

REGULAR MEETING of the Board of Directors of the Peninsula Clean Energy Authority (PCEA) Thursday, January 25, 2018

Peninsula Clean Energy, 2075 Woodside Road, Redwood City, CA 94061 6:30 p.m.

Supplemental Agenda Packet items. Please find attached:

- Item No. 11.1 Amendment 1 to Power Purchase Agreement with Mega Renewables Hatchet Creek Hydroelectric Project
- Item No. 11.2 Amendment 1 to Power Purchase Agreement with Mega Renewables Roaring Creek Hydroelectric Project
- Item No. 11.3 Amendment 1 to Power Purchase Agreement with Mega Renewables Bidwell Ditch Hydroelectric Project
- Item No. 12 Power Purchase Agreement with Hydro Partners Clover Creek Hydroelectric Project
- Item No. 15 Memo, Resolution, and Amendment to the Agreement for Barclays Bank PLC
- Item No. 17 Memo and Updated Mid-Year Financial Statements

FIRST AMENDMENT TO THE POWER PURCHASE AND SALE AGREEMENT (HATCHET CREEK)

This First Amendment to the Power Purchase and Sale Agreement (Hatchet Creek) ("<u>Amendment</u>") is entered into as of January 26, 2018 ("<u>Effective Date</u>") by and between MEGA RENEWABLES, a California general partnership ("<u>Seller</u>"), and PENINSULA CLEAN ENERGY, a California joint powers authority ("<u>Buyer</u>") (each of Buyer and Seller are referred to as a "<u>Party</u>" and collectively as the "<u>Parties</u>").

RECITALS

WHEREAS, Seller and Buyer entered into that certain Power Purchase and Sale Agreement, effective as of January 26, 2017, in respect of the Hatchet Creek Hydroelectric Project ("Agreement") and desire to amend the Agreement as provided herein.

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

AGREEMENT

- I. <u>Amendments to Agreement</u>. The Agreement is hereby amended as follows:
 - A. <u>Amendment to Cover Sheet</u>: The Cover Sheet to the Agreement is deleted in its entirety and replaced with Attachment 1 to this Amendment.
 - B. <u>Amendment to Section 8.1</u>: The following sentence shall be added to the end of the existing text of Section 8.1:
 - "Each invoice shall also include a statement of the Availability Percentage, the Available Hours and the Base Hours, both for the preceding month and cumulatively for the Contract Year to date."
 - C. <u>Amendment to Section 8.7</u>: The existing text of Section 8.7 of the Agreement shall be deleted in its entirety and replaced with the following:



D. <u>Amendment to Exhibit B</u>: Exhibit B to Purchase and Sale Agreement is deleted in its entirety and replaced with Attachment 2 to this Amendment.

II. Miscellaneous.

- Effect of Amendment. The Agreement, as modified by this Amendment, remains in effect in accordance with its terms. If there is any conflict between the Agreement and this Amendment, this Amendment shall control.
- Entire Agreement. This Amendment along with the Agreement constitutes the
 entire agreement between the Parties relating to the subject matter thereof and
 shall supercede all other prior and contemporaneous understandings or
 agreements, both written and oral, between the Parties relating to the subject
 matter thereof.
- 3. Governing Law. This Amendment shall be governed by Section 16.1 of the Agreement establishing the laws of the state of California as the governing law. The Parties agree to comply with Sections 16.2 and 16.3 of the Agreement with respect to any dispute relating to this Amendment.
- 4. <u>Facsimile or Electronic Delivery</u>. This Amendment 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 Amendment shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.
- 5. <u>Amendment or Modification</u>. This Amendment may only be amended or modified in writing signed by each of the Parties.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the Effective Date. This Amendment shall not become effective as to either Party unless and until executed by both Parties.

SELLER Mega Renewables	BUYER Peninsula Clean Energy Authority
Ву:	By:
Name:	PCE Executive Officer
Title:	

ATTACHMENT 1

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Mega Renewables, a California general partnership

Buyer: Peninsula Clean Energy, a California joint powers authority

<u>Description of Facility</u>: Hatchet Creek Hydroelectric Project, a 7.5 MW AC hydroelectric

generating facility located in Shasta County, California

Delivery Term: Twenty (20) Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1	
2	
3	
4	
5	
6 – 20	

Peak Energy: (Based on the sum of individual historical peak monthly outputs in MWH.)

Year	Peak Energy (MWh)
All	

Contract Year 1 Expected Energy:

Month	Expected Energy (MWh)	Peak Energy (MWH)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10	I	
11		
12		

Contract Price:

Contract Year	Contract Price (\$/MWh)
1	
2	
3	
4	
5	
6 – 20	

Product:

X	Energy
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☑ Green Attributes:

Portfolio Content Category 1

☐ Portfolio Content Category 2

Deliverability:

☐ Energy Only Status

☐ Full Capacity Deliverability Status. The Facility currently has Full Capacity Deliverability Status

Scheduling Coordinator: Buyer or Buyer's Agent

Notice Addresses:

Seller:

Mega Renewables 10050 Bandley Dr. Cupertino, CA 95014

Attention: Mike Knapp Phone No.: (408) 725-7620 Fax No.: (408) 725-1626

Email: Mknapp@bergvc.com

With a copy to:

Hydrodynamics 375 Holland Lane Bozeman, MT 59718

Attention: Ben Singer Phone No.: (406) 763-4063 Fax No.: (406) 763-4468

Email: ben@hydrodynamics.biz

Buyer:

Peninsula Clean Energy 2075 Woodside Road Redwood City, CA 94061

Attention: Director of Power Resources

Fax No.: TBD

Phone No.: (650) 260-0005

Email: contracts@peninsulacleanenergy.com

With a copy to:

Peninsula Clean Energy 400 County Center, 6th Floor Redwood City, CA 94063

Attention: Nirit Eriksson, Deputy County Counsel

Fax No.: (650) 363-4034 Phone No.: (650) 363-4461

Email: neriksson@smcgov.org

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

SELLER Mega Renewables	BUYER Peninsula Clean Energy Authority
By:	By:
Name:	PCE Executive Officer
Title:	

ATTACHMENT 2

EXHIBIT B

EMERGENCY CONTACT INFORMATION

BUYER:

Peninsula Clean Energy Attn: Director of Power Resources

(650) 260-0005 Phone No.:

constracts@peninsulacleanenergy.com Email:

SELLER:

Mega Renewables Attn: Ben Singer

Phone No.: 406-763-4063

FIRST AMENDMENT TO THE POWER PURCHASE AND SALE AGREEMENT (Roaring Creek)

This First Amendment to the Power Purchase and Sale Agreement (Hatchet Creek) ("<u>Amendment</u>") is entered into as of January 26, 2018 ("<u>Effective Date</u>") by and between MEGA RENEWABLES, a California general partnership ("<u>Seller</u>"), and PENINSULA CLEAN ENERGY, a California joint powers authority ("<u>Buyer</u>") (each of Buyer and Seller are referred to as a "<u>Party</u>" and collectively as the "<u>Parties</u>").

RECITALS

WHEREAS, Seller and Buyer entered into that certain Power Purchase and Sale Agreement, effective as of January 26, 2017, in respect of the Roaring Creek Hydroelectric Project ("Agreement") and desire to amend the Agreement as provided herein.

