



**REGULAR MEETING of the Board of Directors of the
Peninsula Clean Energy Authority (PCEA)
Thursday, October 27, 2016**

San Mateo County Office of Education, Pine and Oak Room
101 Twin Dolphin Drive, Redwood City, CA 94065
6:30 p.m.

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to participate in this meeting, or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet or other writings that may be distributed at the meeting, should contact Anne Bartoletti, Board Clerk, at least 2 working days before the meeting at abartoletti@peninsulacleanenergy.com. Notification in advance of the meeting will enable the PCEA to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it. Attendees to this meeting are reminded that other attendees may be sensitive to various chemical based products.

If you wish to speak to the Board, please fill out a speaker's slip located on the tables as you enter the Board meeting room. If you have anything that you wish to be distributed to the Board and included in the official record, please hand it to a member of PCEA staff who will distribute the information to the Board members and other staff.

CALL TO ORDER / ROLL CALL

PUBLIC COMMENT

This item is reserved for persons wishing to address the Board on any PCEA-related matters that are as follows: 1) Not otherwise on this meeting agenda; 2) Listed on the Consent Agenda and/or Closed Session Agenda; 3) Chief Executive Officer's or Staff Report on the Regular Agenda; or 4) Board Members' Reports on the Regular Agenda. Public comments on matters not listed above shall be heard at the time the matter is called.

As with all public comment, members of the public who wish to address the Board are requested to complete a speaker's slip and provide it to PCEA staff. Speakers are customarily limited to two minutes, but an extension can be provided to you at the discretion of the Board Chair.

ACTION TO SET AGENDA and TO APPROVE CONSENT AGENDA ITEMS

This item is to set the final consent and regular agenda, and for the approval of the items listed on the consent agenda. All items on the consent agenda are approved by one action.

REGULAR AGENDA

1. Chair Report (Discussion)
2. CEO Report (Discussion)
3. Provide an Update on the Citizens Advisory Committee (Discussion)
4. Provide an Update on Recent Community Outreach and Marketing Efforts (Discussion)
5. Provide an Overview and Update of the Renewable Supply Request for Offers (Discussion)
6. Review Draft Agenda for November 12th Board Retreat (Discussion)
7. Request Approval to Give Broader Authority to the CEO to Negotiate a Lease (Action)
8. Board Members' Reports (Discussion)

CLOSED SESSION

9. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: 155 Linfield, Menlo Park

Agency Negotiators: Jan Pepper, David Silberman and Nirit Eriksson

Negotiating Party: Barclays

Under Negotiation: price and terms

CONSENT AGENDA

10. Approval of the Minutes for the September 22nd, 2016 Meeting (Action)
11. a. Adopt a Resolution Authorizing the General Counsel to Execute an Agreement with Keyes & Fox in an amount not to exceed \$100,000 for provision of legal services. (Action)

b. Adopt a Resolution Authorizing the General Counsel to Execute an Agreement with Davis, Wright & Tremaine in an amount not to exceed \$100,000 for provision of legal services. (Action)

c. Adopt a Resolution Authorizing the General Counsel to Execute an Agreement with Winston & Strawn in an amount not to exceed \$100,000 for provision of legal services. (Action)

12. Approve Resolution Authorizing Chief Executive Officer to enter into Contracts with Union Bank, N.A. (Action)
13. Review and Adopt Policies Regarding Risk Management for CRRs and Information Technology / Security (Action)

Public records that relate to any item on the open session agenda for a regular board meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members of the Board. The Board has designated the Office of Sustainability, located at 455 County Center, 4th Floor, Redwood City, CA 94063, for the purpose of making those public records available for inspection. The documents are also available on the PCEA's Internet Web site. The website is located at: <http://www.peninsulacleanenergy.com>.



**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: October 24, 2016
BOARD MEETING DATE: October 27, 2016
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
SUBJECT: Provide an Overview and Update of the Renewable Supply Request for Offers

BACKGROUND:

Peninsula Clean Energy (PCE) has made a commitment to procuring increasing amounts of renewable and carbon-free energy for its customers. As part of its ongoing effort to deliver environmentally responsible, competitively priced retail service options, PCE has launched its first competitive, objectively administered opportunity for qualified suppliers of various energy products to fulfill certain portions of PCE's future resource requirements. Specifically, this is a Request for Offers (RFO) for renewable resources, namely large (utility-scale) power plants using solar, wind and other renewable energy technologies.

In response to the most competitive offers received, PCE intends to contract with owner/operators to buy the product from these facilities over long periods of time. In the future, PCE will be issuing additional competitive opportunities to fulfill PCE's needs for a broad spectrum of energy products, including renewable energy, carbon-free energy, shaped energy, and resource adequacy capacity.

DISCUSSION:

PCE launched the RFO on Monday, October 17 and held a webinar for potential offerors on October 21. Currently, respondents are preparing offers, which must be submitted no later than November 7, 2016. Following a rigorous evaluation of offers, PCE will negotiate a small number of power purchase agreements (PPAs) and formally notify all offerors of the status of their offers on December 5, 2016. PCE anticipates signing the resulting, Board-approved contracts on December 20, 2016.

As background information, the following RFO documents are attached:

- RFO Procedural Overview and Instructions
- Webinar presentation slide deck
- Pro forma PPA

FISCAL IMPACT:

The fiscal impact of signing long-term power purchase agreements will be substantial, and was contemplated in the planning materials provided to the Board during the formation of PCE.

Item No. 5-1

Peninsula Clean Energy
Request for Offers for Renewable Resources – October 2016
Procedural Overview & Instructions

1) Introduction: Peninsula Clean Energy (“PCE”) has made a commitment to procuring increasing amounts of renewable and carbon-free energy for its customers. PCE’s default retail service option, ECOplus, provides participating customers with a minimum 50 percent renewable energy and 75% carbon-free content. PCE’s customers may also opt up to the 100 percent renewable energy service option, ECO100.

As part of its ongoing effort to deliver environmentally responsible, competitively priced retail service options, PCE is establishing this first competitive, objectively administered opportunity for qualified suppliers of various energy products to fulfill certain portions of PCE’s future resource requirements. PCE will be issuing additional competitive opportunities in the future to fulfill PCE’s needs for a broad spectrum of energy products, including renewable energy, carbon-free energy, shaped energy, and resource adequacy capacity.

Conforming offers for renewable resources must be submitted in consideration of the following schedule:

<u>Date</u>	<u>Event</u>
Monday, October 17, 2016	PCE launches RFO: posts RFO Instructions, pro forma PPA and other RFO documents on the RFO website
Friday, October 21, 2016, 10:00 am Pacific Prevailing Time (PPT)	PCE hosts RFO web conference
Monday, November 7, 2016, 12:00 pm PPT	Deadline for offerors to submit offers and required documentation
Monday, December 5, 2016	Anticipated date PCE will notify each offeror regarding selection status of individual offers and provide executable PPAs to selected offerors
Monday, December 12, 2016	Anticipated deadline for selected Offerors to execute PPAs
Tuesday, December 20, 2016	Anticipated date PCE will execute PPAs
Thursday, January 19, 2017	Anticipated date Sellers will post Development Security

By participating in PCE’s RFO process, a respondent acknowledges that it has read, understands, and agrees to the terms and conditions set forth in this Procedural Overview & Instructions. PCE reserves the right to reject any offer that does not comply with the requirements identified herein. Furthermore, PCE may, in its sole discretion and without notice, modify, suspend, or terminate the RFO without liability to any organization or individual. The RFO does not constitute an offer to buy or create an obligation for PCE to enter into an agreement with any party, and PCE shall not be bound by the

Item No. 5-1

Peninsula Clean Energy
Request for Offers for Renewable Resources – October 2016
Procedural Overview & Instructions

terms of any offer until PCE has entered into a fully executed agreement.

Instructions for participating in the RFO, including requested products and volumes, are below.

2) Project Form and Offer Form: All respondents must complete and submit a Project Form and Offer Form for each offer submitted on the RFO website, <https://pcerfo.accionpower.com>. Respondents should carefully review the requirements in this document as well as in the Project and Offer Forms to ensure submittal of conforming responses.

3) Request for Renewable Energy: Based on PCE's most recent planning process, the following renewable energy product requirements have been identified:

Peninsula Clean Energy Resource Balance*
October 2016

	2017	2018	2019	2020	2021	2022	2023	2024	2025
Product Content Category 1	616	920	977	1,033	1,459	1,533	1,609	1,685	1,761
Product Content Category 2	205	307	326	344	486	511	536	562	587
Product Content Category 3	-	-	-	-	-	-	-	-	-
Total	821	1,227	1,303	1,377	1,945	2,045	2,145	2,246	2,348

*All volumes are presented as gigawatt hours/year. Renewable Portfolio Standard ("RPS") open positions are based on PCE's internal renewable procurement targets, which exceed state-wide mandates.

All proposed generating resources must be certified by the California Energy Commission ("CEC" or "Commission") as Eligible Renewable Energy Resources ("ERR") (or must receive CEC certification prior to the commencement of any energy deliveries), as set forth in applicable sections of the California Public Utilities Code ("Code"), which may be amended or supplemented from time to time.¹ Each respondent at its own expense shall be responsible for certification of the proposed resource through the applicable process administered by the CEC and maintenance of such certification throughout the contract term.

4) Delivery of Bundled Energy Product:

a. California In-State

For In-State ERR Generating Facilities that are, or will be, interconnected to the California Independent System Operator ("CAISO"), the Delivery Point must be the point where the ERR Generating Facility connects to the CAISO Controlled Grid.

¹ For purposes of this RFO and any final agreement executed pursuant thereto, an ERR is a generating facility that meets all of the criteria set forth in Public Utilities Code Section 399.12, Public Resources Code Section 25741, and the California Energy Commission's "Renewables Portfolio Standard (RPS) Eligibility Guidebook," available at: <http://www.energy.ca.gov/portfolio/index.html>.

Item No. 5-1

Peninsula Clean Energy
Request for Offers for Renewable Resources – October 2016
Procedural Overview & Instructions

For In-State ERR Generating Facilities that are, or will be, interconnected to a California Balancing Authority (“CBA”) other than the CAISO, the Delivery Point must be the intertie point where Seller’s Transmission Provider ties to the CAISO (“CAISO Intertie”).

b. Out-of-State

For Category 1 Product, Seller must reasonably demonstrate to PCE as part of its submitted Proposal package that the output of the proposed Out-of-State ERR Generating Facility can in fact be scheduled on an hourly or sub-hourly basis into a CBA, without substituting electricity from another source, or dynamically transferred into a CBA. Such reasonable demonstration may include, for example, a Dynamic Scheduling Host Balancing Authority Operating agreement as defined in the CAISO Tariff.

Seller will be required to have firm transmission rights to the Delivery Point within the CAISO or to the respective CAISO Intertie for the duration of the term of the PPA.

Product that is certified as eligible for the California RPS may be eligible as a Category 2 Product if the ERR from which the electricity is procured is firmed and shaped with substitute electricity providing incremental electricity scheduled into a CBA within the same calendar year as the generation from the ERR. For further details, please refer to California Public Utilities Decision D.11-12-052.

Category 2 Offers must include firming and shaping service to a CAISO interface point. Offers to deliver at the Project’s busbar will not be accepted. Participants offering a Category 2 Product should provide the delivery profile of the firmed and shaped product in their Offer and specify the CAISO delivery point.

A. Bucket 1 - Eligible Renewable Energy:

i. Resource Location: Preference will be given to resources located closer to PCE’s service area, but eligible resources located within the Western Electricity Coordinating Council (“WECC”) will be considered.

ii. Product: Electric energy, Green Attributes/Renewable Energy Credits and Capacity Attributes (if available).

iii. Resource Eligibility: All deliveries shall meet minimum specifications for the PCC1 as described in the Code and applicable regulations.

iv. Generating Capacity: Minimum one (1) megawatt (“MW”), AC.

v. Initial Date of Delivery: Preference will be given to resources that deliver earlier, but all eligible offers will be considered.

vi. Proposed Pricing: Each submitted project must include at least one offer with a single, flat price for each MWh of electric energy delivered from the proposed resource. This energy price shall remain constant throughout the entire contract term and shall not be adjusted by periodic escalators or time of delivery adjustments. This energy price shall include procurement of the energy commodity, all Green Attributes/Renewable Energy Credits related thereto,

Request for Offers for Renewable Resources – October 2016 Procedural Overview & Instructions

Capacity Attributes (if available), transmission charges to the delivery point, including but not limited to CAISO imbalance costs, fees and penalties associated with delivered energy volumes. Scheduling fees, if any, should be broken out separately. (PCE may choose to serve as its own scheduling coordinator, or make arrangements for a third party scheduling coordinator at PCE's sole expense.)

vii. Point of Delivery: Respondents must propose pricing under each of the product delivery options:

- a. Each submitted project must include at least one offer in which Seller shall be financially and operationally responsible for delivery of all electric energy to the generator's applicable production node, scheduling all electric energy from the generator's applicable production node. *Alternative delivery options may be proposed so long as the aforementioned delivery requirement has been satisfied.*
- b. Seller shall be financially and operationally responsible for delivery of all electric energy to the NP15 trading hub. *Alternative delivery options may be proposed so long as the aforementioned delivery requirement has been satisfied.*

viii. Minimum Development Progress: To the extent that a proposed generating resource is not yet commercially operational, respondent must provide, at the time of offer submittal, documentation substantiating achievement of the following development milestones for each eligible generator: 1) site control; and 2) a Phase II interconnection study or an executed interconnection agreement. A complete list of required documents is provided in the project form and offer form on the RFO website. All documents must be uploaded to the RFO website in the formats specified. The website will not allow offers to be submitted until all required document uploads are completed.

With regard to PCE's requested Portfolio Content Category 2 ("PCC2" or "Bucket 2") volumes, the following specifications will apply:

B. Bucket 2 - Eligible Renewable Energy:

i. Resource Location: Within the Western Electricity Coordinating Council ("WECC"). Preference shall be given to resources located in closer proximity to California.

ii. Product: Electric Energy and associated Green Attributes (inclusive of Renewable Energy Credits ("RECs")) produced on or after the Trade Date and delivered, if needed, with Substitute Energy to Seller from the Project(s) to Buyer at the Delivery Point. All deliveries must meet minimum specifications for Bucket 2 resources, which are described in the Code and applicable regulations.

iii. Resource Eligibility and E-Tag Requirements: Product shall meet minimum specifications for the PCC2 as described in the Code and applicable regulations. Additionally, any supplier

Item No. 5-1

Peninsula Clean Energy
Request for Offers for Renewable Resources – October 2016
Procedural Overview & Instructions

of Bucket 2 product volumes shall ensure that any e-tags associated with Substitute Energy deliveries (energy delivered to a point of interconnection within California) do not reflect a generating resource that uses coal or nuclear fuels to produce electric power.

iv. Generating Capacity: Minimum one (1) MW, AC.

v. Annual Delivery Specifications: Delivered energy volumes shall be limited to the noted, annual open position for Bucket 2 resources. Maximum annual deliveries for proposed deliveries extending beyond the 2025 calendar year may not exceed the specified volume for Bucket 2 resources identified for the 2025 calendar year (587 GWh, shown in the above table).

vi. Initial Date of Delivery: Preference will be given to resources that deliver earlier, but all eligible offers will be considered.

vii. Proposed Pricing: Each respondent must include product pricing under option a below but may include pricing under option b:

- a. **Index Plus REC Premium** – A single fixed REC premium for each MWh of electric energy delivered from the proposed resource plus the hourly day-ahead market clearing price per MWh of Energy delivered by Seller at NP15. The REC premium price shall remain constant throughout the entire contract term and shall not be adjusted by periodic escalators or time of delivery adjustments. *Respondents may propose alternative pricing options so long as both aforementioned pricing requirements have been satisfied.*
- b. **Fixed Price** - A single, flat price for each megawatt-hour of electric energy produced by the proposed resource. This price shall remain constant throughout the entire contract term and shall not be adjusted by periodic escalators or time of delivery adjustments. This price shall include procurement of the energy commodity, all Green Attributes/Renewable Energy Credits, transmission charges to the delivery point, including but not limited to CAISO imbalance costs, fees and penalties associated with delivered energy volumes. *Respondents may propose alternative pricing options so long as both the aforementioned pricing requirements have been satisfied.*

viii. Point of Delivery: Each respondent shall be financially and operationally responsible for delivery of all electric energy to the NP15 trading hub. Scheduling fees, if any, should be broken out separately. (PCE may choose to serve as its own scheduling coordinator, or make arrangements for a third party scheduling coordinator at PCE's sole expense.)

ix. Minimum Development Progress: To the extent that a proposed generating resource is not yet commercially operational, respondent must provide, at the time of offer submittal, documentation substantiating achievement of the following development milestones for each eligible generator: 1) site control; and 2) a Phase II interconnection study or equivalent, or an executed interconnection agreement. A complete list of required

Item No. 5-1

Peninsula Clean Energy
Request for Offers for Renewable Resources – October 2016
Procedural Overview & Instructions

documents is provided in the project form and offer form on the RFO website. All documents must be uploaded to the RFO website in the formats specified. The website will not allow offers to be submitted until all required document uploads are completed.

5) Transfer of Environmental Attributes/Renewable Energy Certificates: As part of the proposed transaction associated with any renewable energy product, all Environmental Attributes/Renewable Energy Certificates must be tendered and transferred to PCE via the Western Renewable Energy Generation Information System (“WREGIS”), or its successor, without any additional costs or conditions to PCE. As appropriate, any e-tags associated with delivered product volumes shall be matched to associated renewable energy certificates within the WREGIS system before transferring such certificates to PCE.

