coming to Sacramento due to term limits and redistricting, and therefore many new faces on critical committees. For instance, San Mateo County and Los Banos will both have new representatives in the state Assembly. We also expect many new staff will be hired to support legislators in their work.

Of keen interest to Peninsula Clean Energy is the vacancy in the chair position and new composition of the Senate Committee on Energy, Utilities and Communications and the Assembly Committee on Utilities and Energy. There will be at least 3 vacant seats on the Senate committee and the Assembly committee will have at least 4 vacant seats that need to be filled.

In the coming weeks we will be meeting with legislators and their staff to discuss legislative initiatives for 2023, an effort that will ramp up further once the election results are known. Already identified by Governor Newsom as a concern is the likelihood of a shrinking state budget should markets continue to stagnate, thus reducing the capital gains taxes the state collects and which are a significant source of state revenues.

(Public Policy Objective B, Key Tactic 1)

PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: October 21, 2022
BOARD MEETING DATE: October 27, 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
   - 3.4. Community Solar, DAC-GT
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

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 elected officials will be invited to attend.

Model Code Summary

- 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**: Most cities with reach codes from the prior cycle have begun the renewal process. The following cities are currently advancing code updates:
    - New construction: County of San Mateo, Atherton, Belmont, Brisbane, Burlingame, Colma, Daly City, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Portola Valley, Redwood City, San Bruno (adopted on first reading), San Carlos (adopted on first reading) and City of San Mateo.
    - Existing buildings: Portola Valley (adopted on first reading), City of San Mateo, Brisbane, 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 Zero Percent Loans

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 was exclusively offered in partnership with BayREN's Home+ program. BayREN offers a rebate of $1,000 and Peninsula Clean Energy offered 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 (now referred to as the Zero Percent Loan 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 launched October 17, 2022.

Status: The Appliance Rebate Program, initially focused on HPWH rebates, was launched on January 01, 2021 and as of October 13, 2022 has issued 299 HPWH rebates, which amounts to $418,000 or 15% 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. Peninsula Clean Energy has been promoting the incentive through digital ads, email outreach and other channels. The statewide 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 in May. BayREN still offers additional rebates for San Mateo County residents for installing HPWH and some heat pump HVAC equipment that can be combined with Peninsula Clean Energy's rebates.

Peninsula Clean Energy rolled out modifications and enhancements to the Appliance Rebates Program on October 17, 2022. Those include:

1. **Increase HPWH rebate:** previously, 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 increased 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 had 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 added 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:**Peninsula Clean Energy panel upgrade rebates up to $1,500 had varied according to the type of panel upgrade (main panel or subpanel) and the capacity of it (amperage). The nuanced rebate structure was a common point of confusion for contractors. With the objective of simplifying the structure, the rebate is now $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 completed by March 31, 2023 will again be put in place to drive volume and motivation for customer action.
5. **Offer rebates to all customers irrespective of contractor used:** when the program was launched in San Mateo County on January 1, 2021, it was fully integrated with the BayREN Home+ program, meaning customers could only access the Peninsula Clean Energy rebates if they worked 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 on April 1, 2022. This meant that in Los Banos, residents were always 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 has now made 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 launched the Zero Percent Financing programconcurrently 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 August 31, 2022.

Stage/category	#s as of August 31, 2022
Leads	938
Reached	393
Pre-assessments	278
Enrolled	217
Ineligible	181
Installations in progress	32
Fully complete	66

The following table summarizes the number of electrification measures implemented on the fully complete homes.

Measure	Count
Heat pump water heater	28
Induction cooktop/range	15
Electric dryer	19
Central or mini split heat pump (HVAC)	3
Window or wall mounted heat pump (HVAC)	7
Portable heat pump (HVAC)	20

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 September 7, 2022, all four homes have had their system installed. 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 third meeting on August 31, 2022, following the second meeting on June 2, 2022 and 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. 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 606 refrigerators and freezers resulting in approximately 1,000 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. 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. Commitments for the projects were secured from all 13 local governments. A Request for Proposals for equipment was conducted and closed in August.

Status:

Peninsula Clean Energy has completed its RFP evaluation process and has selected Intermountain Electric Company to be the Engineering, Procurement, and Construction (EPC) contractor to deploy the solar and battery storage projects. Staff is currently working with the legal counsel and the contractor on an agreement.

The recent passage of the Inflation Reduction Act (IRA) provides for qualifying tax-exempt entities to receive the Investment Tax Credit (ITC) directly (Direct Pay). Previously, partnership with a Tax Equity firm would have been required to monetize and share in the ITC. Staff completed due diligence on this new legislation and the potential for Peninsula Clean Energy to pursue the Direct Pay option, working in conjunction with its legal counsels, and has elected to move forward with direct ownership / direct pay option due to the enhanced financial benefit that can accrue to customers via a lower PPA price.