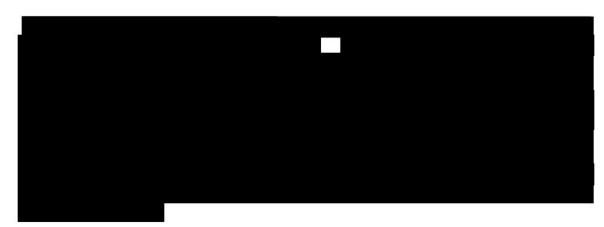
NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

AGREEMENT

- I. <u>Amendments to Agreement</u>. The Agreement is hereby amended as follows:
 - A. <u>Amendment to Cover Sheet</u>: The Cover Sheet to the Agreement is deleted in its entirety and replaced with Attachment 1 to this Amendment.
 - B. <u>Amendment to Section 8.1</u>: The following sentence shall be added to the end of the existing text of Section 8.1:
 - "Each invoice shall also include a statement of the Availability Percentage, the Available Hours and the Base Hours, both for the preceding month and cumulatively for the Contract Year to date."
 - C. <u>Amendment to Section 8.7</u>: The existing text of Section 8.7 of the Agreement shall be deleted in its entirety and replaced with the following:



D. Addition of Section 11.8. The following new Section 11.8 shall be added to the Agreement:



E. <u>Amendment to Exhibit B</u>: Exhibit B to Purchase and Sale Agreement is deleted in its entirety and replaced with Attachment 2 to this Amendment.

II. <u>Miscellaneous.</u>

- Effect of Amendment. The Agreement, as modified by this Amendment, remains in effect in accordance with its terms. If there is any conflict between the Agreement and this Amendment, this Amendment shall control.
- Entire Agreement. This Amendment along with the Agreement constitutes the
 entire agreement between the Parties relating to the subject matter thereof and
 shall supercede all other prior and contemporaneous understandings or
 agreements, both written and oral, between the Parties relating to the subject
 matter thereof.
- 3. <u>Governing Law</u>. This Amendment shall be governed by Section 16.1 of the Agreement establishing the laws of the state of California as the governing law.

The Parties agree to comply with Sections 16.2 and 16.3 of the Agreement with respect to any dispute relating to this Amendment.

- 4. <u>Facsimile or Electronic Delivery</u>. This Amendment 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 Amendment shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.
- 5. <u>Amendment or Modification</u>. This Amendment may only be amended or modified in writing signed by each of the Parties.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the Effective Date. This Amendment shall not become effective as to either Party unless and until executed by both Parties.

SELLER Mega Renewables	BUYER Peninsula Clean Energy Authority
By:	By:
Name:	PCE Executive Officer
Title:	

ATTACHMENT 1

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Mega Renewables, a California general partnership

Buyer: Peninsula Clean Energy, a California joint powers authority

<u>Description of Facility</u>: Roaring Creek Hydroelectric Project, a 2 MW AC hydroelectric

generating facility located in Shasta County, California

Delivery Term: Seventeen (17) Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1 – 17	

Peak Energy: (Based on the sum of individual historical peak monthly outputs in MWH.)

Year	Peak Energy (MWh)
All	

Contract Year 1 Expected Energy:

Month	Expected Energy (MWh)	Peak Energy (MWH)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

Contract Price:

Contract Year	Contract Price (\$/MWh)
1	
2	
3 - 17	

Product:

	ý
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☑ Green Attributes:

Portfolio Content Category 1

☐ Portfolio Content Category 2

Deliverability:

☐ Energy Only Status

☑ Full Capacity Deliverability Status. The Facility currently has Full Capacity Deliverability Status

Scheduling Coordinator: Buyer or Buyer's Agent

Notice Addresses:

Seller:

Mega Renewables 10050 Bandley Dr. Cupertino, CA 95014

Attention: Mike Knapp Phone No.: (408) 725-7620 Fax No.: (408) 725-1626

Email: Mknapp@bergvc.com

With a copy to:

Hydrodynamics 375 Holland Lane Bozeman, MT 59718

Attention: Ben Singer Phone No.: (406) 763-4063 Fax No.: (406) 763-4468

Email: ben@hydrodynamics.biz

Buyer:

Peninsula Clean Energy 2075 Woodside Road Redwood City, CA 94061

Attention: Director of Power Resources

Fax No.: TBD

Phone No.: (650) 260-0005

Email: contracts@peninsulacleanenergy.com

With a copy to:

Peninsula Clean Energy 400 County Center, 6th Floor Redwood City, CA 94063

Attention: Nirit Eriksson, Deputy County Counsel

Fax No.: (650) 363-4034 Phone No.: (650) 363-4461

Email: neriksson@smcgov.org

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

SELLER Mega Renewables	BUYER Peninsula Clean Energy Authority
By:	By:
Name:	PCE Executive Officer
Title:	

ATTACHMENT 2

EXHIBIT B

EMERGENCY CONTACT INFORMATION

BUYER:

Peninsula Clean Energy Attn: Director of Power Resources

(650) 260-0005 Phone No.:

constracts@peninsulacleanenergy.com Email:

SELLER:

Mega Renewables Attn: Ben Singer

Phone No.: 406-763-4063

FIRST AMENDMENT TO THE POWER PURCHASE AND SALE AGREEMENT (Bidwell Ditch)

This First Amendment to the Power Purchase and Sale Agreement (Hatchet Creek) ("<u>Amendment</u>") is entered into as of January 26, 2018 ("<u>Effective Date</u>") by and between MEGA RENEWABLES, a California general partnership ("<u>Seller</u>"), and PENINSULA CLEAN ENERGY, a California joint powers authority ("<u>Buyer</u>") (each of Buyer and Seller are referred to as a "<u>Party</u>" and collectively as the "<u>Parties</u>").

RECITALS

WHEREAS, Seller and Buyer entered into that certain Power Purchase and Sale Agreement, effective as of January 26, 2017, in respect of the Bidwell Ditch Hydroelectric Project ("Agreement") and desire to amend the Agreement as provided herein.

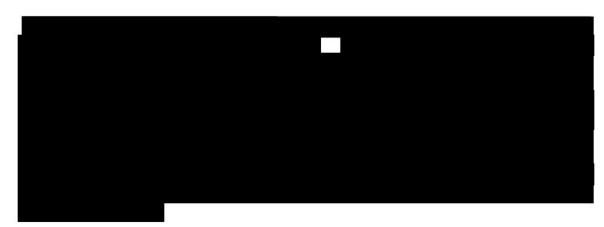
NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

AGREEMENT

- I. <u>Amendments to Agreement</u>. The Agreement is hereby amended as follows:
 - A. <u>Amendment to Cover Sheet</u>: The Cover Sheet to the Agreement is deleted in its entirety and replaced with Attachment 1 to this Amendment.
 - B. <u>Amendment to Section 8.1</u>: The following sentence shall be added to the end of the existing text of Section 8.1:
 - "Each invoice shall also include a statement of the Availability Percentage, the Available Hours and the Base Hours, both for the preceding month and cumulatively for the Contract Year to date."
 - C. <u>Amendment to Section 8.7</u>: The existing text of Section 8.7 of the Agreement shall be deleted in its entirety and replaced with the following:



D. Addition of Section 11.8. The following new Section 11.8 shall be added to the Agreement:



E. <u>Amendment to Exhibit B</u>: Exhibit B to Purchase and Sale Agreement is deleted in its entirety and replaced with Attachment 2 to this Amendment.