6) Acceptance of PCE’s Pro Forma Contract Terms: Each respondent shall review the terms and conditions included in PCE’s pro forma power purchase agreement for renewable energy (the “PPA”). Any requested changes to the PPA must be included electronically, in redline form, as an attachment to the response. Respondents should be aware that PCE will not accept or discuss substantive changes to its credit requirements, as reflected in PCE’s PPA, nor will PCE consider credit requirements that impose any obligations on its member municipalities. If no changes are requested, respondent must include a statement indicating acceptance of PCE’s standard contract terms. ***Note: PPA changes submitted after the response deadline may result in disqualification of the respondent.*** PCE will post its PPA on the RFO website.

7) Evaluation of Responses: PCE will evaluate responses against a common set of criteria that will include various factors. A partial list of factors to be considered during PCE’s evaluation process is included below. This list may be revised at PCE’s sole discretion.

- a. Overall quality of response, including general completeness and conformance with RFO instructions
- b. Project location & local benefits (Including local hiring and prevailing wage consideration)
- c. Interconnection status, including queue position, full deliverability of RA capacity, and related study completion, if applicable
- d. Siting, zoning, permitting status, if applicable
- e. Price
- f. Qualifications of project team
- g. Ownership structure
- h. Environmental impacts and related mitigation requirements
- i. Financing plan and financial stability of project owner/developer
- j. Acceptance of PCE’s pro forma contract terms
- k. Development milestone schedule, if applicable

8) PCE Local Hire and Prevailing Wages: Consistent with the California Public Utilities Commission policy objectives of Decision 10-04-052, Peninsula Clean Energy wishes to collect information from respondents regarding past, current and/or planned efforts by project developers and their contractors to:

- a. Employ C-10 licensed contractors and certified electricians.
- b. Pay the prevailing wage for electricians pursuant to the Labor Code.

Request for Offers for Renewable Resources – October 2016
Procedural Overview & Instructions

- c. Utilize local apprentices during construction and maintenance.
- d. Pay workers the correct prevailing wage rates for each craft, classification and type of work performed.
- e. Utilize Project Labor Agreements on the proposed project or prior project developments.
- f. Display a poster at jobsites informing workers of prevailing wage requirements.
- g. Provide workers compensation coverage.

This information will be used to evaluate potential workforce impacts of proposed projects with the goal of promoting fair worker treatment and support of the existing wage base in local communities where contracted projects will be located.

9) PCE Legal Obligations: PCE is not obligated to respond to any offer submitted as part of the RFO. The Parties acknowledge that PCE is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. PCE acknowledges that the other party may submit information to PCE that the other party considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). The other party acknowledges that PCE may submit to the other party information that PCE considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Contract ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon as practical but within three (3) business days of receipt of the request, shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed on the cover page of the Contract. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

Agenda

Introduction

10:00 am

RFO Instructions and Q&A

Pro Forma PPA and Q&A

Closing Q&A

Adjourn

(not later than) 11:30 am

About Q&A

- The moderator will place participants on mute except during “open mike” Q&A periods at the end of each presentation section, as well as during the closing Q&A
- At the beginning of each Q&A segment, the moderator will unmute all participants
- Please keep your device on mute unless asking a question
 - (No road noise, children or dogs, please)
- You also have the option to text written questions to the moderator on the GoToMeeting sidebar; he will read the question for you
- Following the webinar, PCE will review the webinar recording and provide a written summary of Q&A
- The written responses will take precedence over responses given during the webinar

Introduction

- **PCE mission – to provide residents and businesses in San Mateo County with high percentages of renewable and carbon-free energy at competitive prices**
- **This RFO seeks offers for generating resources certified by the California Energy Commission as Eligible Renewable Resources**
- **This is a 100% electronic RFO; all offer materials and communications except PPA negotiations will occur on the RFO website**

PCE Resource Balance – RPS Open Positions*

	2017	2018	2019	2020	2021	2022	2023	2024	2025
PCC1	616	920	977	1,033	1,459	1,533	1,609	1,685	1,761
PCC2	205	307	326	344	486	511	536	562	587
PCC3	-	-	-	-	-	-	-	-	-
Total	821	1,227	1,303	1,377	1,945	2,045	2,145	2,246	2,348

*All volumes presented as gigawatt-hours/year. RPS open positions are based on PCE's internal renewable procurement targets, which exceed state-wide mandates.

RFO Instructions



RFO Schedule

Date	Event
Monday, October 17, 2016	PCE launches RFO; posts RFO Instructions, pro forma PPA and other RFO documents on the RFO website
Friday, October 21, 2016, 10:00 am Pacific Prevailing Time (PPT)	PCE hosts RFO webinar
Monday, November 7, 2016, 12:00 pm PPT	Deadline for offerors to submit offers and required documentation on the RFO website
Monday, December 5, 2016	Anticipated date PCE will notify each offeror regarding selection status of individual offers and provide executable PPAs to selected offerors
Monday, December 12, 2016	Anticipated deadline for selected offerors to execute PPAs
Tuesday, December 20, 2016	Anticipated date PCE will execute PPAs
Thursday, January 19, 2017	Anticipated date Sellers will post Development Security

Disclaimers

- **By participating in PCE's RFO process, a respondent acknowledges that it has read, understands, and agrees to the terms and conditions set forth in the Procedural Overview & Instructions ("RFO Instructions")**
- **PCE reserves the right to reject any offer that does not comply with the requirements identified therein**
- **PCE may, in its sole discretion and without notice, modify, suspend, or terminate the RFO without liability to any organization or individual**
- **The RFO does not constitute an offer to buy or create an obligation for PCE to enter into an agreement with any party, and PCE shall not be bound by the terms of any offer until PCE has entered into a fully executed agreement**
- **In the event of any difference between this presentation and the RFO Instructions or pro forma PPA, the following order of precedence shall apply:**
 - **Pro forma PPA**
 - **RFO Instructions**
 - **This presentation**

Delivery Point

- **The Delivery Point for in-state projects interconnected to the California Independent System Operator (“CAISO”) must be the point where the project connects to the CAISO Controlled Grid**
- **The Delivery Point for in-state projects interconnected to a California Balancing Authority (“CBA”) other than the CAISO must be the CAISO intertie**
- **Offers for out-of-state projects that qualify as Category 1 renewables must demonstrate that the output can be scheduled on an hourly or sub-hourly basis into a CBA or dynamically transferred into a CBA**
- **Seller will be required to have firm transmission rights to the Delivery Point within the CAISO or to the respective CAISO Intertie**
- **Category 2 Offers must include firming and shaping service to a CAISO interface point**
 - **Offers to deliver at the Project’s busbar will not be accepted**
 - **Participants offering a Category 2 Product should provide the delivery profile of the firmed and shaped product in their offer and specify the CAISO delivery point**

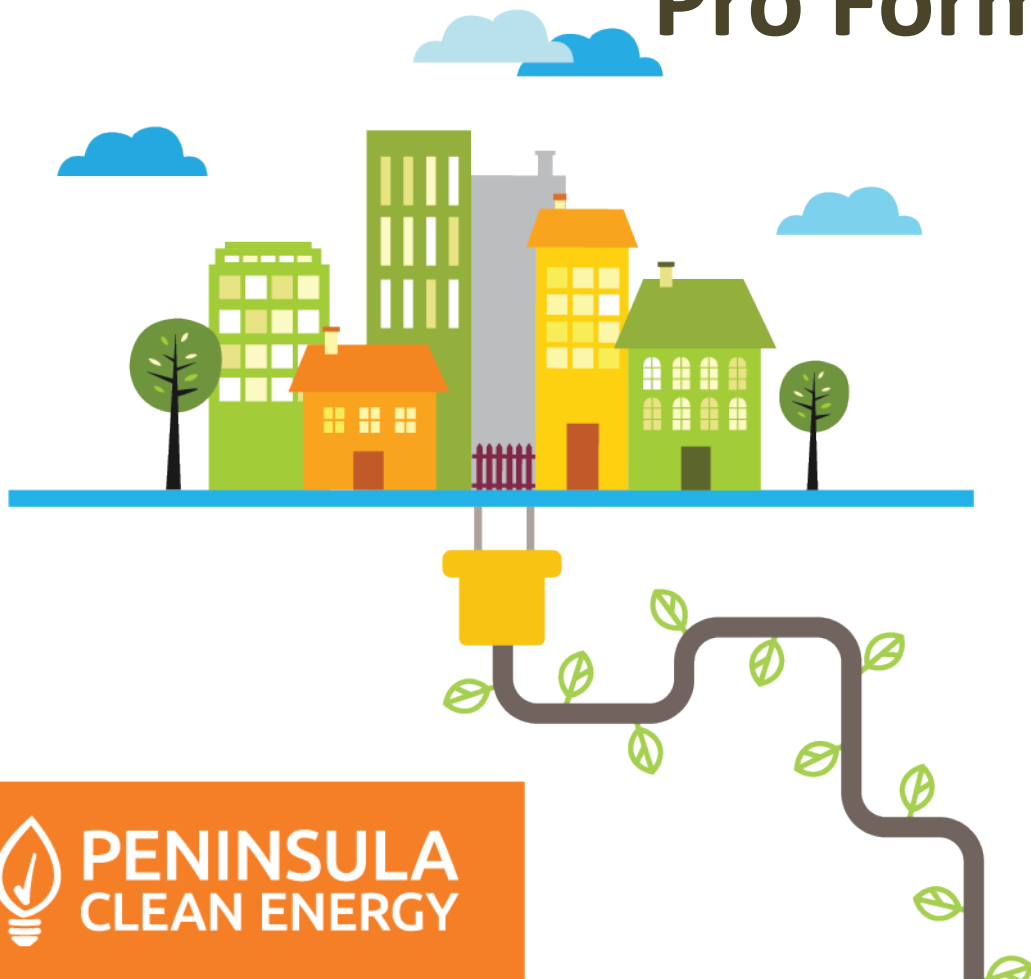
Offer Submission

- All proposed generating resources must be certified by the California Energy Commission (“CEC”) as Eligible Renewable Energy Resources (“ERR”) prior to the commercial operation date (“COD”)
- Preference will be given to resources located closer to PCE’s service area, but eligible resources located within the Western Electricity Coordinating Council (“WECC”) will be considered
- Minimum project capacity is 1 megawatt (MW), AC
- Preference will be given to resources that deliver earlier, but all eligible offers will be considered
- Each submitted project must include at least one offer with a single, flat price for each MWh of electric energy delivered from the proposed resource
- All respondents must complete and submit a Project Form and Offer Form for each offer submitted on the RFO website, <https://pcerfo.accionpower.com>
- **At this point Accion will show a brief website demo – “video tutorial”**

Q&A on RFO Instructions

- **The moderator will unmute all participants**
- **Please keep your device on mute unless asking a question**
- **The moderator will also read questions from the text bar**

Pro Forma Power Purchase Agreement (PPA)



Pro Forma PPA – Cover Sheet

- **Seller name, entity type**
- **Facility description**
- **Guaranteed Commercial Operation Date**
- **Milestones**
- **Delivery Term**
- **Delivery Term Expected Energy**
- **Contract Year 1 Expected Energy**
- **Contract Price**
- **Product – energy, green attributes (PPC1 or PCC2), capacity attributes**
- **Deliverability**
- **Scheduling Coordinator***
- **Development Security (\$60/kW for as-available; \$90/kW for dispatchable)**
- **Performance Security (5% of the total term project revenues)**
- **Damage Payment**
- **Notice Addresses**

*In the pro forma PPA, the Scheduling Coordinator is to be Buyer or Buyer's agent. The offer form allows the opportunity for 11 offerors to provide pricing under which Seller would provide Scheduling Coordinator services.

Pro Forma PPA – Conditions Precedent

- **Delivery Term shall not commence until PCE receives from Seller:**
 - **Commercial Operation Date Certificate and Installed Capacity Certificate**
 - **CAISO Participating Generator Agreement and Meter Service Agreement**
 - **Interconnection Agreement between Seller and the PTO**
 - **Environmental impact reports, conditional use permit and a certificate of compliance with the conditional use permit**
 - **CEC precertification**
 - **All applicable WREGIS registration requirements**
 - **Performance Security**
 - **Daily Delay Damages and Commercial Operation Delay Damages, if applicable**

Pro Forma PPA – Miscellaneous

- **Compliance Expenditure Cap**
 - Seller's maximum obligation is \$20,000 per MW of Guaranteed Capacity
- **Curtailement Cap**
 - Seller's maximum obligation is equal to [Guaranteed Capacity times 50 hours] MWh per Contract Year
- **Guaranteed Energy Production**
 - 160% of the average Expected Energy for the previous 2 Contract Years

Pro Forma PPA – Events of Default

- **Both parties:**
 - Failure to make payment when due
 - False or misleading rep or warranty
 - Failure to perform any material covenant or obligation
 - Bankruptcy
 - Assignment of PPA other than in compliance with 14.2 or 14.3
 - Consolidation, amalgamation, merger or transfer of assets in which the resulting, surviving or transferee entity fails to assume all PPA obligations
- **Seller:**
 - Delivery of Product not generated by the Facility
 - Failure to achieve commercial operation within 60 days after the Guaranteed COD
 - Failure to timely obtain CEC Certification and Verification
 - In any 6 month period, Adjusted Energy Production is not at least 10% of Expected Energy
 - Failure to satisfy the collateral requirements
 - Failure to replace Guaranty or Letter of Credit when necessary under defined circumstances

Q&A on Pro Forma PPA

- **The moderator will unmute all participants**
- **Please keep your device on mute unless asking a question**
- **The moderator will also read questions from the text bar**

Closing Q&A

- **The moderator will unmute all participants**
- **Please keep your device on mute unless asking a question**
- **The moderator will also read questions from the text bar**

Adjourn – Thank You!

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: [Seller name], [Entity Type]

Buyer: Peninsula Clean Energy, a California joint powers authority

Description of Facility: [Example: A ____ MW AC photovoltaic electric generating facility located in _____ County, California]

Guaranteed Commercial Operation Date: [Date]

Milestones:

Milestone	Completion Date
Site Control	[Month, Year]
Conditional Use Permit	[Month, Year]
Phase II Interconnection Study Results	[Month, Year]
Executed Interconnection Agreement	[Month, Year]
Financial Close	[Month, Year]
Construction Start	[Month, Year]
Initial Synchronization	[Month, Year]
Commercial Operation Date	[Month, Year]
Deliverability Network Upgrades completed	[Month, Year]

Delivery Term: [Number of years] Contract Years

Delivery Term Expected Energy: [To be based on the P50 value provided by the Facility's resource study.]

Contract Year	Expected Energy (MWh)
1	<input type="text"/>
2	<input type="text"/>
3	<input type="text"/>
4	<input type="text"/>
5	<input type="text"/>
[<i>Through N</i>]	<input type="text"/>

Contract Year 1 Expected Energy:

Month	Expected Energy (MWh)
1	<input type="text"/>
2	<input type="text"/>
3	<input type="text"/>
4	<input type="text"/>
5	<input type="text"/>
6	<input type="text"/>
7	<input type="text"/>
8	<input type="text"/>
9	<input type="text"/>
10	<input type="text"/>

Month	Expected Energy (MWh)
11	[_____]
12	[_____]

Contract Price:

Contract Year	Contract Price (\$/MWh)
1	[\$_____]
2	[\$_____]
3	[\$_____]
4	[\$_____]
5	[\$_____]
[<i>Through N</i>]	[\$_____]

Product:

- x Energy
- x Green Attributes:
 - ☐ Portfolio Content Category 1
 - ☐ Portfolio Content Category 2
- x Capacity Attributes

Deliverability:

- ☐ Energy Only Status
- ☐ Full Capacity Deliverability Status

a) If Full Capacity Deliverability Status is selected, provide the
Expected FCDS Date: [_____]

Scheduling Coordinator: Buyer or Buyer's Agent

Development Security: [*To equal \$60/kW for as-available; \$90/kW for dispatchable.*]

Performance Security: [*To equal five percent (5%) of the total term project revenues.*]

Damage Payment: [*TBD*]

Notice Addresses:

Seller:

Company Name:

Address:

Attention:

Phone No.:

Fax No.:

Email:

With a copy to:

Company Name:

Address:

Office of the General Counsel

Phone No.:

Fax No.:

Email:

Scheduling:

Company Name:

Address:

Attention:

Phone No.:

Fax No.:

Email:

Buyer:

Peninsula Clean Energy

455 County Center, 4th Floor

Redwood City, CA 94063

Attention: George Wiltsee, Director of Power Resources

Fax No.: TBD

Phone No.: (626) 890-8346
Email: gwiltsee@peninsulacleanenergy.com

With a copy to:

Peninsula Clean Energy
400 County Center, 6th Floor
Redwood City, CA 94063
Attention: Nirit Eriksson, Deputy County Counsel
Fax No.: (650) 363-4034
Phone No.: (650) 363-4461
Email: neriksson@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
[*Name of Seller*]

By: _____

Name: _____

Title: _____

BUYER
Peninsula Clean Energy Authority

By: _____
PCE Chairperson

By: _____
PCE Executive Officer

TABLE OF CONTENTS

Page

ARTICLE 1	DEFINITIONS	1
1.1	Contract Definitions.	1
1.2	Rules of Interpretation.	16
ARTICLE 2	TERM; CONDITIONS PRECEDENT	17
2.1	Contract Term.....	17
2.2	Conditions Precedent.....	17
2.3	Progress Reports	18
2.4	Remedial Action Plan.....	18
ARTICLE 3	PURCHASE AND SALE.....	19
3.1	Sale of Product.	19
3.2	Sale of Green Attributes.	19
3.3	Compensation.	19
3.4	Imbalance Energy.	19
3.5	Ownership of Renewable Energy Incentives.	20
3.6	Future Environmental Attributes.	20
3.7	Test Energy.....	21
3.8	Capacity Attributes.	21
3.9	Resource Adequacy Failure.....	21
3.10	CEC Certification and Verification.	22
3.11	Eligibility.....	22
3.12	California Renewables Portfolio Standard.	23
3.13	Compliance Expenditure Cap.....	23
ARTICLE 4	OBLIGATIONS AND DELIVERIES	24
4.1	Delivery.	24
4.2	Title and Risk of Loss.....	24
4.3	Scheduling Coordinator Responsibilities.	24
4.4	Forecasting.	26
4.5	Reserved	27
4.6	Reduction in Delivery Obligation.	28
4.7	Expected Energy and Guaranteed Energy Production.	28
4.8	WREGIS.....	29
4.9	Financial Statements.....	30
ARTICLE 5	TAXES	30
5.1	Allocation of Taxes and Charges.	30
5.2	Cooperation.	31
ARTICLE 6	MAINTENANCE OF THE FACILITY.....	31

