

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

Thursday, October 28, 2021 6:30 p.m.

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

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

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

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

CALL TO ORDER / ROLL CALL

PUBLIC COMMENT

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

ACTION TO SET AGENDA AND TO APPROVE CONSENT AGENDA ITEMS

- 1. Approval of the Minutes for the September 25, 2021 Board Retreat
- 2. Approval of a Revised Spending Plan for the prior Fiscal Year (FY) 2020-2021 to Authorize Operating Expenses in an Amount Not to Exceed \$236,361,472, an Amount that is \$10,719,019 Above the Originally Approved Budget of \$225,642,453
- 3. Approval of a Contract with UC Davis for EV Managed Charging Pilot
- 4. Adopt Findings Pursuant to AB 361 to Continue Fully Teleconferenced Committee Meetings Due to Health Risks Posed by In-Person Meetings

5. Approval of a Resolution to Approve an Amendment to the Contract with Newgen to add Phase Two Services for Ongoing Support and Other Analyses and Increase the Not to Exceed Amount to \$145,000

REGULAR AGENDA

- 6. Chair Report (Discussion)
- 7. CEO Report (Discussion)
- 8. Citizens Advisory Committee Report (Discussion)
- 9. Approval of the Audited Financial Statements for FY2020-2021 (Action)
- 10. Approval of a Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase and Sale Agreement for Renewable Supply with Arica Solar, LLC, and any Necessary Ancillary Documents with a Power Delivery Term of 15 Years Starting at the Commercial Operation Date on or about April 1, 2024, in an Amount Not to Exceed \$215 Million (Action)
- 10A. Approval of a Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase and Sale Agreement for Renewable Supply with Gonzaga Ridge Wind Farm LLC**, and any Necessary Ancillary Documents with a Power Delivery Term of 15 Years Starting at the Commercial Operation Date on or about October 31, 2024, in an Amount Not to Exceed \$204 Million (Action)
- 11. Approval of a Resolution Delegating Authority to the Chief Executive Officer to Execute an Agreement with GCAP Services, Inc. in Amount Not to Exceed \$175,650 for Diversity, Equity, Accessibility, and Inclusion Consulting Services (Action)
- 12. Update on California Community Power (CC Power) Long Duration Storage Project (Discussion)
- 13. Board Members' Reports (Discussion)

INFORMATIONAL REPORTS

- 14. Update on Marketing, Outreach Activities, and Customer Care
- 15. 2021 Q3 Media Relations Report

- 16. Update on Regulatory Policy Activities
- 17. Update on Legislative Activities
- 18. Community Energy Programs Report
- 19. Energy Supply Procurement Report
- 20. California Community Power Board Reports October 8 and 20, 2021 Meetings
- 21. Industry Acronyms and Terms

<u>ADJOURNMENT</u>

**The Agenda released on October 25, 2021 had the name of Gonzaga Ridge Wind Farm, LLC erroneously printed as Scout Clean Energy, LLC.

Public records that relate to any item on the open session agenda are available for public inspection. The records are available at the Peninsula Clean Energy offices or on PCEA's Website at: https://www.peninsulacleanenergy.com.

Instructions for Joining a Zoom Meeting via Computer or Phone

Best Practices:

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

Options for Joining

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

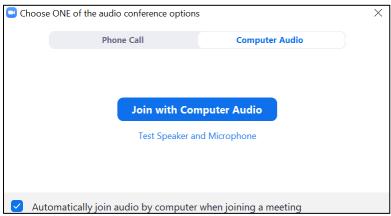
Videoconference Options:

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

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

Option 1 Videoconference with Computer Audio:

- 1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation: https://pencleanenergy.zoom.us/j/82688645399
- 2. The Zoom application will open on its own or you will be instructed to open Zoom.
- 3. After the application opens, the pop-up screen below will appear asking you to choose ONE of the audio conference options. Click on the Computer Audio option at the top of the pop-up screen.