II. <u>Miscellaneous.</u>

- Effect of Amendment. The Agreement, as modified by this Amendment, remains in effect in accordance with its terms. If there is any conflict between the Agreement and this Amendment, this Amendment shall control.
- Entire Agreement. This Amendment along with the Agreement constitutes the
 entire agreement between the Parties relating to the subject matter thereof and
 shall supercede all other prior and contemporaneous understandings or
 agreements, both written and oral, between the Parties relating to the subject
 matter thereof.
- 3. <u>Governing Law</u>. This Amendment shall be governed by Section 16.1 of the Agreement establishing the laws of the state of California as the governing law.

The Parties agree to comply with Sections 16.2 and 16.3 of the Agreement with respect to any dispute relating to this Amendment.

- 4. <u>Facsimile or Electronic Delivery</u>. This Amendment 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 Amendment shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.
- 5. <u>Amendment or Modification</u>. This Amendment may only be amended or modified in writing signed by each of the Parties.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the Effective Date. This Amendment shall not become effective as to either Party unless and until executed by both Parties.

SELLER Mega Renewables	BUYER Peninsula Clean Energy Authority
By:	By:
Name:	PCE Executive Officer
Title:	

ATTACHMENT 1

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Mega Renewables, a California general partnership

Buyer: Peninsula Clean Energy, a California joint powers authority

<u>Description of Facility</u>: Bidwell Ditch Hydroelectric Project, a 2 MW AC hydroelectric

generating facility located in Shasta County, California

Delivery Term: Seventeen (17) Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1 – 17	

Peak Energy: (Based on the sum of individual historical peak monthly outputs in MWH.)

Year	Peak Energy (MWh)
All	

Contract Year 1 Expected Energy:

Month	Expected Energy (MWh)	Peak Energy (MWH)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

Contract Price:

Contract Year	Contract Price (\$/MWh)
1	
2	
3 - 17	

Product:

\times	Energy
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☑ Green Attributes:

Portfolio Content Category 1

☐ Portfolio Content Category 2

Deliverability:

☐ Energy Only Status

☑ Full Capacity Deliverability Status. The Facility currently has Full Capacity Deliverability Status

Scheduling Coordinator: Buyer or Buyer's Agent

Notice Addresses:

Seller:

Mega Renewables 10050 Bandley Dr. Cupertino, CA 95014

Attention: Mike Knapp Phone No.: (408) 725-7620 Fax No.: (408) 725-1626

Email: Mknapp@bergvc.com

With a copy to:

Hydrodynamics 375 Holland Lane Bozeman, MT 59718

Attention: Ben Singer Phone No.: (406) 763-4063 Fax No.: (406) 763-4468

Email: ben@hydrodynamics.biz

Buyer:

Peninsula Clean Energy 2075 Woodside Road Redwood City, CA 94061

Attention: Director of Power Resources

Fax No.: TBD

Phone No.: (650) 260-0005

Email: contracts@peninsulacleanenergy.com

With a copy to:

Peninsula Clean Energy 400 County Center, 6th Floor Redwood City, CA 94063

Attention: Nirit Eriksson, Deputy County Counsel

Fax No.: (650) 363-4034 Phone No.: (650) 363-4461

Email: neriksson@smcgov.org

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

SELLER Mega Renewables	BUYER Peninsula Clean Energy Authority
By:	By:
Name:	PCE Executive Officer
Title:	

ATTACHMENT 2

EXHIBIT B

EMERGENCY CONTACT INFORMATION

BUYER:

Peninsula Clean Energy Attn: Director of Power Resources

(650) 260-0005 Phone No.:

constracts@peninsulacleanenergy.com Email:

SELLER:

Mega Renewables Attn: Ben Singer

Phone No.: 406-763-4063

Execution Version

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Hydro Partners, a California general partnership

<u>Buyer</u>: Peninsula Clean Energy, a California joint powers authority

<u>Description of Facility</u>: Clover Creek Hydroelectric Project, a 0.999 MW AC hydroelectric

generating facility located in Shasta County, California

Delivery Term: Fifteen (15) Contract Years

Delivery Term Expected Energy:

Contract Years	Expected Energy (MWh)
1 - 15	

Peak Energy: (Based on the sum of individual historical peak monthly outputs in MWH.)

Year	Peak Energy (MWh)
All	

Contract Year 1 Expected Energy:

Month	Expected Energy (MWh)	Peak Energy (MWH)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

Contract Price:

Contract Years	Contract Price (\$/MWh)
1-15	

Product:

区 Energy

☑ Green Attributes:

Portfolio Content Category 1

☐ Portfolio Content Category 2

☒ Capacity Attributes

Deliverability:

☐ Energy Only Status

☑ Full Capacity Deliverability Status. The Facility currently has Full Capacity Deliverability Status

Scheduling Coordinator: Buyer or Buyer's Agent

Notice Addresses:

Seller:

Hydro Partners 10050 Bandley Dr. Cupertino, CA 95014

Attention: Mike Knapp Phone No.: 408-725-7620 Fax No.: 408-725-1626

Email: Mknapp@bergvc.com

With a copy to:

Hydrodynamics 375 Holland Lane Bozeman, MT 59718

Attention: Ben Singer Phone No.: 406-763-4063 Fax No.: 406-763-4468

Email: ben@hydrodynamics.biz

Buyer:			
	le Road 7, CA 94061 Director of Power Resources TBD (650) 260-0005		
Email: contract	cts@peninsulacleanenergy.com		
With a copy to):		
Redwood City Attention: Fax No.:	enter, 6 th Floor 7, CA 94063	ounsel	
IN WITNESS Effective Date		sed this	Agreement to be duly executed as of the
SELLER Mega Renewa	bles	BUYI Penin	ER sula Clean Energy Authority
By:			
		By:	PCE Executive Officer
Name:			LCE Executive Officel

Title:

TABLE OF CONTENTS

Page

ARTICLE 1	DEFINITIONS	1
1.1 1.2	Contract DefinitionsRules of Interpretation.	
ARTICLE 2	TERM; CONDITIONS PRECEDENT	
2.1	Contract Term.	15
2.2	Conditions Precedent	
2.3	Progress	16
ARTICLE 3	PURCHASE AND SALE	17
3.1	Sale of Product	17
3.2	Sale of Green Attributes	17
3.3	Compensation.	17
3.4	Imbalance Energy.	
3.5	Ownership of Renewable Energy Incentives	
3.6	Future Environmental Attributes.	
3.7	[Reserved]	
3.8	Capacity Attributes.	19
3.9	Resource Adequacy Failure	
3.10	CEC Certification and Verification.	19
3.11	Eligibility	
3.12	California Renewables Portfolio Standard	
3.13	Compliance Expenditure Cap.	20
ARTICLE 4	OBLIGATIONS AND DELIVERIES	21
4.1	Delivery	21
4.2	Title and Risk of Loss.	
4.3	Scheduling Coordinator Responsibilities	21
4.4	Forecasting.	
4.5	Dispatch Down/Curtailment	24
4.6	Reduction in Delivery Obligation.	25
4.7	Expected Energy	
4.8	WREGIS	25
ARTICLE 5	TAXES	26
5.1	Allocation of Taxes and Charges	26
5.2	Cooperation.	
ARTICLE 6	MAINTENANCE OF THE FACILITY	27
6.1	Maintenance of the Facility.	27
6.2	Maintenance of Health and Safety.	