6.1	Maintenance of the Facility.	31
6.2	Maintenance of Health and Safety.	31
ARTICLE 7	METERING	31
7.1	Metering.	31
7.2	Meter Verification.	31
ARTICLE 8	INVOICING AND PAYMENT; CREDIT	32
8.1	Invoicing.	32
8.2	Payment.	32
8.3	Books and Records.	32
8.4	Payment Adjustments; Billing Errors.	32
8.5	Billing Disputes.	33
8.6	Netting of Payments.	33
8.7	Seller's Development Security.	33
8.8	Seller's Performance Security.	34
8.9	First Priority Security Interest in Cash or Cash Equivalent Collateral.	34
ARTICLE 9	NOTICES	35
9.1	Addresses for the Delivery of Notices.	35
9.2	Acceptable Means of Delivering Notice	35
ARTICLE 10	FORCE MAJEURE	35
10.1	Definition.	35
10.2	No Liability If a Force Majeure Event Occurs	36
10.3	Notice	37
10.4	Termination Following Force Majeure Event	37
ARTICLE 11	DEFAULTS; REMEDIES; TERMINATION	37
11.1	Events of Default	37
11.2	Remedies; Declaration of Early Termination Date.	39
11.3	Termination Payment	40
11.4	Notice of Payment of Termination Payment	41
11.5	Disputes With Respect to Termination Payment.	41
11.6	Rights And Remedies Are Cumulative	41
11.7	Mitigation	41
ARTICLE 12	LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES	41
12.1	No Consequential Damages.	41
12.2	Waiver and Exclusion of Other Damages.	41
ARTICLE 13	REPRESENTATIONS AND WARRANTIES	42
13.1	Seller's Representations and Warranties.	42

13.2	Buyer’s Representations and Warranties.....	43
13.3	General Covenants.....	44
ARTICLE 14	ASSIGNMENT	44
14.1	General Prohibition on Assignments.....	44
14.2	Permitted Assignment by Seller	44
14.3	Permitted Assignment by Buyer.....	44
ARTICLE 15	LENDER ACCOMMODATIONS.....	45
15.1	Granting of Lender Interest	45
15.2	Rights of Lender	45
15.3	Cure Rights of Lender	46
ARTICLE 16	DISPUTE RESOLUTION.....	46
16.1	Governing Law.....	46
16.2	Dispute Resolution.....	46
16.3	Attorneys’ Fees.....	46
ARTICLE 17	INDEMNIFICATION	47
17.1	Indemnification.....	47
17.2	Claims.....	47
ARTICLE 18	INSURANCE	47
18.1	Insurance.....	47
ARTICLE 19	CONFIDENTIAL INFORMATION.....	49
19.1	Definition of Confidential Information	49
19.2	Duty to Maintain Confidentiality	49
19.3	Irreparable Injury; Remedies	50
19.4	Disclosure to Lender.....	50
19.5	Public Statements	50
ARTICLE 20	MISCELLANEOUS.....	50
20.1	Entire Agreement; Integration; Exhibits	50
20.2	Amendments.....	50
20.3	No Waiver	50
20.4	No Agency, Partnership, Joint Venture or Lease	50
20.5	Severability	51
20.6	Mobile-Sierra.....	51
20.7	Counterparts	51
20.8	Facsimile or Electronic Delivery.....	51
20.9	Binding Effect	51
20.10	No Recourse to Members of Buyer	51
20.11	Change in Electric Market Design	51

Exhibits:

Exhibit A	Description of Facility
Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Reserved
Exhibit D	Emergency Contact Information
Exhibit E	Form of Guaranty
Exhibit F	Guaranteed Energy Production Damages Calculation
Exhibit G	Progress Reporting Form
Exhibit H	Buyout Option
Exhibit I-1	Form of Commercial Operation Date Certificate
Exhibit I-2	Form of Installed Capacity Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit

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 F.

“**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.

“**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 than is reflected in the VER Forecast for the Facility for a period of time;

(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 Planned Outage, 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 Planned Outage, 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 (a) Seller reduces generation from the Facility pursuant to (i) Buyer Bid Curtailment or (ii) a 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 Charges Invoice**” has the meaning set forth in Section 4.3(d).

“**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 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), and X-1 2 (2011), codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

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

“**CEC**” means the California Energy Resources Conservation and Development 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, Eighth 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 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.

“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, as may be adjusted by Section 3.3.

“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 at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

“Cover Sheet” means the cover sheet to this Agreement.

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

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

“Curtailment Cap” means [Guaranteed Capacity times 50 hours] MWh per Contract Year.

“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.

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

“Damage Payment” means the dollar amount that is equal to the Development Security amount required hereunder.

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

“Day-Ahead LMP” has the meaning set forth in the CAISO Tariff.

“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, which amount shall be equal to (a) the VER Forecast expressed in MWh, applicable to the Buyer Curtailment Period, or (b) if there is no VER Forecast available or Seller demonstrates to Buyer’s reasonable satisfaction that the VER Forecast does not represent an accurate forecast of generation from the Facility, the result of the equation reasonably calculated and provided by Seller to reflect the potential generation of the Facility as a function of Available Capacity, [*solar insolation and panel temperature,*] [*and wind speed,*] and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period, in either case less the amount of Metered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

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

“Deficient Month” has the meaning set forth in Section 4.8(e).

“Delivery Point” means the PNode designated by the CAISO for the Facility.

“Delivery Term” shall mean the period of Contract Years specified on the Cover Sheet, beginning on the Commercial Operation Date, 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.

“Economic Bid” has the meaning set forth in the CAISO Tariff.

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

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

“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point.

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

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

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

“Energy Supply Bid” has the meaning set forth in the CAISO Tariff.

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

“Excess MWh” has the meaning set forth in Section 3.3(c).

“Expected Energy” has the meaning set forth in Section 4.7.

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

“Facility” means the facility described more fully in Exhibit A attached hereto.

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

“FMM 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.

“Forward Certificate Transfers” has the meaning set forth in Section 4.8(a).

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

“Future Environmental Attributes” shall mean any and all emissions, air quality or other environmental attributes (other than Green Attributes 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.

“**Guaranteed Capacity**” means [_____] MW AC capacity measured at the Delivery Point.

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

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

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

“**Guarantor**” means, with respect to Seller, (a) [_____] provided that the creditworthiness of [_____] as of the Effective Date has not materially deteriorated, as reasonably determined by Buyer, or (b) any other Person in Buyer’s sole and reasonable discretion.

“**Guaranty**” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit E.

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

“**Indemnified Party**” has the meaning set forth in Section 17.1.

“**Indemnifying Party**” has the meaning set forth in Section 17.1.

“**Initial Synchronization**” means the initial delivery of Energy from the Facility to the interconnection point specified in the Interconnection Agreement.

“Installed Capacity” means the actual generating capacity of the Facility, measured at the Facility PNode and adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto provided by Seller to Buyer.

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

“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 in accordance with the Interconnection Agreement.

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

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

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

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

“Lender” means, collectively, 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.

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

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

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

“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 F.

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

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

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

“MW” means megawatts measured in alternating current.

“MWh” means megawatt-hour measured in AC.

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

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

“Participating Intermittent Resource Program” or **“PIRP”** has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

“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 [_____].

“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, (ii) a Letter of Credit, or (iii) a Guaranty, in the amount specified on the Cover Sheet, deposited with Buyer in conformance with Section 8.8.

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

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

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

“Portfolio Content Category 2” or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Product” means (i) Energy, (ii) Green Attributes, (iii) Capacity Attributes, and (iv) any Future Environmental Attributes as applicable in accordance with Section 3.6.

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

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

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

“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 Commercial Operation Date.

“RA Shortfall Month” means the applicable calendar month within the RA Shortfall Period for purposes of calculating an RA Deficiency Amount under Section 3.9(b).

“RA Shortfall Period” means the period of consecutive calendar months that starts with the calendar month in which the RA Guarantee Date occurs and concludes on the earlier of (i) the second calendar month following the calendar month in which the Effective FCDS Date occurs and (ii) the end of the Delivery Term.

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

“Remedial Action Plan” has the meaning 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 Energy” has the meaning given in Exhibit F.

“Replacement Green Attributes” has the meaning given in Exhibit F.

“Replacement Product” has the meaning given in Exhibit F.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within the Northern Area TAC Area (as described in the CAISO Tariff) and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

“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 and any subsequent CPUC

ruling or decision or by any other entity including CAISO, and shall include any local, zonal or otherwise locational attributes associated with the Facility.

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

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

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

“**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 8.4.

“**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.

“**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 J.

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

“Station Use” means:

- (a) The electric energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and
- (b) The electric energy produced by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

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

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

“Terminated Transaction” has the meaning set forth in Section 11.2.

“Termination Payment” has the meaning set forth in Section 11.3.

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

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

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

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

“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 December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

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

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

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

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

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

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

(g) the term “including” means “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”).

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

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 I-1 and I-2;

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

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) 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;

(e) Seller has received CEC Precertification;

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

(g) Seller has delivered the Performance Security to Buyer; and

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

2.3 Progress Reports. The Parties agree time is of the essence in regards to the Agreement. For new facilities or existing facilities that are to be re-powered before Commercial Operation, 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 monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit G. Seller shall also provide Buyer with any reasonable 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 three (3) or more Milestones, or misses any one (1) by more than ninety (90) 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. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that such resale or use for another purpose will not relieve Buyer of any of its obligations under this Agreement. Except for Deemed Delivered Energy, 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 and Replacement Product.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all of the Green Attributes produced by the Facility.

3.3 **Compensation.** 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 plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) If, at any point in any Contract Year, the amount of Metered Energy plus the amount of Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, for each additional MWh of Product, as measured by the amount of Metered Energy plus Deemed Delivered Energy, if any, delivered to Buyer in such Contract Year, the price to be paid shall be the lesser of (i) seventy-five percent (75%) of the Contract Price or (ii) the Day-Ahead price for the applicable Settlement Interval.

(c) If during any Settlement Interval, Seller delivers Product in amounts, as measured by the amount of Metered Energy, in excess of the product of the Installed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), 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) Following the Effective Date the Parties shall cooperate to prepare and mutually agree upon a written protocol (the “**Imbalance Energy Cost Protocol**”) to set forth appropriate administrative details to carry out the Parties’ agreement as follows: (i) the Parties shall coordinate to maintain detailed records of all CAISO revenues and charges associated with Imbalance Energy; (ii) for each Contract Year, Seller will be responsible for and shall pay directly (or promptly reimburse Buyer) for the aggregate Imbalance Energy charges, net of the aggregate Imbalance Energy revenues, allocable to such Contract Year. If Seller is in compliance with EIRP and all provisions of this Agreement, including Section 4.4(d), then Seller’s responsibility for Imbalance Energy charges will be limited as follows: (A) net Imbalance Energy charges paid directly or reimbursed by Seller will be limited to a maximum of Two Hundred Fifty Thousand Dollars (\$250,000) per Contract Year (the “**Imbalance Energy Cost Cap**”), (B) Buyer shall be responsible for and shall pay directly (or reimburse Seller) for all Imbalance Energy charges allocable to such year in excess of the Imbalance Energy Cost Cap, and (C) if the net Imbalance Energy charges paid directly or reimbursed by Seller for a given Contract Year are less than the Imbalance Energy Cost Cap, and Buyer has also paid costs associated with Imbalance Energy equal to or greater than the Imbalance Energy Cost Cap, then within ninety (90) days after the end of such Contract Year, Seller shall pay Buyer an amount equal to the Imbalance Energy Cost Cap, less the net Imbalance Energy charges actually paid directly or reimbursed by Seller for such Contract Year.

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 at no additional cost. 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 additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy.** If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy on an as-available basis. As compensation for such Test Energy, Buyer shall (a) pass through to Seller any CAISO revenues, and any CAISO fees and costs, including Imbalance Energy costs, for such Test Energy, net of any CAISO fees, and (b) pay Seller for each MWh of Test Energy an amount equal to the positive difference between the Contract Price, and the Day-Ahead LMP at the Delivery Point (but only if the Day Ahead LMP is positive), less an RA Credit. The “RA Credit” shall be equal to the product of six dollars per MWh (\$6.00/MWh), multiplied by the ratio of (x) to (y), where (x) is the monthly NQC that the Facility would have received if it had achieved Full Capacity Deliverability Status prior to such month, less the Facility’s actual monthly NQC for the applicable month, and (y) is the monthly NQC that the Facility would have received if it had achieved Full Capacity Deliverability Status prior to such month; provided, however, that for purposes of calculating the RA Credit, the Facility’s actual NQC will be deemed to be increased by the amount of Replacement RA provided by Seller with respect to such month.

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

(a) Throughout the Delivery Term, subject to Section 3.13, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, subject to Section 3.13, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim 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) For the duration of the Delivery Term, 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.

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 FCDS 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 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 product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility for such month, minus (ii) the Net Qualifying Capacity of the Facility for such month, multiplied by \$3.00/kW-mo.; *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is communicated to Buyer at least sixty (60) calendar days before the CPUC operating month for the purpose of monthly RA reporting.

3.10 CEC Certification and Verification. Subject to Section 3.13, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Precertification and CEC Final Certification and Verification for the Facility. Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for CEC Final Certification and Verification. 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. 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 begin paying Seller the Contract Price for Product according to Section 3.3, and, if such CEC Final Certification and Verification relates back to all Energy delivered by Seller during the Delivery Term, will reimburse Seller for the difference between (x) any reduced amounts paid to Seller for Product under this Section 3.10 due to Seller’s failure to obtain CEC Final Certification and Verification within one hundred eighty (180) days after the Commercial Operation Date, and (y) the amount that would have been paid to Seller had Seller timely obtained CEC Final Certification and Verification within one hundred eighty (180) days after the Commercial Operation Date. If Seller has not obtained CEC Final Certification and Verification within one (1) year of the Commercial Operation Date, then an Event of Default shall occur, Buyer shall have all remedies available under this Agreement, including under Section 11.2, and, in the event that Buyer terminates this Agreement under Section 11.2, Seller shall reimburse Buyer, in addition to any other amounts owed, in an amount equal to the difference between (a) the amount paid by Buyer to Seller for Product during the first one hundred eighty (180) days of the Delivery Term, and (b) the amount that would have been paid if the price for energy delivered during the first one hundred eighty (180) days of the Delivery Term were the Day Ahead LMP.

3.11 Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by

the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law. The term "commercially reasonable efforts" as used in this Section 3.11 means efforts consistent with and subject to Section 3.13.

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 thousand dollars (\$20,000.00) per MW of Guaranteed Capacity ("**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 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.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Metered Energy on an as-generated, instantaneous basis. Each Party shall perform all generation, scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the 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.

4.2 Title and Risk of Loss.

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

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 Scheduling Coordinator Responsibilities.

(a) Buyer as Scheduling Coordinator for the Facility. Upon initial synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the initial synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility effective as of the initial synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents

necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the initial synchronization of the Facility to the CAISO Grid. On and after initial synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, Forced Facility Outages, Forced Facility Outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below and in 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 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 a non-binding forecast of each month's average-day expected Metered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Available Capacity. No less than 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 Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(c) Daily Forecast of Available Capacity. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Facility's Available Capacity (or if requested by Buyer, the expected Metered Energy) for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Facility's Available Capacity (or if requested by Buyer, the expected Metered Energy).

(d) Real-Time Available Capacity. During the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of one (1) MW or more, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must likewise notify Buyer. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Project 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 to Buyer and shall be sent to Buyer's web based system.

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 due to Force Majeure

(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 a Buyer Curtailment Period in excess of the Curtailment Cap 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 the Negative LMP Cost, if any, for the Buyer Curtailment Period or Curtailment Period 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.

4.6 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit F:

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Buyer Curtailment Period, or upon Notice of a Curtailment Order, or pursuant to the terms of the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Expected Energy and Guaranteed Energy Production**. The quantity of Product, as measured by Metered Energy, that Seller expects to be able to deliver to Buyer during each Contract Year is set forth on the Cover Sheet ("**Expected Energy**"). Seller shall be required to deliver to Buyer an amount of Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below) in any period of two (2) consecutive Contract Years during the Delivery Term ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means an amount of Product, as measured in MWh, equal to one-hundred sixty percent (160%) of the average Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent 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 F in respect of Lost Output. In addition, for purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer, in the first

Contract Year of each Performance Measurement Period following a Performance Measurement Period as to which Seller has paid damages calculated in accordance with Exhibit F, the Product in the amount equal to the greater of the amount of Metered Energy actually delivered in such Contract Year, less Excess MWh, or eighty percent (80%) of the Expected Energy for such Contract Year. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit F; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit F) that is (i) delivered to Buyer at NP 15 EZ Gen Hub, (ii) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Performance Measurement Period and within the same calendar year in the event Seller fails to deliver the Guaranteed Energy Production during any Performance Measurement Period, (iii) delivered upon a schedule reasonably acceptable to Buyer, and (iv) delivered to Buyer without imposing additional costs upon Buyer; provided further that Buyer will pay Seller for all such Replacement Product provided pursuant to this Section 4.7 at the Contract Price.

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 comply with all Laws, including the WREGIS Operating Rules, regarding the certification and issuance of such WREGIS Certificates to Buyer, and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS in Buyer's name ("**Buyer's WREGIS Account**"), which shall be maintained until the end of the Delivery Term. Seller shall cause and allow Buyer to be the "Account Holder" for Buyer's WREGIS Account (as that term is defined by WREGIS). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Buyer's WREGIS Account and paying WREGIS Certificate issuance fees.