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

Option 2 Videoconference with Phone Call Audio:

- 1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation: https://pencleanenergy.zoom.us/j/82688645399
- 2. The Zoom Application will open on its own or you will be instructed to Open Zoom.
- 3. After the application opens, the pop-up screen below will appear asking you to choose ONE of the audioconference options. Click on the Phone Call option at the top of the pop-up screen.



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

Audio Only Options:

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

Option 3: Calling in via Telephone/Landline:

- 1. Dial +1 (346) 248-7799
- 2. You will be instructed to enter the meeting ID: 826-8864-5399 followed by #
- 3. You will be instructed to enter your **Participant ID** followed by #. If you do not have a participant ID or do not know it, you can press # to stay on the line.
- 4. You will be instructed to enter the meeting passcode 2075 followed by #.



Regular Meeting of the Board of Directors of the Peninsula Clean Energy Authority (PCEA) Saturday, September 25, 2021 MINUTES

Peninsula Clean Energy Zoom Video Conference and Teleconference 9:00 a.m.

CALL TO ORDER

Meeting was called to order at 9:04 a.m.

ROLL CALL

Participating Remotely:

Dave Pine, San Mateo County Rick DeGolia, Atherton, Chair Julia Mates. Belmont Coleen Mackin, Brisbane Raquel Gonzalez, Colma Roderick Daus-Magbual, Daly City Carlos Romero, East Palo Alto Harvey Rarback, Half Moon Bay Christine Krolik, Hillsborough Betsy Nash, Menlo Park Ann Schneider, Millbrae Tygarjas Bigstyck, Pacifica Jeff Aalfs, Portola Valley Giselle Hale, Redwood City Marty Medina, San Bruno Laura Parmer-Lohan, San Carlos Rick Bonilla, San Mateo Flor Nicolas. South San Francisco Jennifer Wall, Woodside

Pradeep Gupta, Director Emeritus John Keener, Director Emeritus

Absent:

Carole Groom, San Mateo County Donna Colson, Burlingame, *Vice Chair* Sam Hindi, Foster City Tom Faria, Los Banos

A quorum was established.

Staff:

Jan Pepper, Chief Executive Officer
Andy Stern, Chief Financial Officer
Leslie Brown, Director of Customer Care
KJ Janowski, Director of Marketing and
Community Relations
Siobhan Doherty, Director of Power Resources
Marc Hershman, Director of Government Affairs
Rafael Reyes, Director of Community Energy
Programs
Jeremy Waen, Director of Regulatory Policy

Jennifer Stalzer, Deputy County Counsel
David Silberman, General Counsel
Kirsten Andrews-Schwind, Senior Manager of
Community Relations

Shayna Barnes, Operations Specialist
Sally Chen, Power Resources Manager
Dave Fribush, DER Technical Advisor
Darren Goode, Public Relations Consultant
Gerald Gottheil, Senior Manager of Marketing
Communications

Chelsea Keys, Power Resources Manager Phillip Kobernick, Programs Manager Doug Karpa, Senior Regulatory Analyst Peter Levitt, Associate Manager, Distributed Energy Resources

Sara Maatta, Renewable Energy and Compliance Analyst

Greg Miller, Power Resources Intern Matthew Rutherford, Senior Regulatory Analyst Mehdi Shahriari, Senior Renewable Energy Analyst

Vanessa Shin, Community Outreach Associate Nelly Wogberg, Board Clerk, Executive Assistant and Office Manager

PUBLIC COMMENT:

Rick Bonilla Tim Bussiek

ACTION TO SET THE AGENDA AND APPROVE CONSENT AGENDA ITEMS

MOTION: Director Hale moved, seconded by Director Mates to set the Agenda, and approve Agenda Item Number 1.