ARTICLE 7	METERING	27
7.1	Metering	27
7.2	Meter Verification	
ARTICLE 8	INVOICING AND PAYMENT; CREDIT	28
8.1	Invoicing.	28
8.2	Payment	
8.3	Books and Records.	28
8.4	Payment Adjustments; Billing Errors.	
8.5	Billing Disputes.	
8.6	Netting of Payments and Offset.	29
ARTICLE 9	NOTICES	30
9.1	Addresses for the Delivery of Notices	30
9.2	Acceptable Means of Delivering Notice	
ARTICLE 10	FORCE MAJEURE	30
10.1	Definition	30
10.2	No Liability If a Force Majeure Event Occurs	
10.3	Notice	
10.4	Termination Following Force Majeure Event	
ARTICLE 11	DEFAULTS; REMEDIES; TERMINATION	32
11.1	Events of Default	32
11.2	Remedies; Declaration of Early Termination Date	
11.3	Termination Payment	33
11.4	Notice of Payment of Termination Payment	
11.5	Disputes With Respect to Termination Payment	
11.6	Rights And Remedies Are Cumulative	
11.7	Mitigation	34
ARTICLE 12	LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES	35
10.1		
12.1	No Consequential Damages.	
12.2	Waiver and Exclusion of Other Damages	35
ARTICLE 13	REPRESENTATIONS AND WARRANTIES; AUTHORITY	36
13.1	Seller's Representations and Warranties.	36
13.2	Buyer's Representations and Warranties	36
13.3	General Covenants	
ARTICLE 14	ASSIGNMENT	38

14.1	General Prohibition on Assignments	38
14.2	Permitted Assignment; Change of Control of Seller	38
14.3	Permitted Assignment; Change of Control of Buyer	
ARTICLE 15	LENDER ACCOMMODATIONS	38
15.1	Granting of Lender Interest	38
15.2	Rights of Lender	
15.3	Cure Rights of Lender	
ARTICLE 16	DISPUTE RESOLUTION	40
16.1	Governing Law.	40
16.2	Dispute Resolution.	40
16.3	Attorneys' Fees.	40
ARTICLE 17	INDEMNIFICATION	40
17.1	Indemnification.	40
17.2	Claims.	
	7.707.75	
ARTICLE 18	INSURANCE	
18.1	Insurance	41
ARTICLE 19	CONFIDENTIAL INFORMATION	42
19.1	Definition of Confidential Information	42
19.2	Duty to Maintain Confidentiality	
19.3	Irreparable Injury; Remedies	
19.4	Disclosure to Lender	
19.5	Public Statements	43
ARTICLE 20	MISCELLANEOUS	43
20.1	Entire Agreement; Integration; Exhibits	43
20.2	Amendments	
20.3	No Waiver	
20.4	No Agency, Partnership, Joint Venture or Lease	
20.5	Severability	
20.6	Mobile-Sierra	
20.7	Counterparts	
20.8	Facsimile or Electronic Delivery	
20.9	Binding Effect	
20.10	No Recourse to Members of Buyer	
20.11	Change in Electric Market Design	
Exhibits:		
Exhibit A	Description of Facility	
Exhibit B	Emergency Contact Information	

POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement ("<u>Agreement</u>") is entered into as of January 26, 2018 (the "<u>Effective Date</u>"), between Seller and Buyer (each also referred to as a "<u>Party</u>" and collectively as the "<u>Parties</u>").

RECITALS

WHEREAS, Seller owns and operates the electric generating facility as described in Exhibit A (the "Facility"); and

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

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

ARTICLE 1 DEFINITIONS

- 1.1 <u>Contract Definitions</u>. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:
 - "AC" means alternating current.
 - "Accepted Compliance Costs" has the meaning set forth in Section 3.13.
- "Affiliate" means, with respect to any Person, each Person that directly or indirectly Controls, is Controlled by, or is under common Control with such designated Person.
- "<u>Agreement</u>" 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.

"<u>Business Day</u>" 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.

- "<u>Buyer Curtailment Period</u>" 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.
- "<u>CAISO Grid</u>" has the same meaning as "<u>CAISO Controlled Grid</u>" as defined in the CAISO Tariff.
- "<u>CAISO Operating Order</u>" 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.
- "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, Ninth Edition, Revised (or its successor), and that all Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

- "CEC Precertification" means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Final Certification and Verification.
- "Change of Control", in the case of Seller, means any circumstance in which Seller's ultimate parent ceases to be the ultimate parent, or to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:
- (a) any ownership interest in Seller held by its ultimate parent indirectly through one or more intermediate entities shall not be counted towards the ultimate parent's ownership interest in Seller unless the ultimate parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and
- (b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.
- "Commercial Operation Date" means the date on which (a) Buyer is fully authorized by CAISO to begin Scheduling Energy produced by the Facility as provided for under this Agreement, and (b) the Conditions Precedent set forth in Section 2.2 are satisfied.
 - "Compliance Actions" has the meaning set forth in Section 3.13.
 - "Compliance Expenditure Cap" has the meaning set forth in Section 3.13.
 - "Conditions Precedent" has the meaning set forth in Section 2.2.
 - "Confidential Information" has the meaning set forth in Section 19.1.
 - "Contract Price" has the meaning set forth in the Cover Sheet.
 - "Contract Term" has the meaning set forth in Section 2.1.
- "<u>Contract Year</u>" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.
- "Control" (including, with correlative meanings, the terms "Controlled by" and "under common Control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast more than fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of more than fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace 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 50 hours 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.

- <u>"Curtailment Period</u>" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order.
 - "<u>Day-Ahead Forecast</u>" 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, water availability 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).
 - "<u>Defaulting Party</u>" has the meaning set forth in Section 11.1(a).
 - "<u>Deficient Month</u>" has the meaning set forth in Section 4.8(e).
 - "**Delivery Point**" means the PNode designated by the CAISO for the Facility.
- "<u>Delivery Term</u>" 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.
 - "Early Termination Date" has the meaning set forth in Section 11.2.
 - "Effective Date" has the meaning set forth on the Preamble.
- "<u>Electrical Losses</u>" means all transmission or transformation losses between the Facility and the Delivery Point.
- "<u>Eligible Intermittent Resources Protocol</u>" or "<u>EIRP</u>" has the meaning set forth in the CAISO Tariff.
- "<u>Eligible Renewable Energy Resource</u>" 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.

"<u>Energy</u>" means metered electrical energy, measured in MWh, which is produced by the Facility.

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

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

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

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

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

"<u>FERC</u>" 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.

"<u>Forced Facility Outage</u>" 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.

"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 the amount set forth in Exhibit A.

"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.

"<u>Initial Synchronization</u>" means the initial delivery of Energy from the Facility to the interconnection point specified in the Interconnection Agreement.

"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.

"<u>Interconnection Facilities</u>" 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.

"<u>Joint Powers Act</u>" 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.

"<u>Law</u>" 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 agreed to by Buyer.

"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.

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

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

"MW" means megawatts measured in alternating current.

"MWh" means megawatt-hour measured in AC.

"<u>Negative LMP</u>" 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).

"<u>Participating Intermittent Resource Program</u>" or "<u>PIRP</u>" has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

"<u>Participating Transmission Owner</u>" or "<u>PTO</u>" means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas and Electric Company.

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

"<u>Peak Energy</u>" means, for any Contract Year, the amount of energy set forth in the Peak Energy section of the Cover Sheet.

"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.

"<u>Portfolio Content Category 2</u>" or "<u>PCC2</u>" 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.

"<u>Portfolio Content Category 3</u>" or "<u>PCC3</u>" 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.