(b) Seller shall cause itself or its agent to be designated as the "Qualified Reporting Entity" (as that term is defined by WREGIS) for the Facility.

(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 issued 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 is caused, or the result of any action or inaction, by Seller or its agent, then the amount of Metered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that such adjustment shall not apply to the extent that Seller provides Replacement Product (as defined in Exhibit F) that is (i) delivered to Buyer at NP 15 EZ Gen Hub, (ii) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Deficient Month, (iii) delivered upon a schedule reasonably acceptable to Buyer, and (iv) delivered to Buyer without imposing additional costs upon Buyer. 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) Seller warrants that all necessary steps to allow the Renewable Energy Credits to be issued to Buyer and tracked in WREGIS will be taken prior to the first delivery under the contract.

4.9 Financial Statements. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 5

TAXES

5.1 Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available Energy to Buyer, that are imposed on Energy prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Energy that are imposed on Energy at and from the Delivery Point (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then

Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

ARTICLE 6 MAINTENANCE OF THE FACILITY

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

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 D Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

ARTICLE 7 METERING

7.1 **Metering**. Seller shall measure the amount of Energy produced by the Facility using a CAISO Approved Meter, using a CAISO-approved methodology. Such meter shall be installed on the high side of the Seller's transformer and maintained at Seller's cost. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more

than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

ARTICLE 8

INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no sooner than fifteen (15) Business 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, including the amount of Product in MWh produced by the facility as read by the CAISO Approved Meter, the amount of Replacement RA and Replacement Product delivered to Buyer, the calculation of Deemed Delivered Energy and Adjusted Energy Production, and the Contract Price applicable to such Product; and (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount. Invoices shall be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within 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 any related damages calculated pursuant to Exhibits B and F, 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 [] within thirty (30) 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. 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. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of 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 [_____]. If the Performance Security is provided in the form of a Guaranty, it shall be substantially in the form set forth in Exhibit E. 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 Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

ARTICLE 9

NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10

FORCE MAJEURE

10.1 Definition.

(a) **"Force Majeure Event"** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event,

despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including 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; or (viii) 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 Force Majeure. 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 Section 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, except for Replacement Product;

(ii) the failure by Seller to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date;

(iii) the failure by Seller to timely obtain CEC Final Certification and Verification in accordance with Section 3.10.

(iv) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, and Seller fails to demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum;

(v) 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;

(vi) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

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

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least “A-” by S&P or “A3” by Moody’s;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller under Section 11.1(b)(ii)) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and/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 Damage Payment or Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or 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 Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

11.6 Rights And Remedies Are Cumulative. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 Mitigation. Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 No Consequential Damages. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY, INDEMNITY PROVISION, OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 Waiver and Exclusion of Other Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. 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 F, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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 [] company, duly organized, validly existing and in good standing under the laws of the State of [], 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 [_____].

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.

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.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; *provided* that the non-granting Party shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3 **Cure Rights of Lender.** The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder. The cure rights of Lender may be documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party pursuant to Section 15.2(b).

ARTICLE 16

DISPUTE RESOLUTION

16.1 **Governing Law.** This agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement. 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.

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.

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 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 negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 17.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

17.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 18

INSURANCE

18.1 Insurance.

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed

operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars (\$5,000,000) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. For new facilities or existing facilities that are to be re-powered before Commercial Operation, Seller shall maintain or cause to be maintained during the construction or re-powering of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage, in each case, with limits determined to be appropriate by Seller. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. 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.

(h) 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 which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and executed by the Buyer, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

19.2 Duty to Maintain Confidentiality. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion. Seller 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 of any third person or entity not a party to this Contract for production, inspection and/or copying of this Agreement (in whole or in part) or any information designated by Seller as Confidential Information, 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 information designated as Confidential Information by Seller whether or not advance written notice

has been provided. Seller shall be solely responsible for taking whatever steps it deems necessary to protect information deemed by it to be Confidential Information.

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 **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. 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, 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.

EXHIBIT A

DESCRIPTION OF THE FACILITY

Site Name:

APNs:

County: [_____] County

Guaranteed Capacity: [_____] MW AC (net, at the Delivery Point)

P-node/Delivery Point: the PNode designated by the CAISO for the Facility at the
[_____] Substation

Additional Information:

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. Seller shall cause construction to begin on the Facility by [_____], (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 Facility (“**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 J hereto.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. 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. 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 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 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) [_____] or (y) the date on which Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation for the Facility to occur by [_____] (as such date may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after the Commercial Operation Date.
 - c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Buyer shall retain Daily Delay Damages, as applicable, and 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. The Parties agree that Buyer's retention of Daily Delay Damages and receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for the first sixty (60) days of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's default right pursuant to Section 11.2.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement, which termination shall be effective upon Notice to Seller.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of each of the following delays:
- a. a Force Majeure Event occurs; or
 - b. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event, and no extension shall be given if the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed 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 I-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 One Hundred Thousand Dollars (\$100,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity 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. **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
RESERVED

EXHIBIT D

EMERGENCY CONTACT INFORMATION

BUYER:

George Wiltsee, Director of Power Resources
Peninsula Clean Energy

Fax No.:

Phone No.: 626-890-8346
Email: gwiltsee@peninsulacleanenergy.com

SELLER:

Attn:

Phone:

EXHIBIT E

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [_____] a [_____] (“Guarantor”), and Peninsula Clean Energy, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

Recitals

- A. Buyer and [_____] a [_____] (“Seller”), entered into that certain Power Purchase and Sale Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 2016.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA in an aggregate liability not to exceed [_____] (the “Guaranteed Amount”). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly, after giving effect to all applicable notice and grace, pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the PPA. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed

Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller). Notwithstanding the foregoing, this Guaranty shall automatically terminate and be of no further force or effect if Seller replaces this Guaranty with an alternative form of Performance Security acceptable to Buyer. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or
- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction.

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition

precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any person.

Notwithstanding any other provision of this Guaranty to the contrary, Guarantor hereby reserves all rights and remedies accorded by applicable laws to sureties or guarantors based on the defense of the statute of limitations related to the enforceability of this Guaranty in any action or proceeding for the payment of any Guaranteed Amount.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate corporate powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority, and no consent of any other Person (including, any

stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four business days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

Peninsula Clean Energy

Attn: George Wiltsee, Director of Power
Resources

Fax:

If delivered to Guarantor, to it at

[_____]

Attn: [_____]

Fax: [_____]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Francisco, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.
- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).
- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signatures on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

PENINSULA CLEAN ENERGY

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT F

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the lesser of (x) \$50/MWh and (y) the market value of Replacement Green Attributes.

D = the Contract Price for the Performance Measurement Period, in \$/MWh

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

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, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

Additional Definitions:

“**Adjusted Energy Production**” shall mean the sum of the following: Metered Energy + Deemed Delivered Energy + Lost Output + Replacement Product – Excess MWh.

“**Lost Output**” means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order. The additional MWh shall be calculated using an equation provided by Seller, as approved by Buyer in its reasonable discretion, to reflect the potential generation of the Facility as a function of Available Capacity, [*solar insolation and panel temperature,*] [*and wind speed,*] and using relevant Facility availability, weather, historical and other pertinent data for the period of time

during the period in which the Force Majeure Event, Buyer Default, or Curtailment Order occurred.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (e.g., PCC1) as the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

“Replacement Energy” means energy and associated Green Attributes produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

“Replacement Product” means (a) Replacement Energy, and (b) all Replacement Green Attributes.

EXHIBIT G
PROGRESS REPORTING FORM

For new facilities, 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 month, 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 H

BUYOUT OPTION

(1) Buyout Option. No later than ninety (90) days prior to the last day of each of (i) the tenth (10th) Contract Year of the Contract Term, (ii) the fifteenth (15th) Contract Year of the Contract Term and (iii) the twentieth (20th) Contract Year of the Contract Term, Buyer may deliver Notice to Seller indicating whether it elects to purchase the Facility. If Buyer elects to make a purchase, Buyer shall pay to Seller a “**Buyout Payment**” within thirty (30) days prior to the last day of such Contract Year equal to the Fair Market Value of the Facility as of such date, as determined pursuant to clause (2) below.

(2) Calculation of Fair Market Value. If Buyer provides Notice to Seller that it is contemplating exercising its rights under this Exhibit G, the Parties shall mutually agree upon an independent appraiser on or before the date that is sixty (60) days prior to the last day of (i) the tenth (10th) Contract Year of the Contract Term, (ii) the fifteenth (15th) Contract Year of the Contract Term, or (iii) the twentieth (20th) Contract Year of the Contract Term, if applicable. Such appraiser shall determine, at equally shared expense of Buyer and Seller, the fair market value of the Facility as of the date on which the Buyout Payment is to be paid, taking into account such items as deemed appropriate by the appraiser, which may include the resale value of the Facility, and the price of the Product (the “**Fair Market Value**”). In the event that Buyer and Seller cannot agree upon a single independent appraiser, each Party shall contract for an independent appraiser at its own expense, and the Fair Market Value shall be the simple average of the determinations of the two independent appraisers. On or prior to the date that is thirty (30) days prior to the last day of such Contract Year, the appraiser shall deliver its determination of Fair Market Value to each of Buyer and Seller. After the appraiser provides the Parties with its appraisal of Fair Market Value of the Facility, Buyer shall have thirty (30) days to decide whether to consummate its option to purchase the Facility. If Buyer does not provide Notice to Seller that Buyer intends to exercise its option to purchase the Facility within thirty (30) days of receipt of the Fair Market Value appraisal, Buyer shall be deemed to have not exercised its option to purchase the Facility.

(3) Passage of Title. Upon receipt of the Buyout Payment, the Parties shall execute all documents necessary to cause title to the Facility to pass to Buyer on an as-is, where-is, with-all-faults basis; *provided, however*, that Seller shall remove any encumbrances held by Seller with respect to the Facility.

EXHIBIT I-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by _____[*licensed professional engineer*] (“**Engineer**”) to Peninsula Clean Energy (“**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 Commercial Operation, in accordance with the CAISO tariff on ____[DATE]____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity is delivered by [licensed professional engineer] (“**Engineer**”) to PENINSULA CLEAN ENERGY (“**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 J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification ("**Certification**") of the Construction Start Date is delivered by [SELLER ENTITY] ("**Seller**") to PENINSULA CLEAN ENERGY ("**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 EPC 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 K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXX]

Expiry Date:

Beneficiary:

Peninsula Clean Energy

[Address]

Ladies and Gentlemen:

On behalf of [XXXXXXXX] ("Applicant"), we, [insert bank name and address] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the "Letter of Credit") in favor of Peninsula Clean Energy, Address _____, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXXXX] 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. [XXXXXXXX] 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

Exhibit K - 3

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. **[XXXXXXXX]**. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at **[XXX-XXX-XXXX]** and have this Letter of Credit available.

[Bank Name]

[Insert officer name]

[Insert officer title]

DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Peninsula Clean Energy, Address _____ as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of [XXXXXXX] (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of [XXXXXXX] (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____.

or

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

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

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

[Specify account information]

Peninsula Clean Energy

Name and Title of Authorized Representative

Date _____



PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: October 25, 2016
BOARD MEETING DATE: October 27, 2016
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
SUBJECT: Review Draft Agenda for November 12th Board Retreat

BACKGROUND:

The Board of Directors has scheduled a retreat to allow for a full discussion to establish a mission statement, strategic goals, and certain policies for Peninsula Clean Energy (PCE). PCE staff created the draft agenda based on previous discussions with the Board of Directors and the Executive Committee. PCE staff will prepare a draft mission statement and strategic goals as a starting basis for a facilitated discussion by the board. Draft policies on possible qualitative evaluation criteria for PCE suppliers based on discussions at recent meetings of the Board of Directors and Executive Committee will also be prepared as a basis for discussion. The afternoon will include an overview of PCE's future procurement activities, an update on the PCIA, and a discussion on the future of the Citizens Advisory Committee.

DISCUSSION:

The following is a draft of the proposed agenda and schedule for the board retreat, which will be held on November 12, 2016 at the Portola Valley Community Hall from 9:00 am to 3:00 pm.

8:30 – 9:00	Refreshments
9:00 – 9:05	Introduce schedule for the day
9:05 – 9:15	Public Comment
9:15 – 9:30	Board of Directors Business

- 9:30 – 11:30 Adopt PCEA Mission Statement and Long-term Strategic Goals (Action)
- 11:30 – 12:00 Discuss and possibly adopt policies on qualitative evaluation criteria for PCE suppliers (Action)
- 12:00 – 12:30 Lunch Break
- 12:30 – 1:30 Overview of PCE's Procurement Requirements (Discussion)
- 1:30 – 2:00 Update on PCIA Activities (Discussion)
- 2:00 – 2:45 Adopt Resolution regarding Citizen Committee (Action)
- 2:45 – 3:00 Wrap-Up



PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: October 25, 2016
BOARD MEETING DATE: October 27, 2016
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

SUBJECT: Request Approval to Give Broader Authority to the CEO to Negotiate a Lease (Action)

BACKGROUND:

Peninsula Clean Energy (PCE) has been seeking an office space since May 2016 to serve as headquarters for PCE's operations. County Real Property Services is assisting PCE with defining leased facility needs, identifying potential facilities and negotiating a lease.

On August 11th, 2016, the Board authorized the Chief Executive Officer to execute a lease agreement with Lex Machina to sub-lease office space located at 1010 Doyle Street in Menlo Park in a form approved by General Counsel. During difficult contract negotiations with the parent of Lex Machina, County Real Property Services identified another potential facility in Menlo Park located at 800 El Camino Real. After touring the facility, the Chief Executive Officer and the Board Chair determined that the office at 800 El Camino Real would better meet the long term space requirements of PCE due to the availability of a longer lease term. A letter of intent (LOI) was submitted to the sublessor of the office space at 800 El Camino Real, Longitude Capital. After a number of weeks of waiting, the sublessor at 800 El Camino decided not to lease the office space and took the property off of the market.

County Real Property Services and PCE have identified another facility in Menlo Park which meets the needs of PCE, and can be leased at a competitive rate. The details of this property will be discussed in closed session.

DISCUSSION:

PCE staff is hopeful that the current property under negotiation will go forward. PCE is in the process of hiring additional staff and moving into an appropriate office location within the

next month or so is necessary for the growing staff. However, based on the difficulty of finding an appropriate site to date, we are asking for Board authority for the CEO to negotiate and execute a lease for a different property provided it falls within the approved budget, if negotiations for the current site fall through.

FISCAL IMPACT:

The Fiscal Year 2016-17 budget approved by the Board on July 14th, 2016 included funding for Miscellaneous Administrative and General (Miscellaneous A&G) costs. Under this line item, PCE staff budgeted up to \$40,000 a month for an office space.



**REGULAR MEETING of the Board of Directors of the
Peninsula Clean Energy Authority (PCEA)
Thursday, September 22nd, 2016
MINUTES**

San Mateo County Office of Education, Corte Madera Room
101 Twin Dolphin Drive, Redwood City, CA 94065
6:30pm

CALL TO ORDER

Meeting was called to order at 6:38 pm.

ROLL CALL

Present: Dave Pine, County of San Mateo, *Chair*
Carole Groom, County of San Mateo
Rick DeGolia, Town of Atherton
Lori Liu, City of Brisbane
Donna Colson, City of Burlingame
Larry Moody, City of East Palo Alto
Gary Pollard, City of Foster City
Deborah Penrose, City of Half Moon Bay
Laurence May, Town of Hillsborough
Catherine Carlton, City of Menlo Park
Wayne Lee, City of Millbrae
John Keener, City of Pacifica
Jeff Aalfs, Town of Portola Valley, *Vice Chair*
Ian Bain, City of Redwood City
Marty Medina, City of San Bruno
Cameron Johnson, City of San Carlos
Joe Goethals, City of San Mateo
Pradeep Gupta, City of South San Francisco
Daniel Yost, Town of Woodside

Absent: Charles Stone, City of Belmont
Joseph Silva, Town of Colma
Michael Guingona, City of Daly City

Staff: Jan Pepper, Chief Executive Officer
David Silberman, General Counsel

Nirit Eriksson, Associate General Counsel
George Wiltsee, Director of Power Resources and Energy Programs
Dan Lieberman, Director of Marketing and Public Affairs
Anne Bartoletti, Board Clerk / Executive Assistant to the CEO
Carolyn Raider, Office of Sustainability

A quorum was established.

PUBLIC COMMENT

None

ACTION TO SET THE AGENDA AND APPROVE CONSENT AGENDA ITEMS

Motion Made / Seconded: Lee/ Bain

Motion passed unanimously 17-0 (Absent: Groom, Stone, Silva, Guingona, Carlton)

REGULAR AGENDA

1. CHAIR REPORT

Chair Pine announced that Atherton and Foster City voted to Opt Up. Now that Peninsula Clean Energy Authority (PCEA) is about to launch, the Board will meet once a month on the 4th Thursday. He announced that the Board will have a Retreat on November 12th or 19th to develop PCEA's mission statement and strategic goals

2. CEO REPORT

Jan Pepper—Chief Executive Officer— introduced PCEA's new hires: Anne Bartoletti, Board Clerk / Executive Assistant to CEO; Dan Lieberman, Director of Marketing and Public Affairs; George Wiltsee, Director of Power Resources and Energy Programs. Jan also introduced Nirit Eriksson, Deputy County Counsel with San Mateo County, who is serving as Associate General Counsel for PCEA.

Public Comment

Jim Eggemeyer, Director of San Mateo County's Office of Sustainability (OOS), thanked his staff for supporting PCEA in the lead-up to the launch, and as they transition duties to the PCEA staff. Board members, Chair Pine, and PCEA's CEO Jan Pepper, also extended thanks to the entire OOS team for their support.