1. Approval of the Minutes for the August 26, 2021 Meeting

MOTION PASSED: 17-0 (Absent: San Mateo County, Burlingame, Foster City, Los Banos, South San Francisco, Woodside)

JURISDICTION	NAME	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	Х			
San Mateo County	Director Groom				Х
Atherton	Director DeGolia	Χ			
Belmont	Director Mates	Χ			
Brisbane	Director Mackin	Χ			
Burlingame	Director Colson				Х
Colma	Director Gonzalez	Χ			
Daly City	Director Daus-Magbual	Χ			
East Palo Alto	Director Romero	Χ			
Foster City	Director Hindi				Х
Half Moon Bay	Director Rarback	Χ			
Hillsborough	Director Krolik	Χ			
Los Banos	Director Faria				Х
Menlo Park	Director Nash	Χ			
Millbrae	Director Schneider	Χ			
Pacifica	Director Bigstyck	Χ			
Portola Valley	Director Aalfs	Χ			
Redwood City	Director Hale	Χ			
San Bruno	Director Medina	Χ			
San Carlos	Director Parmer-Lohan	Χ			
San Mateo	Director Bonilla	Χ			
S. San Francisco	Director Nicolas				Х
Woodside	Director Wall				Χ
	Totals	17			6

REGULAR AGENDA

2. Approval of a Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase and Sale Agreement for Renewable Supply with Chaparral Solar, LLC, and any Necessary Ancillary Documents with a Delivery Term of 15 Years Starting at the Delivery

Commencement Date on or About December 31, 2023, in an Amount Not to Exceed \$230 Million (Action)

Siobhan Doherty, Director of Power Resources, gave a presentation on the power purchase agreement with Chaparral Solar, LLC detailing the contract structure, labor agreement, environmental review, permitting, generation profile, and the fit with the Peninsula Clean Energy Strategic Plan. Board members sought clarification on battery storage.

Public Comment: Rahul Bahadur

MOTION: Director Bonilla moved, seconded by Director Lohan-Parmer to Approve a Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase and Sale Agreement for Renewable Supply with Chaparral Solar, LLC, and any necessary ancillary documents with a Power Delivery Term of 15 years starting at the Delivery Commencement Date on or about December 31, 2023, in an amount not to exceed \$230 million.

MOTION PASSED: 17-0 (Absent: San Mateo County, Burlingame, Foster City, Los Banos, South San Francisco, Woodside)

JURISDICTION	NAME	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	Χ			
San Mateo County	Director Groom				Х
Atherton	Director DeGolia	Χ			
Belmont	Director Mates	Χ			
Brisbane	Director Mackin	Х			
Burlingame	Director Colson				Х
Colma	Director Gonzalez	Χ			
Daly City	Director Daus-Magbual	Х			
East Palo Alto	Director Romero	Χ			
Foster City	Director Hindi				Х
Half Moon Bay	Director Rarback	Χ			
Hillsborough	Director Krolik	Χ			
Los Banos	Director Faria				Х
Menlo Park	Director Nash	Χ			
Millbrae	Director Schneider	Χ			
Pacifica	Director Bigstyck	Χ			
Portola Valley	Director Aalfs	Χ			
Redwood City	Director Hale	Χ			
San Bruno	Director Medina	Χ			
San Carlos	Director Parmer-Lohan	Χ			
San Mateo	Director Bonilla	Х			
S. San Francisco	Director Nicolas				Х
Woodside	Director Wall				Х
	Totals	17			6

2A. Adopt Findings Pursuant to AB 361 to Continue Fully Teleconferenced Board Meetings Due to Health Risks Posed by In-Person Meetings (Action)

Jennifer Stalzer, Deputy County Counsel, gave a verbal presentation on the requirements of AB 361. Board Members sought clarification on the requirement for findings as specified in AB 361, and the timing requirements of board meetings and subcommittees.

MOTION: Director Mates Moved, Seconded by Director Medina to Adopt the Resolution Finding That, as a Result of the Continuing Covid-19 Pandemic State of Emergency Declared by Governor Newsom, Meeting in Person for Meetings of the Peninsula Clean Energy Board of Directors Would Present Imminent Risks to the Health or Safety of Attendees.