"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 following the RA Guarantee Date during which Seller fails to provide Resource Adequacy Benefits as required hereunder for purposes of calculating an RA Deficiency Amount under Section 3.9(b).
 - "Real-Time Market" has the meaning set forth in the CAISO Tariff.
- "Renewable Energy Credit" has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.
- "Renewable Energy Incentives" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, provided in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.
- "Replacement RA" means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, 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.
- "<u>S&P</u>" 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 " \underline{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).
- "<u>Settlement Amount</u>" 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.
- "<u>Settlement Period</u>" 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.
- "<u>Site</u>" means the real property on which the Facility is or will be located, as further described in Exhibit A.
- "<u>Site Control</u>" 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.
- "<u>Tax</u>" or "<u>Taxes</u>" 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.

"<u>Terminated Transaction</u>" has the meaning set forth in Section 11.2.

"<u>Termination Payment</u>" has the meaning set forth in Section 11.3.

"<u>Transmission System</u>" 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.

"<u>Variable Energy Resource Forecast</u>" or "<u>VER Forecast</u>" 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.

"<u>WREGIS</u>" 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).

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

"<u>WREGIS Operating Rules</u>" 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 <u>Conditions Precedent</u>. The Commercial Operation Date shall not occur and the Delivery Term shall not commence until Seller completes each of the following conditions ("<u>Conditions Precedent</u>"):
- (a) Seller shall have completed CAISO's New Resource Implementation process and be eligible to make deliveries of Energy over the CAISO-controlled grid in accordance with the CAISO Tariff (subject to the appointment by CAISO of Buyer or Buyer's designee as Scheduling Coordinator for the Facility);
- (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 certificate signed by an authorized representative of Seller stating that Seller (i) has the ability to deliver the Product and legally perform all other obligations under, and in accordance with, the terms of the Agreement, and (ii) that the Product is not committed for sale under any contract or obligation other than this Agreement;
 - (e) Seller has received CEC Final Certification and Verification; and
- (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.
- 2.3 **Progress.** Seller shall complete the Conditions Precedent set forth in Section 2.2 no later than April 1, 2018. The Parties agree time is of the essence in regards to the Agreement.

ARTICLE 3 PURCHASE AND SALE

- 3.1 <u>Sale of Product</u>. 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.
- 3.2 <u>Sale of Green Attributes</u>. 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 <u>Compensation</u>. Buyer shall compensate Seller for the Product in accordance with this Section 3.3.
- (a) Subject to Section 8.7, Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Metered Energy plus the amount of Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the 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 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 Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("Excess MWh"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times the number of such Excess MWh ("Negative LMP Costs").

3.4 **Imbalance Energy**.

(a) Buyer and Seller recognize that from time to time the amount of Metered Energy will deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible.

Subject to Section 3.4(b), to the extent there are such deviations, any CAISO costs or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.

- (b) 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) if Seller is not in compliance with EIRP at any time during which EIRP applies, or may apply (following registration and/or other actions by Seller) to the Facility, or any applicable provisions of this Agreement, including Section 4.4(d), or if Imbalance Energy results from any outage or change in the availability of the Facility that is not communicated to Buyer at least one hour before the deadline to submit Schedules to CAISO, then Seller will be responsible for and shall pay directly or promptly reimburse Buyer (and Buyer may offset amounts owed to Seller) for the aggregate Imbalance Energy charges assessed, net of the aggregate Imbalance Energy revenues earned, during such period of noncompliance and reasonably attributable such noncompliance within the applicable Contract Year; and (iii) Seller shall provide information concerning existing and anticipated water supplies in as detailed a manner as is commercially reasonable and at least daily.
- 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 [Reserved].

- 3.8 <u>Capacity Attributes</u>. 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) <u>RA Deficiency Determination</u>. 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) <u>RA Deficiency Amount Calculation</u>. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "<u>RA Deficiency Amount</u>") 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 <u>CEC Certification and Verification</u>. Seller shall maintain throughout 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 Final Certification and Verification for the Facility.
- 3.11 **Eligibility**. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the 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 <u>California Renewables Portfolio Standard</u>. 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 <u>Compliance Expenditure Cap</u>. 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 "<u>Compliance Actions</u>."

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) <u>Energy</u>. 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) <u>Green Attributes</u>. 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 <u>Title and Risk of Loss</u>.

- (a) <u>Energy</u>. Title to and risk of loss related to the Metered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.
- (b) <u>Green Attributes</u>. 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) <u>Buyer as Scheduling Coordinator for the Facility.</u> Upon the commencement of the Delivery Term, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point. As soon as practicable following the Effective Date, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer or its designee as Seller's Scheduling Coordinator for the Facility effective as of the Commercial Operation Date, 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 Commercial Operation Date. On and after the Commercial Operation Date, 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 (or its designee's) authorization to act

as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer, or its designee (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) <u>Notices</u>. 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) <u>CAISO Costs and Revenues</u>. Except as otherwise set forth below and in Section 3.4(b), Buyer 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 or its designee'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.
- <u>CAISO Settlements</u>. Buyer (as Seller's SC) shall be responsible for all (d) 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) <u>Dispute Costs.</u> 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) <u>Terminating Buyer's Designation as Scheduling Coordinator</u>. 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) <u>Master Data File and Resource Data Template</u>. 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) <u>NERC Reliability Standards</u>. 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 <u>Forecasting</u>. 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 and Expected Metered Energy. No less than 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, and the expected Metered Energy for each hour of each day, of the following month in a form reasonably acceptable to Buyer.
- (c) <u>Daily Forecast of Available Capacity and Expected Metered Energy</u>. 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 and the expected Metered Energy) for each hour of the immediately succeeding day ("<u>Day-Ahead</u>"

- **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 and the expected Metered Energy).
- Real-Time Available Capacity and Expected Metered Energy. During the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of one (1) MW or more or any change in the expected Metered Energy of five hundred (500) kWh or more in any hour, 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 or expected Metered Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must likewise notify Buyer as soon as practicable. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity or expected Metered Energy, the expected end date and time of such event, the expected Available Capacity in MW or Metered Energy in MWh, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that 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 or expected Metered Energy shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.4(d), then Seller shall send such communications by telephone to Buyer.

4.5 **Dispatch Down/Curtailment**.

- (a) <u>General</u>. 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) <u>Buyer Curtailment.</u> 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 Bid Curtailment, Buyer Curtailment Order or Curtailment Order, then, for each MWh of Metered Energy that the Facility generated in contradiction to the 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 Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

- 4.6 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1:
- (a) <u>Facility Maintenance</u>. 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) <u>Forced Facility Outage</u>. 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) <u>System Emergencies and other Interconnection Events</u>. 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) <u>Force Majeure Event</u>. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.
- (e) <u>Health and Safety</u>. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.
- 4.7 **Expected Energy**. The quantity of Product, as measured by Metered Energy, that Seller expects to be able to deliver to Buyer during each Contract Year is set forth on the Cover Sheet ("**Expected Energy**"). Buyer acknowledges that Seller does not guarantee that the Facility will generate the Expected Energy in any Contract Year.
- 4.8 <u>WREGIS</u>. 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. 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.

ARTICLE 5 TAXES

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 <u>Cooperation</u>. 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 <u>Maintenance of the Facility</u>. 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 <u>Maintenance of Health and Safety</u>. 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 <u>Exhibit B</u> 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 <u>Metering</u>. 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 <u>Meter Verification</u>. 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. The cost of each such test shall be borne by the Party requesting the test.