Jan reported upcoming events including the first PCEA customers coming online on October 3rd, and PCEA's official Launch and press conference on October 6th at 10:30 a.m. in the San Mateo County Center courtyard.

San Mateo County staff have been providing Finance and Banking assistance, but PCEA should have their own bank account soon. Revenues will begin flowing in November, and PCEA will be contracting with Maher Accountancy for finance support and treasury functions. Jan announced upcoming expenditures for computers, a secure Box account to store PCE files in the “cloud”, an IT consultant, interest payments to Barclay’s, printing and postage.

Jan reported that PCEA has joined the California Community Choice Association (CalCCA), which is a 501(c)6 that was created to advocate for and represent the CCAs at the legislative and regulatory levels. Their website is cal-cca.org. PCE is on the board, along with other CCAs. The cost is \$15,000, but that will increase as revenues increase. CalCCA will be hosting a Policy Summit on October 20th in San Francisco.

Chair Pine requested that information on The Clean Power Exchange be shared with the Board. The following information was provided to the Board via email the following week: The Clean Power Exchange is hosted by the Center for Climate Protection. They track CCA growth across the state. They have also recently released a new report called *“Community Choice Energy: What is the Local Economic Impact?”*, which can be downloaded from their website: <http://cleanpowerexchange.org/>. It is an interesting read, with the key finding that local economic benefits and jobs accrue from local renewable energy investment.

3. RESOURCE ADEQUACY

Jan Pepper—Chief Executive Officer— introduced Jay Robertson and Scott Adair from Direct Energy, who provided an overview of Resource Adequacy (RA). They explained that RA is extra capacity that ensures there are generation reserves available in times of extreme demand. There are three types of resource adequacy: System, Local, and Flexible. PCEA’s obligation is 115% of peak monthly demand. It’s a compliance issue, with year-ahead and month-ahead requirements. The year-ahead filing deadline is the last business day of October 2016, and again in October 2017.

Public Comment:

Landis Marttila, IBEW Local 1245
Michael Closson, MenloSpark

- a. Adopt a Resolution delegating authority to the Chief Executive Officer to execute a Confirmation Agreement with Shell Energy North America for Resource Adequacy with terms consistent with those presented, in a form approved by the General Counsel and for a term ending December 31, 2017**

The Board members discussed RA regulatory requirements, that there will be multiple purchases during the year, and that Shell offered the best price for this latest need. EEI vs WSPP contracts were discussed, as well as the possibility of the CCAs buying in bulk in the future.

Public Comment:

Michael Closson, MenloSpark
Anne Schneider, City of Millbrae

Jan Pepper explained that PCEA purchased renewable and green-house gas free energy from Direct Energy to meet the energy requirements, and RA provides capacity, which are power plants that are on stand-by in case of greater demand or outage, as a back-up for the grid. Board members discussed that solar output is intermittent, so PCEA needs to provide backup resources to help keep the power constant. Shell Energy North America (SENA) is providing RA with a hydro plant, and Silicon Valley Power (SVP) is providing RA with two natural gas-fired combustion turbines.

The Board discussed the implications of doing business with SENA considering their business practices in 2001, and their conduct in other countries. It was also discussed that if PCEA is going to set a policy, it should be applied consistently. The timeframe for making a decision is October 31st, 2016, for the 2017 filing. The Board discussed taking action on RA now, and handling the issue of adopting consistent criteria and policies separately. It was reiterated that SENA would be providing hydro-powered RA.

The Board discussed voting on the Resolution for SVP first. (Agenda item 3. b.)

b. Adopt a Resolution delegating authority to the Chief Executive Officer to execute a Confirmation Agreement and a Master Agreement with Silicon Valley Power for Resource Adequacy with terms consistent with those presented, in a form approved by the General Counsel and for a term ending December 31, 2017

Motion on 3.b. Made / Seconded: Lee / Pine

Motion passed 18-1 (Opposed: Bonilla. Absent: Stone, Silva, and Guingona)

The Board discussed SENA, the scandals various companies have had, and what criteria we should use to decide whether or not to do business with a company.

Motion on 3.a. Made / Seconded: Lee / Moody

Motion passed 14-4 (Opposed: Carlton, Penrose, Gupta, and Bonilla. Abstain: Yost. Absent: Stone, Silva, and Guingona)

The Board discussed requesting the Executive Committee establish an ad hoc committee to consider creating of a Code of Conduct by which to measure any company that PCEA is considering doing business with.

Public comment:

Mark Roest, SeaWave Battery, Inc.
Landis Martilla, IBEW Local 1245

4. MARKETING AND OUTREACH

Dan Lieberman presented information on community workshops, ad campaigns, and volunteers doing business outreach. The information is included in the Presentation Slides that will be posted on the PCEA website.

5. CITIZEN'S ADVISORY COMMITTEE UPDATE

- a. Request approval of Citizens Advisory Committee (CAC) Extension and Meeting Schedule for 2016.

The Board discussed extending the CAC meetings through calendar year 2016, changing the meeting date to the Thursday before the Board meeting starting October 2016 so the CAC can provide input on the Board agenda, and adding the CAC as a standing item on the Board agenda so a CAC member can make a report to the Board.

Motion Made / Seconded: Yost / Bain

Motion passed unanimously 19-0 (Absent: Stone, Silva, and Guingona)

Public comment:

Diane Bailey, MenloSpark

- b. Provide Direction on Future Role and Membership of CAC

The Board discussed the current composition of the CAC, the definition of "Citizens Advisory", and whether or not stakeholders or representatives from the energy industry should be included. The Board discussed doing outreach to citizens, setting up an interview process, and establishing guidelines for selection criteria for CAC membership. Chair Pine suggested having the Executive Committee report back to the Board on the role of the CAC.

6. REGULATORY UPDATE

Steve McCarty from Lean Energy discussed PG&E's Diablo Canyon Power Plant closure application. Forty parties filed comments or protests. He also discussed PG&E's 2015 ERRRA Forecast Application, Integrated Resource Planning (IRP), and SDG&E's request to establish a Marketing Affiliate.

7. CORRECTED RATES

Jan Pepper—Chief Executive Officer— explained that she was notified of a minor error in the calculation of two rates. She requested approval of two corrected rate calculations and the rate schedule that was updated to reflect those corrections.

Motion Made / Seconded: Yost / Penrose

Motion passed unanimously 19-0 (Absent: Stone, Silva, and Guingona)

8. BOARD MEMBERS' REPORTS

None

CLOSED SESSION

9. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: 800 El Camino Real, Menlo Park

Agency Negotiators: Jan Pepper, David Silverman, and Nirit Eriksson

Negotiating Party: Longitude Capital Management Co.

Under Negotiation: price and terms of usage

CLOSED SESSION REPORT

No reportable actions were taken.

ADJOURNMENT

Meeting was adjourned.

Chair

Attest:

Secretary



PENINSULA CLEAN ENERGY
JPA Board Correspondence
General Counsel

DATE: October 20, 2016
BOARD MEETING DATE: October 27, 2016
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable PCE Joint Powers Board

FROM: John C. Beiers, County Counsel/General Counsel
David A. Silberman, Chief Deputy County Counsel/General Counsel

SUBJECT: Approve Three Agreements Between the Peninsula Clean Energy Authority and (1) Keyes & Fox; (2) Davis, Wright & Tremaine; and (3) Winston & Strawn for Provision of Legal Services

RECOMMENDATION:

Adopt Three Resolutions authorizing the General Counsel to execute agreements with:

- (1) Keyes & Fox in an amount not to exceed \$100,000 for legal services
- (2) Davis, Wright & Tremaine not to exceed \$100,000 for legal services
- (3) Winston & Strawn not to exceed \$100,000 for legal services

BACKGROUND:

The County Counsel's Office provides legal services to the Peninsula Clean Energy (PCE) Authority pursuant to a contract approved by the Board March 24, 2016.

Pursuant to that agreement, the County Counsel 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 on 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. The PCE Board in August

approved the retention of Troutman Sanders to provide assistance in negotiating PCE's first power purchase agreements and creating PCE's "multi-party lockbox". Approximately \$70,000 remains available pursuant to that agreement.

Further, PCE operations can be dynamic, requiring legal assistance with relatively short notice to respond to developments in proceedings before the CPUC.

DISCUSSION:

To ensure that PCE is ready in the event that it requires outside legal assistance, the General Counsel and CEO began identifying in July those firms that could supplement the County Counsel's Office's legal work in areas of specialty. It did so by speaking with each of the existing Community Choice Aggregation Programs as well as PCE's consultants. From those conversations, Tim Lindl at Keyes & Fox, Vid Prabhakaran at Davis, Wright & Tremaine, Joe Karp from Winston & Strawn (among others) were identified as attorneys who were well-qualified to assist PCE.

In July and August, the General Counsel and CEO met in person with groups of lawyers from each firm to discuss their qualifications and confirmed that each firm was willing and able to represent PCE. Please find attached biographies of the lawyers who would likely be performing the work in the event the Board approves retention agreements with the firms.

Each firm has attorneys with significant experience in the areas of both regulatory litigation and power purchase agreement negotiation. General Counsel and the CEO believe that PCE benefits from having the flexibility to work with each and all of the firms, as each brings slightly different strengths to the table at varying costs. Further, the General Counsel and CEO believe that expanding the landscape of firms doing work for CCAs will benefit the community as a whole. In addition, it is possible that each firm could have conflicts that would prevent them from working with PCE on particular matters and/or be unavailable to provide services in situations where assistance was necessary with little or no notice.

Accordingly, in September and October the General Counsel confirmed that each firm would be open to an open-ended retention agreement, recognizing that PCE would be establishing similar relationships with multiple firms and then negotiated retention agreements with each. These agreements do not obligate PCE to expend any particular sum of money on legal services. They simply provide a framework to access to those services as they become necessary.

It is of note that on October 7th, the County Counsel's Office entered into a separate retention agreement (not to exceed \$24,000) with Winston & Strawn to authorize it to assist PCE with the competitive process for renewable energy PCE released last week.

RESOLUTION NO. _____

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

* * * * *

**RESOLUTION AUTHORIZING GENERAL COUNSEL TO EXECUTE AN
AGREEMENT WITH KEYES & FOX IN AN AMOUNT NOT TO EXCEED \$100,000
FOR PROVISION OF LEGAL SERVICES**

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

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

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

WHEREAS, the San Mateo County Counsel'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 has determined it may be necessary to seek outside legal services related to negotiation of power purchase agreements and litigating regulatory proceedings before the California Public Utilities Commission and seeks authority to retain Keyes & Fox on behalf of Peninsula Clean Energy for that

purpose and is now asking the Board to execute a retention agreement not to exceed \$100,000; and

WHEREAS, a form of such agreement has been provided to the Board for its review and approval, reference to which should be made for further particulars.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the General Counsel of Peninsula Clean Energy is hereby authorized to execute the Agreement for legal services with Keyes & Fox in an amount not to exceed \$100,000.

* * * * *

[CCO-113499]

October 5, 2016

Jan Pepper
David Silberman
San Mateo County Counsel's Office
400 County Center, Sixth Floor
Redwood City, California 94063

Re: Engagement Letter – Peninsula Clean Energy Authority

Dear Ms. Pepper and Mr. Silberman,

We are pleased Peninsula Clean Energy Authority (“PCE”) has decided to retain Keyes & Fox LLP (“Keyes & Fox”) to represent PCE (a) in future regulatory proceedings at the California Public Utilities Commission we both mutually agree to undertake and (b) to address other legal issues we both mutually agree to undertake ((a) and (b) referred to collectively herein as “Legal Services”). We thank you for this opportunity to work on your behalf.

This letter describes the basis of the attorney-client relationship between Keyes & Fox and PCE, along with an explanation of how Keyes & Fox will bill for its Legal Services. We believe that it is beneficial to the attorney-client relationship to develop a clear understanding of our billing and engagement policies upfront.

1. Scope of Keyes & Fox’s Representation

Pursuant to this engagement letter, Keyes & Fox agrees to represent PCE as its client with regard to the Legal Services described above. Keyes & Fox will do its utmost to serve PCE effectively, provide Legal Services in an efficient manner, and respond promptly to PCE’s inquiries.

We have run a conflicts check as it relates to the proposed Legal Services, and we have not found any direct conflicts with undertaking them. If a conflict arises that may impact our ability to provide PCE with effective representation, we will promptly bring that conflict to PCE’s attention. If you are concerned about any relationship we might have with particular companies, organizations or individuals, please bring those concerns to our attention.

Keyes & Fox will coordinate its projects with David Silberman, as the designated representative of PCE, or with whomever Mr. Silberman may specifically delegate that authority. Subject to the limitation(s) contained in Section 3(a), *infra*, we understand that Mr. Silberman has the authority to make all decisions on behalf of PCE in connection with the Legal Services proposed, and we are relying on that understanding.

2. Confidentiality

Generally, it is in PCE's interest to preserve confidentiality of all communications with Keyes & Fox. If PCE discloses any of our communications, it jeopardizes the privileged nature of the communications, so we believe it is advisable that PCE take care not to disclose privileged information to third parties.

3. Fees, Expenses and Invoicing

By signing this engagement letter, PCE agrees to pay Keyes & Fox for time and out-of-pocket expenses according to the terms set forth below.

a. Professional fees

Keyes & Fox will keep an hourly total of any time spent on PCE's matters. Work will be performed at hourly rates according to the rates set forth in Attachment A to this engagement letter, which is incorporated by reference herein.

It is Keyes & Fox's policy to adjust hourly rates for all attorneys and staff at the beginning of the calendar year. Historically, rate increases have been between 5-8% per year. Rates quoted in Attachment A are 2016 rates. Our firm's practice is to charge for travel time, as discussed in Attachment A.

Tim Lindl will be the lead Keyes & Fox attorney working with PCE in connection with the proposed Legal Services. Mr. Lindl may utilize the services of other Keyes & Fox attorneys and non-attorney professionals in connection with this matter. By agreeing to this engagement letter, PCE consents in writing to Mr. Lindl serving as the lead attorney in this matter and to Mr. Lindl's assignment of work on this matter to any of the other Keyes & Fox team members listed in Attachment A.

Of Counsel attorneys identified in the Rates for Attorneys provided in Attachment A are neither partners nor associates of Keyes & Fox. A portion of any legal fees billed by Keyes & Fox may be divided and paid to them. By agreeing to this engagement letter, you consent in writing to a division of fees with the firm's Of Counsel attorneys.

This letter authorizes payment of fees of up to \$100,000 in connection with the Legal Services. Unless otherwise agreed to in writing, PCE will not be obligated for fees in excess of this amount.

b. Expenses

Expenses may be incurred in performing legal services as part of your engagement. You agree that PCE will pay for all costs, disbursements, and expenses in addition to our hourly fees. Costs and expenses include messenger and other delivery fees, copying and reproduction costs, costs

for travel including mileage and parking, computerized legal research, and other similar expenses. Expenses will be billed at actual cost.

c. Invoices and payments

We invoice our clients monthly. Our invoices are due and payable within 15 days, unless other arrangements have been agreed to in writing in advance. Typically, invoices will list the matter worked on and provide information on the dates of service, time involved, Keyes & Fox team member responsible and activity undertaken. We will use our best efforts to respond to requests for special invoice formats. Any unpaid amounts after sixty (60) days will accrue interest at a rate of five percent (5%) per annum, provided that Keyes & Fox shall give PCE notice of Keyes & Fox's intent to charge such interest thirty (30) days before any accrual begins.

4. Termination of Keyes & Fox's Representation

Either PCE or Keyes & Fox may terminate Keyes & Fox's representation of PCE at any time and for any reason. At the time Keyes & Fox's representation of PCE concludes, all unpaid fees and costs for Keyes & Fox's Legal Services become due and payable. If at that time, PCE does not request the return of its file, Keyes & Fox will retain PCE's file for a period of three (3) years, after which Keyes & Fox may have the file destroyed.

5. Miscellaneous

This letter is the entire agreement between PCE and Keyes & Fox concerning the provision of Legal Services. This agreement and the scope of Legal Services provided under it may be amended from time to time by mutual agreement. California law will govern this agreement and any subsequent amendments.

Nothing in this agreement should be construed as a promise or guarantee about the outcome of any matter which Keyes & Fox is handling on PCE's behalf. Our comments about the outcome of PCE's matters are expressions of opinion only. If Keyes & Fox should provide PCE with an estimate of the fees and costs which may be incurred in connection with our representation of PCE, it is important that PCE understand and acknowledge that any such estimate is merely an estimate based on numerous assumptions, which may or may not prove to be correct and that any estimate is not a guarantee or agreement of what the maximum amount of fees and/or costs will be.

Generally, Keyes & Fox does not update our clients about changed circumstances or changes in the law after our work on a matter is completed. Please let Mr. Lindl know if PCE wants Keyes & Fox to assume this responsibility so that appropriate arrangements can be made.

6. Conclusion

If the terms of Keyes & Fox's representation of PCE as explained in this letter are satisfactory, please execute a copy of this letter as indicated and return it to me. Please feel free to contact me if you have any questions or concerns.

We look forward to working with you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Lindl', with a large, sweeping loop at the end.

Tim Lindl, Partner
Keyes & Fox LLP

KEYES&FOX^{LLP}

By signing this letter, PCE affirms that it understands and agrees to the terms set forth in this letter. This agreement will not take effect, and Keyes & Fox will have no obligation to provide Legal Services, until PCE returns a signed copy of this letter.

I have read the foregoing letter, understand it and agree to it on behalf of PCE.