MOTION PASSED: 17-0 (Absent: San Mateo County, Burlingame, Foster City, Los Banos, South San Francisco, Woodside)

JURISDICTION	NAME	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	Х			
San Mateo County	Director Groom				Х
Atherton	Director DeGolia	Χ			
Belmont	Director Mates	Х			
Brisbane	Director Mackin	Х			
Burlingame	Director Colson				Х
Colma	Director Gonzalez	Χ			
Daly City	Director Daus-Magbual	Χ			
East Palo Alto	Director Romero	Χ			
Foster City	Director Hindi				Х
Half Moon Bay	Director Rarback	Χ			
Hillsborough	Director Krolik	Х			
Los Banos	Director Faria				Х
Menlo Park	Director Nash	Х			
Millbrae	Director Schneider	Х			
Pacifica	Director Bigstyck	Х			
Portola Valley	Director Aalfs	Х			
Redwood City	Director Hale	Х			
San Bruno	Director Medina	Х			
San Carlos	Director Parmer-Lohan	Х			
San Mateo	Director Bonilla	Х			
S. San Francisco	Director Nicolas				Х
Woodside	Director Wall				Х
	Totals	17			6

Citizen's Advisory Committee Report to Recommend Amending Peninsula Clean Energy's Goal to be 100% Greenhouse Gas-Free by 2035

Morgan Chaknova, Vice Chair of the Citizens Advisory Committee (CAC), gave a verbal presentation on the CAC's recommendation to amend Peninsula Clean Energy's goal to contribute

to Peninsula Clean Energy service territory reaching the state's goal to be 100% greenhouse gasfree by 2035 instead of the current goal of 2045.

Board Members expressed their interest in this updated goal.

Public Comment: Jason Mendelson

4. First Annual Strategic Plan Update

Jan Pepper, CEO, gave a presentation on the first annual strategic plan update overview of Peninsula Clean Energy's two priorities: 100% renewable energy by 2025 on a 24/7 basis and 100% Greenhouse Gas (GHG) free by 2045. Siobhan Doherty, Director of Power Resources, reported on the progress, challenges and 2022 priorities of the Power Resources Team's four goals: Low-Cost and Stable Power, Clean Power, Local Power Sources, and New Power Sources. Rafael Reyes, Director of Energy Programs, reported on the progress, challenges and 2022 priorities of the Programs Team's goal of Signature Programs, Community Benefits, and Innovation and Scale.

Board Members discussed the impacts of social, health and climate costs for the continued use of natural gas, the challenges behind the Power on Peninsula program, the need to develop momentum in electric vehicle areas, and the benefits of creating a dashboard to focus on aspects of our programs that will affect the most change in our community. Siobhan answered questions on Firm Clean Resources.

Public Comment: Tim Bussiek, Rahul Bahadur

KJ Janowski, Director of Marketing and Community Relations, and Leslie Brown, Director of Account Services, reported on the progress, challenges and 2022 priorities of the Marketing and Customer Care Team's objective of Brand Reputation, Engagement, and Customer Care. Jeremy Waen, Director of Regulatory Policy, and Marc Hershman, Director of Government Affairs reported on the progress, challenges and 2022 priorities of the Public Policy Team. Andy Stern, Chief Financial Officer, reported on the progress, challenges and 2022 priorities of Peninsula Clean Energy's Financial Stewardship. Jan reported on Organizational Excellence Highlighting Culture, Innovation, Technology, External Vendors, and Governance.

The Board of Directors took a break at 10:38 a.m. and returned at 10:45 a.m.

- 5. Peninsula Clean Energy's Strategic Priorities:
 - A. Discussion on Approach to Delivering 24/7 Renewable Energy by 2025

Jan Pepper, CEO, gave an introduction explaining Peninsula Clean Energy's two organizational priorities: Delivering 100% Renewable Energy 24/7 by 2025 and 100% Greenhouse Gas (GHG) free by 2045, and she provided some historical information from Peninsula Clean Energy on progress made thus far. Sara Maatta, Renewable Energy and Compliance Analyst, presented information on why 24/7 renewable energy is important, including background on the electricity grid, current 100% carbon free status, and differences between energy supply and demand.

Board members discussed procurement of biogas, clean firm storage requirements, an interest in future cost implication data, and a general enthusiasm for this goal.