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 delivered to Buyer, the calculation of Deemed Delivery 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 reasonable format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Each invoice shall also include a statement of the Availability Percentage, the Available Hours and the Base Hours, both for the preceding month and cumulatively for the Contract Year to date.
- 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 <u>Books and Records</u>. 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.
- A Party may, in good faith, dispute the correctness of any 8.5 Billing Disputes. 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 and Offset. 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, 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. Buyer may net against any amounts otherwise owed to Seller hereunder any amounts owed to Buyer by Seller arising out of, or related to, any other agreement between Buyer and Seller. Nothing this Section 8.6 shall limit Buyer's rights under applicable Law.



ARTICLE 9 NOTICES

- 9.1 <u>Addresses for the Delivery of Notices</u>. 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.
- 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) "<u>Force Majeure Event</u>" 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; drought; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.
- Notwithstanding the foregoing, the term "Force Majeure Event" does not (c) 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's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event.
- 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 <u>Notice</u>. 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 <u>Termination Following Force Majeure Event</u>. 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).

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An "**Event of Default**" shall mean,

- (a) with respect to a Party (the "<u>Defaulting Party</u>") 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 <u>Section 14.2</u> or 14.3, as applicable; or
- (vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.
- (b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

- (i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Facility;
- (ii) the failure by Seller to timely obtain CEC Final Certification and Verification in accordance with Section 3.10; and

(iii)

- 11.2 <u>Remedies; Declaration of Early Termination Date</u>. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("<u>Non-Defaulting Party</u>") shall have the following rights:
- (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") that terminates this Agreement (the "Terminated Transaction") and ends the Delivery Term effective as of the Early Termination Date;
- (b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);
- (c) to withhold any payments due to the Defaulting Party under this Agreement;
 - (d) to suspend performance; 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;

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

11.3 <u>Termination Payment</u>. The Termination Payment ("<u>Termination Payment</u>") for a Terminated Transaction shall be the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the

Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

- 11.4 <u>Notice of Payment of Termination Payment</u>. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.
- 11.5 <u>Disputes With Respect to Termination Payment</u>. 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 <u>Rights And Remedies Are Cumulative</u>. 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 <u>Mitigation</u>. 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 <u>No Consequential Damages</u>. 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 TERMINATION PAYMENT UNDER SECTION 11.3, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. 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 <u>Seller's Representations and Warranties</u>. As of the Effective Date, Seller represents and warrants as follows:
- (a) Seller is a general partnership, duly organized, validly existing and in good standing under the laws of the State of California, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.
- (b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.
- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.
- (d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.
 - (e) The Facility is located in the State of California.
- 13.2 <u>Buyer's Representations and Warranties</u>. 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 <u>General Covenants</u>. 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 <u>General Prohibition on Assignments</u>. 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 <u>Permitted Assignment; Change of Control of Seller</u>. 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 <u>Granting of Lender Interest</u>. 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 <u>Cure Rights of Lender</u>. 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 <u>Dispute Resolution</u>. 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 <u>Attorneys' Fees.</u> 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 "<u>Indemnifying Party</u>") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "<u>Indemnified Party</u>") 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 <u>Claims</u>. 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) <u>Employer's Liability Insurance</u>. 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) <u>Workers Compensation Insurance</u>. 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) <u>Business Auto Insurance</u>. 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) [Reserved]

- (f) <u>Subcontractor Insurance</u>. 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 <u>Definition of Confidential Information</u>. The following constitutes "<u>Confidential Information</u>," 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 <u>Irreparable Injury; Remedies</u>. 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 <u>Disclosure to Lender</u>. 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 <u>Public Statements</u>. 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 <u>Amendments</u>. 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 <u>No Agency, Partnership, Joint Venture or Lease</u>. 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 <u>Severability</u>. 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 <u>Mobile-Sierra</u>. 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 <u>Counterparts</u>. 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 <u>Facsimile or Electronic Delivery</u>. 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 <u>No Recourse to Members of Buyer</u>. 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 <u>Change in Electric Market Design</u>. 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: Clover Creek Hydroelectric Project

APNs: 098230015000

County: Shasta County

Guaranteed Capacity: 0.999 MW AC (net, at the Delivery Point)

P-node/Delivery Point: the PNode designated by the CAISO for the Facility at Kilarc-Cedar

Creek 60 kV Line (Pole 5/12)

Additional Information:

CAISO Resource ID/Meter Number: CLOVER_2_UNIT / 5915262

EXHIBIT B

EMERGENCY CONTACT INFORMATION

BUYER:

Peninsula Clean Energy

Attn: Director of Power Resources

Phone No.: (650) 260-0005

Email: constracts@peninsulacleanenergy.com

Mega Renewables

Attn: Ben Singer

Phone: 406-763-406



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: January 19, 2018

BOARD MEETING DATE: January 25, 2018

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

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

SUBJECT: Delegate authority to CEO to amend the agreement with Barclays for a

Line of Credit

RECOMMENDATION:

Authorize the CEO to execute an amendment to the agreement with Barclays Bank PLC that reduces the commitment fees, permits reborrowing the amounts previously borrowed and repaid, and makes other minor changes in a form approved by the General Counsel.

BACKGROUND:

In December 2015, County staff, on behalf of the Peninsula Clean Energy Authority (PCEA) began to solicit interest from and meet with a number of local and regional banks with the capacity to provide the required financing. A loan in an amount not to exceed \$12 million was sought in order to establish a reserve fund in support of the power purchase agreements entered into by the PCEA, to provide working capital for the pre-revenue collection phase as well as to account for seasonal differences in cash flow, to cover deposits required by the California Independent Service Operator (CAISO) and the California Public Utilities Commission (CPUC), and to cover other operating needs such as internal staffing costs and other administrative overhead. In June 2016, Barclays Bank PLC was selected to provide this line of credit.

As part of the loan agreement with Barclays, PCEA was required to pay annual commitment fee of 1.925% for the undrawn funds. On December 8, 2017, PCEA fully repaid the \$3 million which PCEA had borrowed from Barclays and subsequently renegotiated the commitment fee rate on the undrawn line of credit from 1.925% to

1.400%. The PCE Board of Directors approved this commitment fee change at the December 14, 2017 board meeting.

In the process of finalizing the agreement with Barclays, we were informed that in order to permit the reborrowing of amounts previously borrowed and repaid, a new resolution that permits this must be approved by the Board of Directors.

DISCUSSION:

PCEA is requesting that the board delegate authority to the CEO to amend the agreement to reduce the commitment fee for the undrawn funds, to permit reborrowing the amounts previously borrowed and repaid, and make other minor changes in a form approved by the General Counsel.

FISCAL IMPACT:

Annual commitment fee payments, assuming PCE does not draw any of the funds, will be reduced from \$231,000 to \$168,000, saving PCEA \$63,000.