Staff in conjunction with legal counsel is currently working on a revised Customer Power Purchase Agreement (PPA) based on feedback from all participating jurisdictions to its original draft sent in August, 2022. This will be the agreement between Peninsula Clean Energy and site hosts for the installation and operations of solar and, where applicable, solar + storage systems. This will be a 20-year agreement at a fixed $/kWh price that will provide substantial savings over the current PG&E rate for all customers, and savings will increase with time if utility rates escalates, as is expected.

Staff is planning the next round of the Local Government Solar Program. This will include an expansion of eligible agencies. In addition to the county and cities, school districts and other local public agencies in Peninsula Clean Energy's service territory will be eligible. A webinar for school districts interested in the program will take place on Thursday, October 27, and a webinar for other public agencies interested in the program will take place on Thursday, November 3.

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 and electricity prices are high. 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 is continuing to enroll new customers throughout 2022. The program is being impacted by supply chain issues including contractor, materials, and product supply and cost. Sunrun has significantly increased effective dispatch of battery systems as part of the Peninsula Clean Energy Load Modification agreement and this dispatch has been very supportive of state needs during recent statewide Flex Alerts.

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 is also 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. In September, Peninsula Clean Energy and Calpine signed the Second Amendment to the Master Services Agreement to enable the development and launch of the FLEXmarket program. Staff is planning to launch the residential FLEXmarket program in early 2023, with the commercial program intended to follow shortly thereafter.

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

3.4 Community Solar, DAC-GT

Background: The Disadvantaged Communities Green Tariff program ("DAC-GT") and associated Community Solar Green Tariff ("CSGT") are community solar programs developed by the California Public Utilities Commission (CPUC) to enable DAC residents to participate in renewable energy projects, and to 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 administers these programs on behalf of its customers.

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.

Per the CPUC DAC program guidelines, Peninsula Clean Energy is authorized to procure up to 3MW of solar capacity. Until a new solar resource is procured, Peninsula Clean Energy will serve customers from MCE's 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.

Status: Peninsula Clean Energy ran an RFP for new renewable resources sited in qualifying DACs in November 2021. Seven DAC-GT projects were offered from four bidders. No CSGT offers were received. Peninsula Clean Energy selected the Dos Palos Clean Power project from this solicitation, and, following Board approval in August 2022,

signed a PPA for that resource with Renewable America, LLC. The Dos Palos Clean Power project is a 3MW solar resource located in Dos Palos, CA, approximately 15 miles southeast of the City of Los Banos. The Dos Palos solar resource has a Commercial Operation Date of August 1, 2023.

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 and as of October 14, 2022, 121 rebates have been provided under the new program and 300+ 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 was previously 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. In August, Peninsula Clean Energy elected to directly administer the not yet approved pool of funds that were previously administered through CALeVIP, worth approximately $4 million, further described below.

Status: The program has been significantly impacted by partner and supply chain issues including contractor scheduling materials, and product supply and cost. To address these issues, Peninsula Clean Energy implemented changes in August 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 (worth approximately $4 million in funding). The CALeVIP projects were notified in late August and are in the process of transferring to PCE direct management.

The program changes were implemented, beginning on August 17, and projects that were in the CALeVIP pipeline were asked to reapply for incentives directly with Peninsula Clean Energy. Peninsula Clean Energy also provided outreach to public agencies and other stakeholders to encourage new sites to apply for these incentives. Since the changes were implemented there has been significant uptake in the program:

- 29 applications received, representing ~$1.4m in incentives and ~400 ports (143 L1, 213 L2 chargers, 20 L2 outlets, and 13 make ready)
- 13 public agency applications received. Notably, 8 new incentives applications received for Belmont-Redwood Shores School District.
- 15 new sites have enrolled in technical assistance (11 multi-family housing sites including 1 Affordable Housing site and 4 public agency sites, including 3 Ravenswood School District sites and a large project at Menlo Park City Hall)

Summary of program metrics is outlined in the table below:

	Sites/ Applications	Ports	Incentive Amount
# of sites in PCE Technical Assistance	161	1,700+	-
# of Technical Assistance site evaluations approved by PCE	109	2,272	-

# of funding applications received in Peninsula Clean Energy incentive program	81	1,041	$3,522,000
# of funding applications approved in Peninsula Clean Energy incentive program	59	840	$2,554,500
# of CALeVIP applications approved*	54	805	
Total # of ports installed	12	260	$902,000

*Includes DCFC and L2 ports: 250 DCFC, 543 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 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, approved an increase of an additional $300,000 in December 2022, and approved a further increase of $150,000 in August 2022, bringing the total program budget to $750,000. The first phase of the program launched in May 2021 and sold out immediately and provided 275 rebates. The second phase is currently underway and will provide up to 470 rebates, including the additional funding approved by the Board of Directors in August to cover the waitlist. 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. 235+ e-bikes have 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

4.4 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. In August 2022, the Board of Directors approved a contract with Optony to assist in administration of this program.