Public Comment: Drew, Ken Branson, Bruce Karney, Tom Kabat (read by Nelly Wogberg)

Siobhan Doherty, Director of Power Resources, presented an overview of renewable energy procurement including information on strategy, Peninsula Clean Energy's load, and renewable energy from wind, solar, geothermal, and small hydro. Greg Miller, Power Resources Intern, presented on strategies to achieve the 24/7 goal, including procuring a diverse portfolio of renewables, using energy storage to shift excess renewables, and shaping and shifting load to match renewable supply. Greg also presented on phasing the 24/7 goal into two phases, one by 2025 and one beyond 2025. Mehdi Shahriari, Senior Renewable Energy Analyst, presented on the modeling approach including a portfolio planning tool, inputs and outputs, scenarios, and modeling uncertainty. Mehdi also presented on challenges including resource challenges, external policy challenges, and product challenges. Jan presented on next steps and a timeline for the 24/7 goal.

Board Members discussed battery storage capabilities, the importance of the 24/7 undertaking, the role of large hydro, and advocating for a reduction of commercial consumption of energy during peak hours.

Public Comment: Drew; Rahul Bahadur

The Board of Directors took a break at 12:34 p.m. and returned at 12:40 p.m.

B. Discussion of the Peninsula Clean Energy's Energy Program Focus on the 2045 State Goal of 100% Greenhouse-Gas Free

Rafael Reyes, Director of Energy Programs, introduced Peninsula Clean Energy's distributed decarbonization efforts. Phillip Kobernick, Programs Manager, gave a presentation detailing success highlights with Reach Codes, EV Charging, and Advanced Building System Technology and success highlights in underserved communities through the used Electric Vehicle Rebate Program and the E-Bikes Program. Rafael presented on 2021 emissions projections including information on the methane gas leakage and shared the programs portfolio and the cost of Greenhouse Gas reductions by program. Rafael also discussed the programs budget and critical challenges of public awareness and motivation, how to make it easier to take action, and accessing the capital to enable action.

Board Members discussed waiting on results from the DEAI Subcommittee to give feedback on the Peninsula Clean Energy budget mix, the importance of marketing and educating the public on what Peninsula Clean Energy offers, and the importance of incorporating Los Banos as part of the integral mix when considering the 2035 greenhouse gas free target. Board Members noted the distinction of methane gas versus natural gas as a more helpful descriptor. The Board moved to adopt a new goal of 100% greenhouse gas free by 2035 versus 2045 as previously stated.

MOTION: Director Krolik moved, Seconded by Director Aalfs to direct Peninsula Clean Energy to adopt a goal of 100% greenhouse gas free by 2035.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to "direct staff to return with a plan for achieving that goal."

Board Members also discussed an electrification turnkey program into a comprehensive direct installation program, the need for a real carbon pricing program in the U.S., and the Carbon Fee Dividend Act currently in Washington D.C.

Public Comment: Bruce Karney, Jason Mendelson

MOTION AS AMENDED: Director Krolik moved, Seconded by Director Aalfs to direct Peninsula Clean Energy to adopt a goal of 100% greenhouse gas free by 2035 and direct staff to return with a plan for achieving that goal.

MOTION AS AMENDED PASSED: 14-0 (Absent: San Mateo County, Burlingame, Colma, Daly City, Foster City, Los Banos, Redwood City, South San Francisco, Woodside)

JURISDICTION	NAME	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	Х			
San Mateo County	Director Groom				Х
Atherton	Director DeGolia	Χ			
Belmont	Director Mates	Χ			
Brisbane	Director Mackin	Х			
Burlingame	Director Colson				Х
Colma	Director Gonzalez				Х
Daly City	Director Daus-Magbual				Х
East Palo Alto	Director Romero	Х			
Foster City	Director Hindi				Х
Half Moon Bay	Director Rarback	Χ			
Hillsborough	Director Krolik	Χ			
Los Banos	Director Faria				Х
Menlo Park	Director Nash	Χ			
Millbrae	Director Schneider	Χ			
Pacifica	Director Bigstyck	Χ			
Portola Valley	Director Aalfs	Χ			
Redwood City	Director Hale				Х
San Bruno	Director Medina	Χ			
San Carlos	Director Parmer-Lohan	Χ			
San Mateo	Director Bonilla	Χ			
S. San Francisco	Director Nicolas				Х
Woodside	Director Wall				Х
	Totals	14			9

ADJOURNMENT

Meeting was adjourned at 1:57 p.m.