By: _____

David Silberman, Chief Deputy County Counsel
Peninsula Clean Energy Authority

Date: _____

Attachment A: Keyes & Fox LLP 2016 Hourly Rate Sheet

Attorneys

Jason Keyes	365
Kevin Fox	365
Tim Lindl	265
James Van Nostrand*	375
Larry Chaset*	375
David Wooley*	340
Sam Harvey	210
Beren Argetsinger	200

* Denotes Of-Counsel

Non-Attorneys

Kelly Crandall	170
Rusty Haynes	155
Amanda Vanega	155
Justin Barnes	145
Laurel Passera	135
Chelsea Barnes	140
Phillip Jett	150
Ben Inskeep	120

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

Default Administrative Work Policy: For regulatory clients, reasonable time for filing and service is billed at regular billable rates.

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

Effective: January 4, 2016

**PARTNER****Contact Information**

- Phone: (510) 314-8385
- Email: tlindl@kfwlaw.com

California

436 14th Street Suite 1305
Oakland, California 94612

Admissions

- State Bar of California

TIM LINDL

Experience

Mr. Lindl develops, advances and defends regulatory policies empowering customers and communities to choose the source of their electricity. His practice centers on community choice aggregation and customer-based resources such as solar, energy storage and combined heat and power. His work includes administrative hearings, workshops and policymaking in a number of different state and federal jurisdictions. His experience, which put him in a hearing room at the California Public Utilities Commission three days after he passed the bar in 2009, gives Mr. Lindl a wide breadth of skills from complex regulatory proceedings to transactional work. Mr. Lindl works out of the firm's San Francisco Bay Area office.

Professional Honors and Activities

- Member of the CCPUC
- Member of the Energy Bar Association

Publications

- *Integrated Distribution Planning – A Proactive Approach for Accommodating High Penetrations of Distributed Generation Resources*, a concept paper for the Interstate Renewable Energy Council, Inc. (May 2013)
- *Letting Solar Shine: An Argument to Temper the Over-the-Fence Rule*, 36 Ecology L.Q. 4 (2009)
- *Forsake the Cubicle for the Crest – 1,650 Miles on the Pacific Crest Trail*, The News Marin, August 19, 2005.
- *Customer-Based Solutions for the Hawaii Electric System, Empowering consumers to solve the technical and policy challenges required to achieve Hawaii's clean energy future*, on behalf of The Alliance for Solar Choice (August 2014)

Education

- University of Wisconsin, Madison, BBA, Finance and International Business, 2003; completed major in Latin American, Caribbean and Iberian Studies, 2003
- UC Berkeley, School of Law (Boalt Hall), JD, 2009
- Inaugural Winner of the Energy and Climate Change Legal Writing Award

Timothy J. Lindl

EXPERIENCE

Partner – Keyes & Fox, LLP, San Francisco, CA

November 2011 - Present

- Litigate rate cases and rulemaking proceedings at Public Utility and Public Service Commissions in a number of different states on behalf of community choice aggregators (CCA) and renewable energy organizations and companies, including:
 - Advocating for fair treatment of CCA customers with respect to non-bypassable charges
 - Achieving equitable grandfathering policy for solar customers under California's revised net energy metering program
 - Defeating \$4.2 billion proposed utility merger in Hawaii that would have harmed customers' ability to choose the source and content of their energy
 - Setting the stage for, and assisting in, successful appeal of unjustified charges levied on solar customers in Wisconsin
- Publish reports on best practices in the electric utility industry, including:
 - *Integrated Distribution Planning – A Proactive Approach for Accommodating High Penetrations of Distributed Generation Resources*, a concept paper for the Interstate Renewable Energy Council, Inc. (May 2013)
 - *Customer-Based Solutions for the Hawaii Electric System, Empowering consumers to solve the technical and policy challenges required to achieve Hawaii's clean energy future*, on behalf of The Alliance for Solar Choice (August 2014)
- Draft legislation and legislative amendments regarding clean and renewable energy technologies
- Draft and analyze power purchase and related agreements

Associate – Alcantar & Kahl LLP, San Francisco, CA

September 2009 – November 2011

- Advocated on behalf of cogeneration resources at the California Public Utility Commission to ensure such resources were properly credited under the Resource Adequacy program
- Achieved special treatment for QF cogeneration resources under the California ISO Standard Capacity Product's availability penalties and must-offer obligation
- Drafted influential brief in the California Public Utility Commission Electric Vehicle Service Provider proceeding

Summer Associate – Thelen Reid LLP, San Francisco, CA

May 2008 – July 2008

Legal Intern – California Department of Justice, Oakland, CA

January 2008 – May 2008

Law Clerk – U.S. Department of Justice, San Francisco, CA

May 2007 – August 2007

EDUCATION

University of California, Berkeley, School of Law (Boalt Hall)

- JD, May 2009
- Inaugural Winner of the Energy and Climate Change Legal Writing Award, May 2009, for publication of *Letting Solar Shine: An Argument to Temper the Over-the-Fence Rule*, 36 Ecology L.Q. 4 (2009)

University of Wisconsin, Madison

- BBA Finance and International Business, December 2002 and June 2003, with Distinction
- Completed major in Latin American, Caribbean and Iberian Studies, June 2003

BAR ADMISSION – California, 2009

RESOLUTION NO. _____

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

* * * * *

**RESOLUTION AUTHORIZING GENERAL COUNSEL TO EXECUTE AN
AGREEMENT WITH DAVIS, WRIGHT & TREMAINE IN AN AMOUNT NOT TO
EXCEED \$100,000 FOR PROVISION OF LEGAL SERVICES**

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

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

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

WHEREAS, the San Mateo County Counsel'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 has determined it may be necessary to seek outside legal services related to negotiation of power purchase agreements and litigating regulatory proceedings before the California Public Utilities Commission and seeks authority to retain Davis, Wright & Tremaine on behalf of Peninsula Clean Energy

for that purpose and is now asking the Board to execute a retention agreement not to exceed \$100,000; and

WHEREAS, a form of such agreement has been provided to the Board for its review and approval, reference to which should be made for further particulars; and

WHEREAS, Davis, Wright & Tremaine has asked Peninsula Clean Energy to also execute a conflict waiver to address conflicts that might arise based on its relationships with other clients, reference to which should be made for further particulars.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the General Counsel of Peninsula Clean Energy is hereby authorized to execute the Agreement for legal services with Davis, Wright & Tremaine in an amount not to exceed \$100,000.

BE IT FURTHER RESOLVED that the General Counsel of Peninsula Clean Energy is hereby authorized to execute the conflict waiver.

* * * * *

[CCO-113499]

October 6, 2016

David Silberman
Peninsula Clean EnergyRe: Terms of Engagement

Dear Mr. Silberman:

Thank you for selecting Davis Wright Tremaine LLP to represent Peninsula Clean Energy ("PCE") in connection with any legal services necessary for the operation of Peninsula Clean energy. This letter sets forth the terms of our representation of PCE in this matter.

PCE is the only entity we will be representing pursuant to this agreement. Unless we agree otherwise, we will not be representing any related or affiliated entity or person, nor any family member, parent corporation or entity, subsidiary, or affiliated corporation or entity, whether or not any such related entity or person is operationally integrated with the PCE.

We want to make sure that we have explained to our clients the essential understanding of our relationship at the outset. Therefore, please review this agreement before signing below and return the signature page to me. If you have any questions, please do not hesitate to contact me immediately. If you wish, you may have another attorney review this agreement before signing it.

Our firm will provide the services requested, keep you informed of developments and progress in the matter, and respond promptly to your inquiries. You agree to be truthful and cooperative and apprise us of all developments relating to your needs and our services, to be available to attend all requested appearances and depositions, settlement negotiations or court appearances, to attend meetings when requested by us, and to keep us apprised of any change in address or telephone numbers.

Fees and Costs; Billing and Payment

PCE agrees to pay the attorneys' fees, costs and other charges that it incurs under this agreement. Our fees for services will be based on the hourly rates of the lawyers and legal assistants providing the services. As a courtesy to all of our municipal clients, we provide the following discounted current hourly billing rates of the lawyers we expect will assist in these matters to PCE are as follows: Vidhya Prabhakaran, partner (\$550 per hour); Patrick Ferguson, partner (\$525 per hour); Steven Greenwald, partner (\$800 per hour); Katie Jorrie, associate

(\$375 per hour), Emily Sangi, associate (\$375 per hour), and Judy Pau, paralegal (\$290 per hour). We may use other lawyers as the matter evolves. We will also use legal assistants where appropriate. We will advise you of the rates at the time other lawyers or legal assistants are assigned any tasks. All our hourly rates will also be displayed in our billing invoices you receive. We charge in increments of one-tenth of an hour, rounded off for each particular activity to the nearest one-tenth of an hour. Our billing rates are reviewed on a periodic basis, generally at year end, and we will inform you of any adjustments.

We charge our clients for out-of-pocket expenses incurred on your behalf, but also for other ancillary services provided. Examples include court filing fees, expert fees and expenses, travel expenses, in-house messenger services, facsimile and photocopy services, computerized legal research, discovery data handling and hosting, and litigation services. We will advance routine expenses for individual items that cost less than \$1,000 but will refer items that cost more directly to you for payment. While our charges for these services are measured by use, they do not, in all instances, reflect our actual out-of-pocket costs. For many of these items, the true cost of providing the service is difficult to establish. While we are constantly striving to maintain these charges at rates which are the same as or lower than those maintained by others in our markets, in some instances, the amounts charged exceed the actual costs to the firm. If you have any questions about the basis for any of these expenses, please let us know.

We will provide bills to you on a monthly basis and ask that they be paid in full within 30 days after you receive them. We may bill you for interest on any amount that is not paid 30 days after it is past due. Interest will accrue at the maximum amount permitted by state law, but not exceeding one percent per month. We ask you to acknowledge that our firm is entitled to a contractual lien, pursuant to California Civil Code § 2881, on your claims or causes of action and all proceeds of such claims or causes of action to secure payment of our bills. In addition, if you are depositing a retainer with us, you hereby grant us a security interest in the retainer and in any other funds we hold on your behalf to secure your obligations to us under this agreement.

Do Not Exceed Amount

PCE and we agree that by executing this agreement PCE is authorizing the incurrence of an amount of fees and costs not to exceed \$100,000. When we become aware of a reasonable likelihood that fees and/or costs under this agreement will exceed \$100,000, we will notify PCE before we incur costs or fees exceeding that amount.

Termination of Services

You may terminate our representation at any time, with or without cause. Our right or obligation to terminate our representation is subject to the rules of professional responsibility for the applicable jurisdiction in which we practice, which list several types of conduct or circumstances that require or permit us to withdraw from a representation, including, for example, nonpayment of fees or costs, misrepresentation or failure to disclose material facts, failure to cooperate, taking action contrary to our advice and conflict of interest with another client. We will try to identify in advance and discuss with you any situation which may lead to

our withdrawal and if we decide to withdraw, we usually give written notice of our withdrawal. In addition, you agree that our representation of you will terminate automatically if the contact information you have provided us becomes obsolete and we are unable to communicate with you or obtain direction from you regarding how to proceed on your behalf. If this happens, we will have no further obligation to act on your behalf even if that means deadlines may be missed which may adversely affect your interests.

Unless previously terminated by you or us, the attorney-client relationship will be considered terminated upon our sending you the invoice that describes the final legal services for all matters you have retained us to perform. You will not thereafter be considered a current client because you remain on a firm mailing list or have appointed an affiliate of the firm to serve as your registered agent or because the firm retains possession of certain of your papers or other property received in connection with the prior engagement or is identified as a required recipient of notices under a contract to which you are a party. If you later retain us to perform further or additional legal services, our attorney-client relationship will be revived subject to our standard terms of engagement in effect at that time.

Upon your request after the earlier of the termination of the attorney-client relationship or conclusion of the matter, we will return to you any original documents and other property you provided to the firm in connection with the matter. If you do not request your documents, unless you make written arrangements with us to the contrary (such as to retain your original will or other documents in our vault or otherwise), we reserve the right to destroy or otherwise dispose of them for various reasons, including the minimization of unnecessary storage expenses, or for no reason, without further notice to you at any time after ten years following the date of the final invoice to you with respect to the matter.

The remainder of the file pertaining to the matter will be retained by the firm and will remain its property. If, upon your request, we agree to provide you with copies of certain documents from our file pertaining to the matter, you agree to pay the copying costs.

You agree that for various reasons, including the minimization of unnecessary storage expenses, or for no reason, we may destroy or otherwise dispose of the firm's file at any time after ten years following the date of the final invoice to you with respect to the matter.

Postengagement Matters

You are engaging the firm to provide ongoing assistance with regulatory advocacy, contract negotiation and drafting, and other legal services necessary for the operation of Peninsula Clean Energy. However, as part of that ongoing assistance, we will mutually agree upon specific discrete matters and provide services in connection with that matter. After completion of the matter, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you engage us after completion of the matter to provide additional legal advice on issues arising from the matter, the firm has no continuing obligation to advise you with respect to future legal developments.

Disputes Over Our Services

If you disagree with any of our bills, please raise the issue with your billing attorney, who will attempt to resolve the issue to your satisfaction. If the dispute cannot be resolved by discussions with us, you have the right to request arbitration pursuant to California Business & Professions Code § 6201 to address your concerns. In addition, you agree that we also have a right to request arbitration of a fee dispute pursuant to the same provision of law.

Conflicts

To assist in avoiding representing parties with conflicts of interest, we maintain a computerized conflict of interest index. The firm will not represent any party with an interest that may be adverse to that of a person or entity included in the index without an examination to determine whether a conflict of interest would actually be created. To allow us to perform a conflicts check, you represent that you have identified for us all persons or entities that are or may become involved in this matter, including all persons and entities that are affiliated with you and the other involved or potentially involved parties (such as parent corporations, subsidiaries and other affiliates, officers, directors and principals). You also agree that you will promptly notify us if you become aware of any other person or entities that are or may become involved in this matter.

Our firm provides a wide array of legal services, including administrative, legislative, litigation, and transactional services, to many other companies and individuals around the world. It is possible that one or more of our present or future clients will have disputes or transactions with you during the course of our representation of you or that one or more of them will ask us to advocate a change in law or policy that might have a direct or indirect adverse impact upon your interests. You agree that we may represent any existing or new clients in any matter, including litigation, that is not substantially related to our work for you, even if the interests of such clients in those matters are directly adverse to you or a policy we advocate might have a direct or indirect adverse impact upon your interests. We agree, however, that your prospective consent to conflicting representation set forth in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained confidential information that, if known to our other client, could be used in the matter adverse to you and to your material disadvantage and we have not taken steps to screen such information from the lawyers representing the other client in the matter adverse to you prior to such lawyers learning any such information. You hereby consent to the firm taking any reasonable measures it deems appropriate to protect your confidential information from such disclosure or use, including the creation of a formal "ethical screen" in accordance with the firm's internal procedures for implementing such measures. Your alternative to giving this consent to our future representation of other clients in unrelated adverse matters is to retain any other counsel of your choosing to represent you in this matter. This agreement also incorporates in its entirety the attached Conflicts Waiver Letter.

Consent to Electronic Communications

In order to increase our efficiency and responsiveness, we endeavor to use state of the art communication devices (e.g. e-mail, document transfer by computer, wireless telephones, facsimile transfer and other devices which may develop in the future). The use of such devices under current technology may place your confidences and privileges at risk. However, we believe that the efficiencies involved in the use of these devices outweigh the risk of accidental disclosure. By agreeing to these terms you consent to the use of these electronic communication devices.

Consent to In-House Attorney-Client Privilege

From time to time issues arise that raise questions as to our duties under the professional conduct rules that apply to lawyers. These might include, for example, conflict of interest issues, and could even include issues raised because of a dispute between us and a client over the handling of a matter. Under normal circumstances when such issues arise we seek the advice of our General Counsel or a member of the firm's Quality Assurance Committee, each of whom is knowledgeable, and has been given the responsibility within the firm for providing advice, in matters involving professional conduct. Historically, we have considered such consultations to be attorney-client privileged conversations between firm personnel and the counsel for the firm. In recent years, however, there have been a few court decisions indicating that under some circumstances such conversations involve a conflict of interest between the client and the firm and that our consultation with the firm's counsel may not be privileged, unless we either withdraw from the representation of the client or obtain the client's consent to consult with the firm's counsel.

We believe that it is in our clients' interest, as well as the firm's interest, that, in the event legal ethics or related issues arise during a representation, we are able to obtain appropriate advice promptly regarding our obligations. Accordingly, you agree that if we determine in our own discretion during the course of the representation that it is appropriate to consult with our firm counsel (either the firm's internal counsel or, if we choose, outside counsel) we have your consent to do so and that our contemporaneous representation of you shall not result in a waiver or invalidation of any attorney-client privilege that the firm has to protect the confidentiality of our communications with counsel.

Related Proceedings

If we are asked to testify as a result of our representation of you; or if we must defend the confidentiality of our communications in any proceeding, you agree to pay us for any resulting costs, including for our time, calculated at the hourly rate for the particular individuals involved, even if our representation of you has terminated.

Trust Funds

Our firm holds client trust funds at Citibank, One Sansome Street, 24th Floor, San Francisco, California 94104.

No Guarantee of Outcome

Nothing in this agreement should be construed as a guarantee or promise about the outcome of your dispute or matter and the firm makes no such guarantee or promise. If a particular outcome or result is not obtained, your obligations under this agreement do not terminate.

We are pleased that you are entrusting your work to us, and will do our best to provide you with prompt, high-quality legal counsel. If you ever feel we are not meeting this commitment or have any questions about our services, please call me, the partner in charge of our San Francisco office, or our managing partner, Jeffrey P. Gray at (415) 276-6500.