RESOLUTION NO.	RESOL	UTION	NO.		
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PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

RESOLUTION AUTHORIZING THE CEO TO EXECUTE AN AMENDMENT TO THE
AGREEMENT WITH BARCLAYS BANK PLC THAT REDUCES THE COMMITMENT
FEE, PERMITS REBORROWING THE AMOUNTS PREVIOULSY BOROWWED AND
REPAID, AND MAKES OTHER MINOR CHANGES IN A FORM APPROVED BY THE
GENERAL COUNSEL

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

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

WHEREAS, PCEA sought a line of credit in an amount not to exceed \$12 million; and

WHEREAS, the line of credit was to provide working capital, initial power purchases, and to meet internal staffing costs and administrative overhead; and

WHEREAS, In June 2016, Barclays Bank PLC was selected to provide the line of credit; and

WHEREAS, the annual commitment fee required was 1.925% for the undrawn funds; and

WHEREAS, in November 2017, PCEA renegotiated the commitment fee from 1.925% to 1.40% for the undrawn funds; and

WHEREAS, in December 2017, PCEA fully repaid the \$3 million which was borrowed from the existing line with Barclays Bank PLC; and

WHEREAS, to permit the reborrowing of amounts previously borrowed and repaid, PCEA has to amend the existing agreement; and

WHEREAS, the amended agreement will be implemented retrospectively from December 8th, 2017 when PCEA repaid the \$3 million; and

WHEREAS, the amended agreement will allow PCEA to draw up to \$12 million from the existing line of credit and also save up to \$63,000 in annual commitment fee payments for the undrawn funds; and

WHEREAS, PCEA is requesting that the board delegate the authority to the CEO to amend the agreement to reduce the commitment fee for the undrawn funds, to permit reborrowing of amounts previously borrowed and repaid, and make other minor changes in a form approved by the General Counsel.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Board of Directors hereby authorizes the CEO to execute an amendment to the agreement with Barclays Bank PLC that reduces the commitment fee, permits reborrowing of amounts previously

borrowed and repaid, and makes other minor changes in a form approved by the General Counsel.

* * * * * *

[CCO-113499]

FIRST AMENDMENT AGREEMENT

FIRST AMENDMENT AGREEMENT entered into on December ___, 2017 (the "Amendment Agreement") between PENINSULA CLEAN ENERGY AUTHORITY (the "Borrower") and BARCLAYS BANK PLC (the "Bank").

WITNESSETH:

WHEREAS, the Borrower and the Bank have entered into a Term Loan Agreement dated as of June 24, 2016 (the "Agreement");

WHEREAS the Borrower and the Bank desire to amend the terms of the Agreement;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and for other valuable consideration, the parties hereto agree as follows:

- 1. <u>Amendments.</u> The Borrower and the Bank hereby agree that:
- (a) The definition of "Commitment Fee Rate" in Section 1.01 of the Agreement shall be amended and restated in its entirety to read as follows:
 - "Commitment Fee Rate' means (i) from and including the Effective Date to and including December 31, 2016, 0.925% per annum, (ii) from and including January 1, 2017 to and including December 8, 2017, 1.925% per annum and (iii) from and including December 9, 2017 and thereafter, 1.40% per annum."
- (b) Section 2.01(a) of the Agreement shall be amended and restated in its entirety to read as follows:

"Section 2.01 The Term Loans; Manner and Disbursement of Term Loans. (a) Subject to the terms and conditions hereof, the Bank agrees to extend credit (the "Credit") to the Borrower until the Termination Date which may be, subject to the conditions herein, drawn by the Borrower from time to time during the period from and including the Effective Date to but not including the date on which the Commitment is reduced to zero (the "Commitment Term"), at which time the commitment of the Bank to permit draws under this Agreement shall expire. The Credit may be drawn by the Borrower during the Commitment Term in the form of loans (individually a "Term Loan" and collectively the "Term Loans"), provided that the aggregate principal amount of Term Loans outstanding at any one time shall not exceed the then current Commitment. Except as otherwise set forth herein, each Term Loan shall bear interest at the LIBOR Index Rate. Each Term Loan shall be in a minimum amount of not less than \$100,000. Term Loans may be repaid and the principal amount thereof reborrowed before the Maturity Date, subject to the terms and conditions hereof."

- 2. <u>Representations</u>. In addition to the representations and warranties set forth in Article IV of the Agreement which are hereby deemed repeated by the Borrower as of the date hereof (provided that all references therein to the "Agreement" shall be deemed to refer to the Agreement as amended by this Amendment Agreement) the Borrower represents and warrants to the Bank that:
- (a) it is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, is in good standing;
- (b) it has the power to execute and deliver this Amendment Agreement and to perform its obligations under this Amendment Agreement and has taken all necessary action to authorize such execution, delivery and performance;
 - (c) it is entering into this Amendment Agreement as principal;
- (d) the person signing this Amendment Agreement on its behalf is duly authorized to do so:
- (e) it has obtained all governmental and other consents and authorizations that it is required to obtain in connection with its execution and delivery of this Amendment Agreement, all such consents and authorizations are in full force and effect and all conditions of any such consents and authorizations have been complied with;
- (f) such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and
- (g) its obligations under this Amendment Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or in law).
- 3. <u>Agreement Ratified and Confirmed.</u> Except as expressly modified by this Amendment Agreement, the Agreement is in all respects ratified and confirmed and the terms, provisions and conditions thereof are and shall remain in full force and effect. From and after the date hereof all references to the Agreement shall mean such agreement as amended by the terms hereof.
- 4. <u>Fees.</u> By execution of this Amendment Agreement, the Borrower hereby agrees to pay the fees of counsel for the Bank, in the amount of \$5,500, incurred in connection with the preparation, negotiation, execution and delivery of this Amendment Agreement. Notwithstanding Section 2.06 of the Agreement, the Bank hereby agrees that no fee shall be payable to the Bank under Section 2.06 of the Agreement in connection with the execution of this Amendment Agreement.

- 5. <u>Documents to be Delivered.</u> The Borrower shall, on or prior to the date hereof, deliver to the Bank evidence reasonably satisfactory to the Bank of the (i) authority of the Borrower to enter into this Amendment Agreement and (ii) authority and genuine signature of the individual signing this Amendment Agreement on behalf of the Borrower to execute the same.
- 6. <u>Governing Law and Jurisdiction</u>. This Amendment Agreement shall be governed by and construed in accordance with the governing law provision set forth the Agreement.
- 7. <u>Entire Agreement</u>. This Amendment Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto.
- 8. <u>Counterparts</u>. This Amendment Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment Agreement as of the date first above written.

BARCLAYS BANK PLC

By:
James Saakvitne
Authorized Signatory for and on
behalf of Barclays Bank PLC
PENINSULA CLEAN ENERGY AUTHORITY
By:
Name:
Title:

[Signature page to the First Amendment Agreement]



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: January 22, 2018

BOARD MEETING DATE: January 25, 2018

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

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

SUBJECT: Receive Mid-Year Financial Statements (Information Only)

BACKGROUND:

Attached are Mid-Year Financial Statements reflecting activity for the period July 1, 2017 through December 31, 2017. There is one change compared to the version that was sent to the Board of Directors on January 19. The Budgetary Comparison Schedule now reflects the repayment of the loans with Barclays and the County of San Mateo, which occurred in December 2017.