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: October 28, 2021

COMMITTEE MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Andy Stern, Chief Financial Officer

SUBJECT: Revised Spending Budget for FY2020-2021

RECOMMENDATION:

Approve revised spending budget for the prior fiscal year 2020-2021 to authorize total spending on Operating Expenses in an amount not to exceed \$236,361,472, an amount that is \$10,719,019 above the originally approved budget of \$225,642,453

BACKGROUND:

As of the end of June 2021, PCE's financial statements show spending relative to the budget that was approved by the Board in June 2020. Final financial results show that total operating expenses of \$236,361,472 exceeds the approved budget of \$225,642,453 by \$10,719,019.

The Board approved the Budget by authorizing a total expense amount. Year-end results show that only one category exceeded the expected level – Cost of Energy. Reasons for the overage of that category have been discussed with the Audit and Finance Committee throughout the fiscal year. However, in summary, it was mostly the result of energy costs and climate effects (i.e. smoke and fires) in the first fiscal quarter from July 1, 2020 through September 30, 2020.

DISCUSSION:

Per standard government budget management practice as it relates to Budget administration, Board approval represents an authorization to spend. Due to the overage in total operating expense spending, Staff is seeking official Board approval to increase spending.

The proposed increase was reviewed by the Audit and Finance Committee at its meeting on October 12, 2021. The Audit and Finance Committee approved a resolution recommending that the Board adopt this resolution.

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	FY 2021	FY 2021	Variance
	Approved Budget	YTD Actual through June 2021	Forecast \$ vs. FY20/21 Budget Fav/(Unf)
OPERATING EXPENSES			
Cost of electricity	197,445,054	213,833,820	(16,388,766)
Personnel	6,236,981	5,637,451	599,530
Data Manager	3,420,000	3,384,564	35,436
Service Fees - PG&E	1,260,000	1,254,565	5,435
Professional Services	3,068,340	1,995,013	1,073,327
Legal	1,708,230	1,371,676	336,554
Marketing and Noticing	2,873,350	1,416,816	1,456,534
General and Administrative	1,947,282	1,654,264	293,018
Community Energy Programs	7,550,000	5,722,363	1,827,637
Depreciation	133,216	90,940	42,276
Total Operating Expenses	225,642,453	236,361,472	(10,719,019)

FISCAL IMPACT:

No fiscal impact as the requested approval is to increase authorized spending for a period that has already passed. Actual spending for the year already ended will not change.

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

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YEAR 2020-2021 TO AUTHORIZE OPERATING EXPENSES IN AN AMOUNT NOT

TO EXCEED \$236,361,472, AN AMOUNT THAT IS \$10,719,019 ABOVE THE

ORIGINALLY APPROVED BUDGET OF \$225,642,453

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

WHEREAS, the Audit and Finance Committee, at its meeting on June 8, 2020, recommended approval of the FY2020-2021 budget by the Board of PCE; and

WHEREAS, the Board of PCE approved the full year FY2020-2021 budget at its meeting on June 25, 2020; and

WHEREAS, the Audit and Finance Committee of PCE reviewed preliminary financial results for the FY2020-2021 year at its meeting on August 9, 2021 showing detailed variances by major category detailed financial statements through the end of the year ending June 30, 2021 with variances compared to budget; and

WHEREAS, it is expected that the final, audited level of Total Operating Expenses is expected to be \$236,361,472, approximately \$10.7 million above the overall original, approved budgeted level of \$225,642,453; and

WHEREAS, PCE desires to document that the actual spending level for the Fiscal Year 2020-2021 was authorized; and

WHEREAS, approving an increase in the approved spending for the fiscal year which has already ended will have no additional impact on the financial position of PCE; and

. **WHEREAS**, the Audit and Finance Committee approved a resolution at its meeting on October 12, 2021 recommending that the Board approve this resolution.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Board of Directors approves a revised spending budget for FY2020-2021 to authorize total spending on Operating Expenses in an amount not to exceed \$236,361,472, an amount that is \$10,719,019 above the originally approved budget of \$225,642,453.