Very truly yours,

DAVIS WRIGHT TREMAINE LLP



Vidhya Prabhakaran

Reviewed and agreed to:

Peninsula Clean Energy

By: _____

Title: _____

Dated: _____

Enclosure (duplicate copy of this letter)

cc: Central Records

September 30, 2016

David Silberman
Peninsula Clean Energy

Re: Conflicts Waiver Letter between Peninsula Clean Energy
and Davis Wright Tremaine LLP

Dear Mr. Silberman:

As you know, Davis Wright Tremaine is a large, full-service law firm and represents many clients with interests in Peninsula Clean Energy (“PCE”). It is possible that, from time to time during the time we represent PCE, one of these clients might ask us to give them legal advice or represent it in a transaction, proceeding or dispute with, involving, or against PCE as to legal matters that are not substantially related to the energy matters on which we have been engaged to advise PCE. The categories of clients or the potential subject matter of such potential conflicts which are most likely to arise are:

Communications and Media Clients. We serve as outside counsel for many news media organizations and represent or have represented various Bay Area and national newspapers and magazines, newspaper publisher associations, and various local and national broadcast media in connection with, among other matters, news gathering and reporting activities, their right to access to public records and/or meetings, and newsrack ordinance matters. Any of these media or newspaper organizations may seek our assistance in obtaining access to PCE’s records and/or meetings and in publishing or broadcasting stories about PCE at any time, which could lead to disputes between PCE and the media involved, including litigation. These entities may similarly appear as amicus curiae in media and access matters directly adverse to the position of PCE.

Telecommunications and CATV Clients. Several of our telecommunications and cable television clients, from time to time, may challenge ordinances enacted by members of PCE that affect their business or may seek land use permits, franchise agreements or amendments thereto, pole attachment agreements or other licenses or approvals from or agreements with municipalities such as PCE. Each of these challenges, permits, agreements, licenses or approvals could include negotiations or disputes, including litigation, between the other client and members of PCE and, in any event, would create a conflict of interest between the other client and the member of PCE under CRPC Rule 3-310 of the Rules of Professional Conduct of the State Bar of California.

Clients with Real Estate, Land Use and Environmental Interests. We represent clients from time to time who engage in real estate transactions in California and also participate in administrative and judicial proceedings with respect to their uses of such real estate, which could from time to time involve members of PCE. Such clients frequently also ask us to represent them in connection with the presence, potential presence or remediation of hazardous substances on or under such real estate.

Energy Clients. We also have a very active energy law and transactional practice within California and throughout the United States. In particular, we have represented and continue to represent parties who develop, purchase, own and operate power plants; marketers who engage in wholesale and retail energy and natural gas transactions; large consumers and resellers of energy and natural gas, including direct access customers; municipal and other governmental utilities; and transit districts (collectively “Energy Clients”). We also represent parties making debt or equity investments (“Financing Clients”) in energy infrastructure projects (a “Financing Transaction”).

In many instances, one or more of our Energy Clients appear in multi-party regulatory proceedings before state or federal energy/environmental authorities in which PCE may also be a participant (“Regulatory Proceedings”). It is possible that the interests that we are advancing in one or more of these Regulatory Proceedings is sufficiently different from the interest that PCE may be advancing such that our representation of such Energy Client would be considered “adverse” to PCE. In addition, one or more of our Energy Clients or Financing Clients may be engaged in a commercial transaction (“Commercial Transaction”) with PCE or in a Financing Transaction in which PCE is a participant.

PCE accordingly waives any possible conflict between Davis Wright Tremaine’s current representations of Energy Clients in such Regulatory Proceedings and Commercial Transactions, and of Financing Clients in Financing Transactions; *provided* that such representation in such proceedings or transactions is not directly related to the proceeding or negotiations which are the subject of the representation by Davis Wright Tremaine encompassed by this Agreement.

It must be understood that Davis Wright Tremaine cannot undertake to represent PCE without assurance that PCE will not seek, on the basis of this engagement or any future engagement, to disqualify us from representing other clients, including those identified above, in any other matter, now or in the future, that is not substantially related to this engagement or any future engagement for PCE, including or with respect to the areas of potential disputes identified above, in any legal advice that might be adverse to the interests of PCE, any transactions, any alternative dispute resolution, administrative litigation, regulatory proceedings, and related appeals, or judicial proceeding, as long as a new engagement is not substantially related to work we are then doing or have done for PCE.

Accordingly, by countersigning this letter, PCE waives all present and future conflicts of interest concerning matters outside the scope of representation that is the subject of this engagement or any future engagement, including conflicts in transactional, regulatory, and litigation and other dispute resolution matters, and specifically including Davis Wright Tremaine's present and future representation of the clients identified above on all current or future matters unrelated to the engagement or any future engagement for PCE. PCE further agrees not to seek to disqualify DWT in, or assert a conflict with respect to, any such engagement, including in any potential alternative dispute resolution, administrative litigation, regulatory or other related judicial proceeding involving any such engagement that is not substantially related to this engagement or any future engagement for PCE.

Very Truly Yours,

Davis Wright Tremaine LLP



Vidhya Prabhakaran
Attorney

Approved on behalf of Peninsula Clean Energy



Patrick J. Ferguson

Partner

patrickferguson@dwt.com

San Francisco

T 415.276.6563

F 415.276.6599

Patrick Ferguson focuses on energy policy, project development, and energy-related transactions in California and throughout the western United States. He advises power producers, utilities, community choice aggregators, transmission developers, power marketers, and energy technology companies. His practice focuses on commercial contracting, dispute resolution, and regulatory policy involving the California Public Utilities Commission (CPUC), California Independent System Operator (CAISO), and the California Energy Commission (CEC).

Additional Qualifications

- Director, Regulatory Affairs, NaturEner USA, LLC, San Francisco, 2013-2014
- Associate, Latham & Watkins LLP, San Francisco, 2007-2013
- Summer Associate, Latham & Watkins LLP, San Francisco, 2006

Professional & Community Activities

- Board of Directors, Power Association of Northern California, present

EDUCATION

J.D., Columbia Law School, 2007

- Harlan Fiske Stone Scholar
- President, Environmental Law Society
- Advisor, Columbia University Earth Institute
- Staff Editor, Columbia Human Rights Law Review

B.S., B.B.A., Management Science, Georgetown University, McDonough School of Business, 2003, cum laude

- Dean's Citation for Academic and Extracurricular Excellence

RELATED PRACTICES

Energy

Energy Regulation & Litigation

California Public Utilities
Commission (CPUC)

Energy Transactions

Environmental & Natural
Resources

Renewable Energy

NextGen Tech

ADMITTED TO PRACTICE

California, 2007

U.S. District Court Northern
District of California, 2008

Supreme Court of California,
2008

U.S. District Court Eastern
District of Wisconsin, 2009



Vidhya Prabhakaran

Partner

vidhyaprabhakaran@dwt.com

San Francisco

T 415.276.6568

F 415.276.4868



Vidhya Prabhakaran is a California energy attorney focused on matters related to greenhouse gas reduction, ratemaking, safety, and procurement for a wide range of clients including investor-owned utilities, municipal utilities, community choice aggregators, energy service providers, independent power producers, large-scale renewable companies, energy storage companies, distributed energy resource companies, large energy consumers, and energy technology companies. Vid has substantial experience before the California Public Utilities Commission, the California Energy Commission, the California Air Resources Board, the California Independent System Operator, and the California Legislature working for clients in the energy industry as well as those in the transportation, telecommunications, and water industries.

Together with the other members of the DWT energy practice group, Vid assists clients with regulatory approvals, utility rate and certificate proceedings, acquisitions and dispositions of regulated assets, energy-related contracts, project finance, energy-related dispute resolution, and energy litigation.

Vid's clients include: Liberty Utilities (CalPeco Electric) LLC, South San Joaquin Irrigation District, the City of Long Beach, SolarCity Corporation, and Marin Clean Energy.

You can follow Vid on Twitter (@energyatty) as he tweets about energy and CPUC-related issues. You can also connect with him on LinkedIn or Facebook.

Additional Qualifications

- Associate, Goodin, MacBride, Squeri, Day & Lamprey, San Francisco, 2006-2009
- Summer Associate, Kelley Drye & Warren LLP, Washington, D.C., 2005

Professional & Community Activities

- Board Member, Conference of California Public Utilities Counsel; Co-chair and Co-founder, Young Utility Lawyers Committee, 2010-2012
- Board Member, Bar Association of San Francisco; Technology Committee Co-chair, 2008-2009; Equality Committee Co-Chair, 2012-2015
- Board Member, Yale Alumni Nonprofit Alliance
- Board Member, Justice & Diversity Center, Bar Association of San Francisco, 2013-2015; Executive Committee, 2015
- Board Member, South Asian Bar Association of Northern California, 2007-2009 and 2014-2016; President, 2015-2016
- Board Member, South Asian Americans Leading Together, 2011-2015, Treasurer, 2014-2015
- Co-chair, Minority Bar Coalition of Northern California, 2010-2012
- Board Member, Kearny Street Workshop, 2008-2010; President, 2010
- Board Member, Yale Club of San Francisco, 2008-2010; President, 2009-2010

Professional Recognition

- Listed as "Up and Coming" in Energy: State Regulation & Litigation (California) by Chambers USA, 2016

EDUCATION

**J.D., Georgetown University
Law Center, 2006**

- Clinic: Harrison Institute for Policy Law
- President, Student Bar Association
- Washington Law Reporters Prize
- Dean's Certificate
- Pro Bono Award

**B.A., Political Science, Yale
University, 2003**

- Student Body President

RELATED PRACTICES

Energy Regulation & Litigation

Climate Change

California Public Utilities
Commission (CPUC)

Energy Transactions

Energy Project Development &
Finance

Smart Grid

Renewable Energy

Electric Power

Telecommunications

Cleantech

Energy

Solar

Wind

NextGen Tech

ADMITTED TO PRACTICE

California, 2006

- Award of Merit, Bar Association of San Francisco, 2009 and 2012
- Pro Bono Leadership Award, Legal Services for Children, 2014
- Selected to "Northern California Rising Stars" in Energy & Natural Resources Law and Communications Law, Thomson Reuters, 2010-2016

RESOLUTION NO. _____

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

* * * * *

**RESOLUTION AUTHORIZING GENERAL COUNSEL TO EXECUTE AN
AGREEMENT WITH WINSTON & STRAWN IN AN AMOUNT NOT TO EXCEED
\$100,000 FOR PROVISION OF LEGAL SERVICES**

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

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

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

WHEREAS, the San Mateo County Counsel'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 has determined it may be necessary to seek outside legal services related to negotiation of power purchase agreements and litigating regulatory proceedings before the California Public Utilities Commission and seeks authority to retain Winston & Strawn on behalf of Peninsula Clean Energy for that

purpose and is now asking the Board to execute a retention agreement not to exceed \$100,000; and

WHEREAS, a form of such agreement has been provided to the Board for its review and approval, reference to which should be made for further particulars.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the General Counsel of Peninsula Clean Energy is hereby authorized to execute the Agreement for legal services with Winston & Strawn in an amount not to exceed \$100,000.

* * * * *

[CCO-113499]

JOSEPH M. KARP

Partner
Telephone: (415) 591-1529
Email: jkarp@winston.com

September 30, 2016

VIA E-MAIL

Peninsula Clean Energy
c/o David A. Silberman
Chief Deputy County Counsel
San Mateo County Counsel's Office
400 County Center, Sixth Floor
Redwood City, CA 94063

Re: Engagement Letter

Dear Mr. Silberman:

Thank you for selecting Winston & Strawn LLP to represent Peninsula Clean Energy in connection with energy regulatory advice regarding issues facing Community Choice Aggregators and potential power purchase transactions ("Energy Matter"). Our firm's policy at the outset of an engagement with a new client is to outline not only the nature of the engagement, but also the basis on which the firm will provide legal services and bill for them.

1. Nature of Engagement: For all matters which you may, from time to time, request our assistance, the firm's client will be Peninsula Clean Energy and not any parent, affiliates, subsidiaries, participants, members, customers, constituents, directors, officers, joint venture partners or employees of Peninsula Clean Energy. The scope of our engagement will be to provide advice in connection with energy regulatory issues facing Community Choice Aggregators and potential power purchase transactions. We have agreed that our present engagement is limited to performance of services related to this matter and other various matters which you may from time to time request our assistance and that our ability to provide advice on any particular project is subject to the clearance of any conflicts pursuant to Paragraph 8 below. You are engaging the firm to provide legal services in connection with a specific matter. After completion of the matter, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you actually engage us after the closing of this matter to provide additional advice on issues arising from the matter, the firm has no continuing obligation to advise you with respect to future legal developments.

2. Fees: Although I will be the attorney responsible for this engagement, portions of the work may be performed by other firm attorneys, paralegals, legal assistants and practice support personnel, as necessary. My current hourly rate is \$920.00. Our hourly rates for partners range from \$650 to \$1,395; for associates, from \$450 to \$725; and for paralegal and legal assistants, from \$170 to and practice support personnel, from \$140 to \$525. Our billing rates are subject to adjustment from time

to time, usually in January of each year. The parties agree that by executing this agreement Peninsula Clean Energy is authorizing the incurrence of an amount of fees and costs not to exceed \$100,000. When Winston & Strawn LLP becomes aware of a reasonable likelihood that fees and/or costs under this agreement will exceed \$100,000, it will notify Peninsula Clean Energy before it incurs costs or fees exceeding that amount.

3. Costs: In addition to our fees, our bills will include allocable charges for costs and expenses incurred in performing our services, such as printing and reproduction services, mail, messenger and delivery services, computerized research, travel (including mileage, parking, air or rail fare, lodging, meals, taxi or car rental), telephone, secretarial and support staff overtime (when necessitated by the client's work), court costs and filing fees and other litigation support services, such as document scanning, coding and printing. Unless other arrangements are made, certain expenses (such as expert witnesses' fees and court reporters' charges) will be billed directly to you and will not be our responsibility.

4. Billing Arrangements: Our statements for fees and expenses are typically rendered in a monthly statement, and unless other arrangements are made, payment in full is due within sixty days of your receipt of the statement. If you have any question concerning any statement, we ask that you raise it within that sixty-day period.

If we do not receive payment by the end of the sixty-day period following your receipt of our statement, we may charge a fee of 1% a month (subject to adjustment by us from time to time as indicated on our statements) on the unpaid balance of the statement from the invoice's date; provided that no such fee will be charged and unless we have provided at least seven days advance written notice.

5. Client Documents: We will maintain any necessary documents (including any electronic copies) relating to this matter in our client files. At the conclusion of the matter (or earlier, if appropriate), it is your obligation to advise us as to which, if any, of the documents in our files you wish us to make available to you. These documents will be delivered to you within a reasonable time after receipt of payment for outstanding fees and costs, subject to applicable rules of attorney conduct. We will retain any remaining documents in our files for a certain period of time, after which we will destroy them in accordance with our record retention program.

6. Identity of Client: For all matters which you may, from time to time request our assistance, Winston & Strawn LLP's client will be Peninsula Clean Energy and not any parent, affiliates, subsidiaries, participants, members, customers, constituents, directors, officers, joint venture partners or employees of Peninsula Clean Energy. This letter confirms that Peninsula Clean Energy acknowledges and agrees that it is a separate entity from its parent, affiliates, subsidiaries, participants, members, customers, constituents, directors, officers, joint venture partners or employees for conflicts of interest purposes and that our representation of Peninsula Clean Energy does not give rise to an attorney-client relationship for conflicts of interest purposes with any parent, affiliates, subsidiaries, participants, members, customers, constituents, directors, officers, joint venture partners or employees of Peninsula Clean Energy. Peninsula Clean Energy further acknowledges that Winston & Strawn LLP may have in the past represented, currently represent, or in the future represent, other clients whose interests are adverse to the parent, affiliates, subsidiaries, participants, members, customers, constituents, directors,

officers, joint venture partners or employees of Peninsula Clean Energy and that such representations by Winston & Strawn LLP will not give rise to a conflict of interest with Peninsula Clean Energy.

7. Advance Transactional and Litigation Waiver: As you know, Winston & Strawn LLP is a relatively large law firm and has in the past represented, currently represents and may in the future represent clients who may have been, currently are or may become adverse to Peninsula Clean Energy in litigation, transactions, or other matters (collectively, "Other Clients"). As a large firm, conflicts of interest are a major concern. Winston & Strawn LLP therefore cannot accept the representation of clients on matters of limited scope such as that proposed here without a corresponding waiver for litigation, transactions, or any other type of matters. Therefore, as a condition to Winston & Strawn LLP's undertaking to represent Peninsula Clean Energy in any matter, Peninsula Clean Energy agrees that this firm may continue to represent, and in the future may represent, the Other Clients in any matter, including but not limited to litigation, directly adverse to Peninsula Clean Energy, which is not the same as or substantially related to this matter (collectively, "Other Client Matters"), and hereby waive any conflict of interest relating to such representation of the Other Clients on the Other Client Matters.

We agree, however, that with respect to this matter, (i) sensitive, proprietary or other confidential information of a non-public nature concerning you acquired by us as a result of our representation of you will not be transmitted to our lawyers who may become involved in handling Other Clients Matters on behalf of Other Clients, and (ii) the lawyers of this firm with whom you have worked on the Energy Matter will not work on Other Client Matters for Other Clients.

8. Conflicts: In addition, our ability to represent Peninsula Clean Energy on any particular project within the scope of the Energy Matter is subject to our clearing any actual or potential conflicts of interest that may arise in connection with that potential project. For example, as we have discussed, we currently represent various renewable energy sellers in both regulatory and transactional matters, and may need to clear conflicts with any such client if any such client is adverse to Peninsula Clean Energy in connection with a particular project.

9. Client-Created Guidelines for Outside Counsel: To the extent that Peninsula Clean Energy has established its own legal retention agreement, billing policies and/or guidelines for outside counsel (collectively, the "Guidelines"), Peninsula Clean Energy agrees that the terms and conditions of this engagement letter will control unless Winston & Strawn LLP specifically agrees to the terms of the Guidelines in writing.

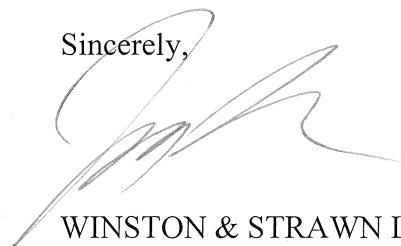
10. Termination of Representation: A client has the right at any time to terminate our services and representation upon written notice to the firm. Such termination shall not, however, relieve the client of the obligation to pay for all services already rendered, including work in progress and remaining incomplete at the time of termination, and to pay for all expenses incurred on behalf of the client through the date of termination.