Status: The program has now started A workshop will be held on November 16 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

4.5 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. 175+ unique drivers have already rented them, with each rental averaging over two months. 1.8 million+ 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 EV charging program modifications and relaunch, 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

PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: October 14, 2022
BOARD MEETING DATE: October 27, 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 – October 2022

BACKGROUND
This memo summarizes energy procurement agreements entered into by the Chief Executive Officer since the last regular Board meeting in September. This summary is provided to the Board for information purposes only.

DISCUSSION

Execution Month	Purpose	Counterparty	Term
October	Purchase of Resource Adequacy	Pacific Gas & Electric Company	12 Months
September	Purchase of Hedge Energy	Morgan Stanley Capital Group Inc.	3 Months
September	Purchase of GHG Free Energy	Avangrid Renewables, LLC	3 Months
October	Purchase of Resource Adequacy	Southern California Edison Company	8 Months
October	Purchase of Resource Adequacy	Southern California Edison Company	1 Month
October	Purchase of Resource Adequacy	Southern California Edison Company	8 Months
October	Sale of Resource Adequacy	Southern California Edison Company	8 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.
   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.

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

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 September and October 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:** 9/21/2022
FROM: Tim Haines – Interim General Manager
SUBJECT: **Report on CC Power Regular Board of Directors Meeting – September 21, 2022**

The CC Power Board of Directors held its regularly scheduled meeting on Wednesday, September 21, 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:

- **Matters subsequent to posting the Agenda.** None.
- **Public Comment.** None.
- **Consent Calendar** - The Board unanimously approved the following items:
  - Minutes of the Regular Board Meeting held on August 17, 2022.
  - Resolution 22-09-01 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
- **Update from Strategic Business Plan ad hoc Committee**
  - The update to the Strategic Business Plan was provided by Committee lead Sears and Phyllis Currie, consultant hired to complete the plan. Mr. Sears provided an overview of the process and schedule. Of note is the plan will be based on the current statement of purpose of CC Power. The ad hoc committee intended to reflect on this decision in future steps. Ms. Phyllis Currie reviewed the preliminary feedback from interviews she has conducted with some Board members, the key objectives that have been identified to date, near- and longer-term opportunities and challenges, and programs that the plan should not include in the scope. The Board provided feedback on the preliminary finding of the plan and confirmed that the ad hoc Committee should continue as planned. The board took no action.

California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacommunitypower.org

TO: CC Power Board of Directors and Alternates **DATE:** 10/21/2022

FROM: Tim Haines – Interim General Manager

SUBJECT: **Report on CC Power Regular Board of Directors Meeting – October 19, 2022**

The CC Power Board of Directors held its regularly scheduled meeting on Wednesday, October 19, 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:

- **Matters subsequent to posting the Agenda.** None.
- **Public Comment.** None.
- **Consent Calendar** - The Board unanimously approved the following items:
  - Minutes of the Regular Board Meeting held on September 21, 2022.
  - Resolution 22-10-01 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 22-10-02 Acceptance of CC Power 2021 Audited Financials
- **Update from Strategic Business Plan ad hoc Committee**
  - Presentation from Independent System Operator CEO Elliot Mainzer. Chair Syphers welcomed Mr. Mainzer and introduced the Board Members. The Chair described the purpose of CC Power, the contracts that it has entered and the intent to engage with CAISO on transmission and market issues related to its projects. He also explained that CAISO should continue to look to CalCCA for matters that are of interest to the broader CCA community. The CAISO President and CEO focused his comments on reforms to Resource Adequacy, transmission planning and efforts to streamline the interconnection queue and responded to Board Member comments and questions. He and Chair Syphers expressed interest in continued discussions.

  - Update from Strategic Business Plan ad hoc Committee. The update to the Strategic Business Plan was provided by Committee lead Sears and CC Power consultant Phyllis Currie. Mr. Sears provided an overview of the process and schedule. Ms. Currie reviewed continuing feedback that she has received from Board members, the key priorities that have been identified to date, provided a list of future programs and services that CC Power will consider and her thoughts on the ordering of priorities in the three-year plan. The Board provided feedback on the preliminary findings and confirmed that the ad hoc Committee should continue as planned. The board took no action.

- Resolution 22-10-03 Approval of the 2023 Budget and Cash Call and Update the Fiscal Year. Interim General Manager presented the proposed CC Power budget for the first six months of 2023. The $555,102 budget includes funding for a full-time GM and a staff person. The Board discussed the budget and provided direction to the Interim GM. The Board adopted the budget unanimously.

- Resolution 22-10-04 Approval of General Manager Authority to Extend and Execute Consulting Contracts in Accordance with CC Power Budgets. The General Counsel presented the Board resolution. The Board directed the Interim General Manager to keep it informed on the contract extension. The Board approved the resolution unanimously.

- General Manager Search Update/Next Steps. The General Manager informed the Board that Members Chaset, Mitchell and he will be on the GM search committee. The GM Search ad hoc Committee will report back to the Board on its initial thoughts at the November Board meeting.

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