ACCOUNTANTS' COMPILATION REPORT

Board of Directors Peninsula Clean Energy Authority

Management is responsible for the accompanying financial statements of Peninsula Clean Energy Authority (the Authority), a California Joint Powers Authority, which comprise the statement of net position as of December 31, 2017, and the related statement of revenues, expenses, and changes in net position, and the statement cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, the financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA January 19, 2018

STATEMENT OF NET POSITION As of December 31, 2017

ASSETS

1100110					
Current assets					
Cash and cash equivalents	\$	53,541,005			
Accounts receivable, net of allowance		17,092,453			
Other receivables		46,569			
Accrued revenue		11,061,682			
Prepaid expenses		265,488			
Deposits		1,924,926			
Total current assets		83,932,123			
Noncurrent assets					
Capital assets, net of depreciation		322,254			
Deposits		135,355			
Total noncurrent assets		457,609			
Total assets		84,389,732			
LIABILITIES					
Current liabilities					
Accounts payable		669,675			
Accrued cost of electricity		27,068,267			
Accrued payroll and related liabilities		103,073			
Other accrued liabilities		25,000			
Supplier security deposits		50,000			
User taxes and energy surcharges due to other governments		740,872			
Total current liabilities		28,656,887			
Noncurrent liabilities					
Supplier security deposits		75,000			
Total liabilities		28,731,887			
NET POSITION					
Net investment in capital assets		322,254			
Unrestricted		55,335,591			
Total net position	\$	55,657,845			
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STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION July 1, 2017 through December 31, 2017

OPERATING REVENUES			
Electricity sales, net	\$ 127,028,378		
Green electricity premium	 568,365		
Total operating revenues	127,596,743		
OPERATING EXPENSES			
Cost of electricity	88,130,793		
Staff compensation and benefits	991,423		
Data manager	2,016,690		
Service fees - PG&E	765,925		
Consultants and other professional fees	270,704		
Legal	604,911		
Communications and noticing	360,035		
General and administration	309,932		
Depreciation	23,388		
Total operating expenses	 93,473,801		
Operating income (loss)	 34,122,942		
NONOPERATING REVENUES (EXPENSES)			
Interest income	6,947		
Interest and related expense	(182,573)		
Total nonoperating revenues (expenses)	(175,626)		
CHANGE IN NET POSITION	33,947,316		
Net position at beginning of period	 21,710,529		
Net position at end of period	\$ 55,657,845		

STATEMENT OF CASH FLOWS July 1, 2017 through December 31, 2017

CASH FLOWS FROM OPERATING ACTIVITIES	
Receipts from electricity sales	\$ 132,410,562
Tax and surcharge receipts from customers	2,171,073
Payments to purchase electricity	(85,434,751)
Payments for staff compensation and benefits	(998,347)
Payments for consultants and other professional fees	(3,114,401)
Payments for legal fees	(579,911)
Payments for communications and noticing	(387,230)
Payments for general and administration	(384,361)
Tax and surcharge payments to other governments	 (2,091,980)
Net cash provided (used) by operating activities	41,590,654
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES	
Principal payments on loan	(7,480,800)
Deposits and collateral paid	(2,633,718)
Deposits and collateral returned	2,115,750
Interest and related expense payments	(216,703)
Net cash provided (used) by non-capital	 _
financing activities	 (8,215,471)
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES	
Acquisition of capital assets	 (223,381)
CASH FLOWS FROM INVESTING ACTIVITIES	
Interest income received	 7,505
Net change in cash and cash equivalents	33,159,307
Cash and cash equivalents at beginning of year	 20,381,698
Cash and cash equivalents at end of period	\$ 53,541,005

STATEMENT OF CASH FLOWS (continued) July 1, 2017 through December 31, 2017

RECONCILIATION OF OPERATING INCOME (LOSS) TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES

Operating income (loss)	\$ 34,122,942
Adjustments to reconcile operating income to net	
cash provided (used) by operating activities	
Depreciation expense	23,388
Revenue reduced for uncollectible accounts	448,157
(Increase) decrease in net accounts receivable	3,584,228
(Increase) decrease in other receivables	(13,310)
(Increase) decrease in accrued revenue	808,437
(Increase) decrease in prepaid expenses	(40,964)
Increase (decrease) in accounts payable	(87,134)
Increase (decrease) in accrued payroll and related	(12,932)
Increase (decrease) in accrued cost of electricity	2,680,752
Increase (decrease) in accrued liabilities	25,000
Increase (decrease) in user taxes and energy	
surcharges due to other governments	52,090
Net cash provided (used) by operating activities	\$ 41,590,654

ACCOUNTANTS' COMPILATION REPORT

Board of Directors Peninsula Clean Energy Authority

Management is responsible for the accompanying special purpose statement of Peninsula Clean Energy Authority (the Authority), a California Joint Powers Authority, which comprise the budgetary comparison schedule for the period ended December 31, 2017, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of PCE.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the special purpose budgetary comparison statement, they might influence the user's conclusions about the Authority's results of operations. Accordingly, this special purpose budgetary comparison statement is not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA January 19, 2018

PENINSULA CLEAN ENERGY AUTHORITY OPERATING FUND

BUDGETARY COMPARISON SCHEDULE

July 1, 2017 through December 31, 2017

	2017/18 YTD Budget	2017/18 YTD Actual	2017/18 YTD Budget Variance (Under) Over	2017/18 YTD Actual/Budget %	2017/18 Annual Budget	2017/18 Budget Remaining
REVENUE AND OTHER SOURCES						
Revenue - Electricity, net	\$ 133,889,974	\$ 127,028,378	\$ (6,861,596)	95%	\$ 248,082,000	\$ 121,053,622
Revenue - Green Premium, net	375,015	568,365	193,350	152%	737,000	168,635
Interest income		6,947	6,947			
Total revenue and other sources	134,264,989	127,603,690	(6,661,299)	95%	248,819,000	121,222,257
EXPENDITURES AND OTHER USES						
CURRENT EXPENDITURES						
Cost of energy	91,851,671	88,130,793	(3,720,878)	96%	181,715,000	93,584,207
Data manager	1,979,861	2,016,690	36,829	102%	3,970,000	1,953,310
PG&E service fees	803,949	765,925	(38,024)	95%	1,636,000	870,075
Personnel	1,500,000	991,423	(508,577)	66%	3,320,000	2,328,577
Customer noticing	150,000	158,684	8,684	106%	425,000	266,316
Outreach and communications	312,000	201,351	(110,649)	65%	624,000	422,649
Professional services	508,500	270,704	(237,796)	53%	1,017,000	746,296
Legal and regulatory	510,000	604,911	94,911	119%	1,030,000	425,089
Energy programs	100,000	=	(100,000)	0%	250,000	250,000
General and administration	422,500	309,932	(112,568)	73%	795,000	485,068
Total current expenditures	98,138,481	93,450,413	(4,688,068)	95%	194,782,000	101,331,587
OTHER USES						
Rate stabilization reserve *	6,713,249	-	(6,713,249)	0%	12,440,950	12,440,950
Capital outlay	375,000	326,729	(48,271)	87%	484,000	157,271
Total other uses	7,088,249	326,729	(6,761,520)	5%	12,924,950	12,598,221
DEBT SERVICE	7,997,000	7,663,373	(333,627)	96%	7,997,000	333,627
Total Expenditures, Other Uses and Debt Service	113,223,730	101,440,515	(11,783,215)	90%	215,703,950	114,263,435
Net increase (decrease) in available fund balance	\$ 21,041,259	\$ 26,163,175	\$ 5,121,916	124%	\$ 33,115,050	\$ 6,958,822

^{*} The rate stabilization reserve will be recognized at the end of the fiscal year

OPERATING FUND BUDGET RECONCILIATION TO STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

July 1, 2017 through December 31, 2017

Net increase (decrease) in available fund balance

per budgetary comparison schedule: \$ 33,643,975

Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position:

Subtract depreciation expense (23,388)
Add back capital asset acquisitions 326,729

Change in net position \$ 33,947,316