We reserve the right to withdraw from our representation if the client fails to honor the terms of the engagement, the client fails to cooperate or follow our advice on a material matter, if our continued representation would be unlawful or unethical, or for any other reason permitted by the applicable ethics rules. In the event that we terminate the engagement, we will take such steps as are reasonably practicable to protect your interests in the above matter, and you agree on behalf of the client that it will take all steps necessary to free us of any obligation to perform further, including the execution of any documents necessary to perfect our withdrawal, and further that we will be entitled to be paid for all services rendered and costs or expenses incurred on behalf of the client through the date of withdrawal. If the client so requests, we will suggest to you possible successor counsel and provide it with whatever documents you have provided to us. If permission for withdrawal is required by a court, we will promptly apply for such permission, and you agree on behalf of the client to engage successor counsel to represent the client.

Please indicate your acceptance of the terms of this letter by signing and returning it to my attention. You may retain the enclosed copy for your files. Should you have any questions, please call me.

We appreciate the chance to be of service and look forward to working with you.

Sincerely,



WINSTON & STRAWN LLP

ACCEPTED AND AGREED to this

____ day of _____, 20____

By: _____

Its: _____



Joseph M. Karp

Chair, Energy, Project Development, and Project Finance Practice
San Francisco
+1 415-591-1529
JKarp@winston.com

Services	California Energy Regulatory, Electric Power Transactions, Energy & Environmental, Energy Industry Investigations & Litigation, Energy Project Development
Sectors	Electric Power & Utilities, Gas-Fired Generation, Renewables
Admissions	California
Education	Harvard Law School, JD 1989 State University of New York at Binghamton, BA 1986

Joseph Karp is chair of the firm's Energy, Project Development, and Project Finance Practice and a member of Winston & Strawn's Executive Committee. Mr. Karp focuses his practice on regulatory, transactional, and project development matters.

Mr. Karp has dealt with natural gas and electricity issues in the United States and internationally. His experience in these areas includes representing end users in retail gas and electricity transactions and representing electricity generators in connection with electricity sales, fuel supply, interconnection, transmission, and other areas. Mr. Karp also has represented clients in numerous electricity generation asset sale and project finance transactions, representing buyers, sellers, developers, and lenders. In the renewable energy area, Mr. Karp has represented developers and power purchasers in matters involving wind, solar, biomass, landfill gas, geothermal, and other technologies.

Mr. Karp regularly represents the California Wind Energy Association and the California Cogeneration Council in regulatory proceedings before the California Public Utilities Commission, involving natural gas unbundling, electric industry restructuring, and renewable portfolio standard issues. He also represents investor-owned water utilities before the California Public Utilities Commission.

Mr. Karp received a B.A. in Law and Society from State University of New York at Binghamton, where he received the Foundation Award for Academic Excellence and was a member of Phi Beta Kappa, in 1986. He received a J.D., *cum laude*, from Harvard Law School in 1989.



Honors & Awards

Mr. Karp is regularly included in *Chambers USA*, *Northern California Super Lawyers*, *The Best Lawyers in America*, *The Legal 500*, and *Who's Who Legal Directory* (energy). Specifically, from 2012-2016 *Chambers USA* lists Mr. Karp for his work in California Energy: State Regulatory & Litigation and nationally in Projects. His clients describe him as a "top-rate" lawyer and a "real key player" in the regulatory space (*Chambers USA* 2016). From 2010-2012, *Chambers Global* ranked him as a leading individual in renewables and alternative energy projects. In the 2016 edition of the *Legal 500*, Mr. Karp was recognized for his regulatory work in Energy Transactions: Conventional Power; Energy: Regulatory; and Energy: Renewable/Alternative. In March 2011, Mr. Karp was profiled in the *Daily Journal's* first ever list of the top 25 clean tech lawyers. In providing outstanding service to the electric and gas industry, *Public Utilities Fortnightly* named Mr. Karp one of "Fortnightly's Top Utility Lawyers of 2011." He is also included in the *San Francisco Chronicle's* "Top Attorneys of 2011." In 2007, Mr. Karp was named one of the *Daily Journal's* "Top 100 Lawyers" in California.

Activities

Mr. Karp is a member of the American Bar Association's Energy and Natural Resource Section.



Thomas W. Solomon

Associate
San Francisco
+1 415-591-6809
TSolomon@winston.com

Services	California Energy Regulatory, Electric Power Transactions, Energy & Environmental, Energy Project Development
Admissions	California
Education	Georgetown University, JD 2008 University of California - San Diego, BS 2001

Thomas Solomon is an associate in the firm's San Francisco office who focuses his practice on transactional and regulatory matters in the energy industry.

Mr. Solomon represents developers and owners of natural gas-fired, wind, solar, biomass, and geothermal electric generating facilities in the negotiation of power purchase agreements, master trading agreements, renewable energy credit purchase and sale agreements, interconnection agreements, transmission services agreements, and scheduling coordinator services agreements. He has also assisted conventional and renewable generation owners with the negotiation of power purchase agreement amendments to address changes in market design and regulatory structure, including changes required to address the California Independent System Operator's (CAISO) Market Redesign and Technology Upgrade (MRTU).

Mr. Solomon also represents developers and industry associations in regulatory proceedings before the California Public Utilities Commission in matters relating to electric industry restructuring, transmission development, energy and capacity procurement, and renewable portfolio standard issues.

Prior to attending law school, Mr. Solomon worked for an electric utility. His responsibilities included short-term resource planning and portfolio optimization, electric power trading, natural gas procurement, implementation and refinement of an energy trading risk management program, and representation of his organization at various industry fora, including the Western Electricity Coordinating Council Market Interface Committee.

Mr. Solomon received a B.S., with distinction, in Management Science from the University of California, San Diego in 2001 and a J.D. in 2008 from Georgetown University Law Center.



Honors & Awards

Mr. Solomon was named a Northern California “Rising Star” by *Super Lawyers* magazine in 2013, 2014, and 2015.

Activities

Mr. Solomon is a member of the Energy Bar Association, Power Association of Northern California, Conference of California Public Utility Counsel, and the American Bar Association.

Publications & Speaking Engagements

Mr. Solomon’s presentations include:

- “Managing Intermittency - Various Approaches in the Western U.S.,” Solar Electric Power Association webinar; and
- Panelist on power purchase agreements at the “Developing Wind Power Projects in California” conference in Marina del Ray, Calif.
- Panelist on interconnection agreements at the “Implementation of Renewable Power Plants in California” conference in San Francisco, Calif.

Mr. Solomon’s publications include:

- “Transmission Providers Face Intermittency,” *Solar Industry* (August 2009) (with Jerry Bloom).



PENINSULA CLEAN ENERGY
JPA Board Correspondence
General Counsel

DATE: October 19, 2016
BOARD MEETING DATE: October 27, 2016
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable PCE Joint Powers Board

FROM: John C. Beiers, County Counsel/General Counsel
David A. Silberman, Chief Deputy County Counsel/General Counsel

SUBJECT: Resolution authorizing Chief Executive Officer to enter into contracts with Union Bank, N.A.

RECOMMENDATION:

Review and approve Resolution authorizing the Chief Executive Officer of Peninsula Clean Energy Authority, pursuant to California Government Code Section 53649, to enter into any contract with Union Bank, N.A. relating to any deposit, which in his or her judgment is to the public advantage.

BACKGROUND:

The County of San Mateo has been providing banking support for PCE since its inception, including designating a trust account within the County's accounts for PCE's funds. Under section 3.9.3 of the PCE JPA agreement, the San Mateo County Treasurer is the Treasurer for the Authority. The Treasurer's duties include acting as the depository of the Authority and has custody of all of the money of the Authority. Section 5.2.1 of the JPA agreement states that the funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with another entity. Section 5.2.2 of the JPA Agreement says that the board will contract with a CPA to make an annual audit of the accounts and records of the Authority. Section 5.2.3 of the JPA Agreement says that expenditures will be made in accordance with the approved budget and with the approval of any officer authorized by the Board.

PCE has retained Maher Accountancy to provide assistance in setting up PCE's financial information systems, establishing proper internal controls and segregation of

duties, and configuring the general ledger. Maher is providing operational assistance to maintain the general ledger, post receipts and expenditures, manage accounts payable, and provide regular financial statements, among other duties.

Maher advised PCE to open a bank account for PCE's operational banking needs. The County Treasurer currently works with Union Bank as the County's bank, and it was suggested that PCE open the account at Union Bank. PCE has opened an operating account at Union Bank for everyday transactions and a reserve account for holding accumulated funds. PCE's CEO is the designated signer for expenditures from these accounts at this time, until a finance manager is hired.

DISCUSSION:

PCE's retained accounting firm, Maher Accountancy, has provided advice and assistance regarding opening an account with Union Bank. One of Union Bank's requirements to open an account is that a Public Entity Resolution be passed by PCE's governing board, authorizing a designated PCE officer to enter into contracts with the bank. Accordingly, such a resolution, in a form provided by Union Bank and reviewed by PCE General Counsel, is presented for your review and approval.



PUBLIC ENTITY RESOLUTION

California Government Code 53679 stipulates that money not under control of the treasurer but belonging to a local agency and under the control of any of its officers or employees other than the treasurer may deposit funds as active deposits or inactive deposits.

For deposits in excess of the amount insured under any federal law, a contract in accordance with Section 53649 is required.

It is resolved that the officer now or subsequently holding the position of

Chief Executive Officer

Peninsula Clean Energy Authority

is authorized by the Governing Board under California Government Code 53649 to enter into any contract with Union Bank, N.A. relating to any deposit, which in his or her judgment is to the public advantage. Contracting requirements could include:

- Establish bank accounts and services.
- Sign, or change in writing, agreements with the Bank regarding the Public Entity's bank deposit relationship.
- Specify in writing to the Bank the individuals who are authorized in the name of and on behalf of the Public Entity to:
 - Withdraw funds from any of the Public Entity's banking accounts on the Public Entity's checks or orders.
 - Endorse and deliver to the Bank, for any purposes, and in any amount, negotiable or non-negotiable items of any kind, and owned by, or held by, or payable to the Public Entity.
 - Send, review, and/or authorize wire and electronic transfers of funds from the Public Entity accounts. Such authority may be exercised by such authorized individual acting alone, regardless of any multiple signature requirements otherwise applicable to the accounts.
 - Otherwise access the Public Entity's deposit accounts.

This authority has been granted by the Governing Board and shall remain in effect until the Bank receives written notice of revocation at the Office where the Public Entity's banking relationship is maintained.

CERTIFICATION

I, Anne Bartoletti, Clerk to the Governing Board of the above referenced Public Entity, do hereby certify that the foregoing is a full, true, and correct copy of a resolution passed by the Governing Board on October 27th of 2016, and the resolution has not been revoked or amended.

CLERK TO THE GOVERNING BOARD	SIGNATURE	DATE
	X	



**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: October 19, 2016

BOARD MEETING DATE: October 27, 2016

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

SUBJECT: Review and Adopt Policies Regarding Risk Management for CRRs and Information Technology / Security

RECOMMENDATION: Adopt Policy 7, Risk Management Policy for CRRs (Congestion Revenue Rights) and Policy 8, Information Technology / Security

BACKGROUND:

Policy 7: Peninsula Clean Energy will be contracting for different sources of power throughout California. Congestion Revenue Rights provide a means for reserving space on the transmission lines for transporting power that may be in a different part of the state to PCE customers here in northern California and San Mateo County. At times, there may be requests for more power to flow in a certain direction on the transmission lines than there is capacity causing congestion. As a result of this congestion, the cost to transport power from one location to another will increase. The California Independent System Operator (CAISO) allocates CRRs to participants in the market to protect against these congestion costs. In order to be allocated CRRs by the CAISO, the CAISO requires that entities adopt a risk management policy that clearly states how participants in this market will manage the credit risk associated with the financial settlement of CRR transactions.

Policy 8: Peninsula Clean Energy utilizes information technology to support all of our business activities. Ensuring that information is complete, accurate, confidential, and available for authorized business activities is critical.

DISCUSSION:

Policy on Risk Management for Congestion Revenue Rights (CRRs)

Direct Energy, PCE's scheduling coordinator, will execute and manage all CRR transactions on behalf of PCE. However, in order to have CRRs allocated to PCE, PCE is required by the CAISO to adopt this risk management policy. Both Marin Clean Energy (MCE) and Sonoma Clean Power (SCP) have adopted Risk Management Policies for CRRs. The policy proposed by PCE is very similar to the policies that both MCE and SCP have adopted.

Policy on Information Technology/Security

The attached policy is to promote sound practices regarding information technology and security.

FISCAL IMPACT:

Adopting Policy 7 will allow PCE to move forward with meeting the requirements of the CAISO to receive an allocation of CRRs through Direct Energy, and mitigate potential congestion costs in the procurement and delivery of power for PCE's customers.

Implementing Policy 8 may involve some hardware, software, and vendor costs, and may also yield savings. The exact fiscal impact is difficult to quantify at this time.

ATTACHMENTS

PCE Policy 7: Risk Management Procedures and Controls for Transactions in the California Independent System Operator Markets

PCE Policy 8: Information Technology/Security



Policy Number: 7

Adoption Date:

Subject: Risk Management Procedures and Controls for Transactions in the California Independent System Operator Markets

Policy:

1. Introduction

This policy sets forth the risk management policies related to PCE's transactions in the California Independent System Operator (CAISO) markets. The CAISO markets in which PCE participates and to which these policies apply include the following:

- Congestion Revenue Rights

2. Risk Exposure and Controls

PCE uses Congestion Revenue Rights (CRRs) for the exclusive purpose of hedging congestion costs associated with serving its customer load. PCE participates in the CAISO CRR allocation process to obtain CRRs that protect against congestion costs that may arise between its contractual energy supply points and its default load aggregation point. CRR positions are limited to the volume of PCE's anticipated energy schedules for the respective path and time period associated with the CRR. All CRR transactions are executed and managed by PCE's scheduling coordinator, Direct Energy, and confirmation of such transactions are provided to PCE personnel who are independent from the CRR trading function.

a. Credit Risk

Credit risk refers to the potential for non-payment or default by the counterparty to a transaction. PCE's CRRs are financially settled with the CAISO through PCE's scheduling coordinator. CRR credit risk is mitigated due to the credit policies and procedures in place at the CAISO and the credit provisions governing PCE's agreement with its scheduling coordinator.

b. Liquidity Risk

Liquidity risk refers to the potential inability of a party to close out a position at prevailing

market prices due to a lack of buyers or sellers for the specific product being liquidated. CRRs can be sold in the CAISO monthly and annual CRR auction markets. CRRs can also be sold bilaterally through the CAISO administered secondary registration system.

c. Market Risk

Market risk refers to potential cost exposure resulting from changes in market prices for the underlying commodity. CRRs have positive value when congestion exists between the source and the sink associated with the CRR path such that locational marginal prices are lower at the source than at the sink. CRRs have negative value when the opposite is true. PCE uses CRRs exclusively to hedge against congestion costs, which are negatively correlated with CRR values, such that the potential adverse financial impacts of changes in CRR values and congestions costs are mitigated. Where possible, PCEA will nominate CRR paths consistent with its expected energy supply and delivery points.

2. Training

PCE employees, contractors and agents transacting in CAISO markets shall meet all training requirements set forth in the CAISO Tariff or applicable CAISO Operating Agreement.

3. Monitoring and Reporting

a. Monitoring

CRR values shall be monitored at regular intervals, with such intervals selected in consideration of the risk characteristics of PCE's CRR holdings, but no less frequently than monthly. PCE personnel responsible for monitoring the value of PCE's CRR holdings shall be independent from those engaged in transacting in the CAISO's CRR markets.

b. Reporting

CRR values shall be reported on a monthly basis to the PCE Chief Executive Officer and the Controller. The CEO shall report on CRR activity at every monthly Board meeting. Any materials change in such CRR values or risks shall be identified and summarized in the aforementioned report.

Subject: Information Technology / Security

Policy:

1. Introduction

Information technology (“IT” or “Information”) is a critical Peninsula Clean Energy (PCE) asset and will be managed to ensure that it remains complete, accurate, confidential, and available for authorized business activities. Proper management of information technology is required to support regulatory compliance, minimize legal liability, reduce the risk of criminal activity, and sustain stakeholder and customer satisfaction.

2. Risk Exposure and Controls

PCE is dependent on information technology to conduct business operations. PCE’s CEO, in collaboration with the IT Consultant, are developing company IT policies and standards, identifying areas of risk, and helping all personnel achieve compliance with policies and standards. All PCE staff are responsible for reporting to management on any non-compliance. PCE will make information technology accessible only to authorized employees or designated vendors as needed and such information shall only be used for authorized agency purposes. To ensure protection of information technology, operational guidelines will be in place for employees and designated vendors to follow which adhere to the principles below:

- Access to specific information technology is to be assigned to PCE employees or designated vendors with the minimum level of access necessary to perform respective responsibilities.
- Access to information technology will be made available only to the extent necessary to support authorized business functions.
- Security systems are to be structured with multiple layers of security, including physical, network, host, and personnel security measures.
- The degree of information security protection is to be commensurate with the impact of inadvertent or intentional misuse, improper disclosure, damage or loss.
- Adequate controls will divide sensitive duties among more than one individual to provide checks and balances that help insure operational guidelines are followed.
- Security is not an optional component of operations. All PCE staff and designated vendors are required to protect information. All staff and designated vendors that use or have access to PCE information technology are personally responsible for exercising the proper control over information according to the operational guidelines provided to them.
- Operational guidelines for treatment of information technology are subject to change as needed to protect PCE based on any changes in systems, threats, and practices.