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PENINSULA CLEAN ENERGY JPA Board Correspondence

DATE: October 12, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

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

Rafael Reyes, Director of Energy Programs

SUBJECT: Contract with The University of California, Davis for the EV Managed

Charging Pilot (Action)

RECOMMENDATION

Board approval for the proposed research grant contract with the University of California, Davis, a component of the Electric Vehicle Managed Charging Pilot, for a total of \$220,000 over two years.

BACKGROUND

Peninsula Clean Energy's mission is to reduce greenhouse gas (GHG) emissions in San Mateo County and achieve carbon neutrality by 2035, which PCE aims to support through investment in local community programs. Transportation emissions are one of the most significant challenges to deep decarbonization in San Mateo County. These emissions account for about 50% of direct emissions within the County and are still increasing. Approximately 40% of transportation emissions are from local commercial, rental, and government fleets that range from light-duty passenger vehicles to heavy-duty trucks.

To support decarbonization efforts, the Board approved the Peninsula Clean Energy Program Roadmap in September 2018, which identifies programs for 2019 and beyond to include transportation electrification measures, such as new and used vehicle purchase incentives, a multi-year electric vehicle (EV) infrastructure program, fleets, and new and shared mobility. Furthermore, in support of Peninsula Clean Energy's effort to provide 100% renewable energy on a 24/7 time-coincident basis, the Programs team has developed strategies to shift energy demand away from times that are more difficult to provide renewable energy. In support of this strategy, the Board approved \$550,000 in June for the Programs team to further advance an EV Managed Charging program, which

included an allocation of \$220,000 to the University of California, Davis (UC Davis) as a research grant.

Peninsula Clean Energy released an RFP to select the EV managed charging platform in August and bids were received on September 27. Staff are currently reviewing proposals and plan to bring a contract for Board approval at the November Board meeting.

DISCUSSION

As a component of the EV Managed Charging program, staff have been developing an experiment with various customer incentives to determine which, if any, are critical to recruitment and retention and to encourage ongoing charge management in this new program. The customer experiment will test customer enrollment incentives and participation incentives such as a flat bill credit or a reduced off-peak EV charging rate, to determine what impact these have on participation in the program and the relative impacts on peak-load reduction. Customers will be randomly assigned to a control group and multiple treatment groups to evaluate the relative performance of each group. Staff anticipate recruitment to begin in early 2022 and for the experiment to begin in Q2 2022 and run for about 9 months.

Staff have collaborated with faculty from the University of California, Davis, Energy and Economics Program (DEEP), a leading institution in the study of consumer energy behavior. The UC Davis team brings extensive experience in the study of consumer behavior in energy usage and how various incentives effect decision making. The scope of the contract with UC Davis is for customer experiment design guidance, the development of a customer survey, and a detailed analysis on the experimental findings and implications for a full-scale EV managed charging program. The contract also includes a non-disclosure agreement (NDA) between Peninsula Clean Energy, UC Davis, and the University of Chicago. University of Chicago has been included because faculty from the University of Chicago, Harris School of Public Policy, is also involved in the academic team in an informal role. University of Chicago will not be receiving funds in this contract, but will be reviewing data and participating in the analysis, which requires them to be included in the NDA.

The budget for the Managed Charging program, approved in June 2021, included a research grant to UC Davis. This request is for approval of the contract between Peninsula Clean Energy and the University of California, Davis.

FISCAL IMPACT:

Up to \$220,000 over 2 years.

RESOLUTION NO.

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

* * * * * *

RESOLUTION APPROVING A CONTRACT WITH THE UNIVERSITY OF
CALIFORNIA, DAVIS FOR THE ELECTRIC VEHICLE MANAGED CHARGING
PILOT, IN AN AMOUNT NOT TO EXCEED \$220,000 OVER TWO YEARS

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

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

WHEREAS, reducing greenhouse gasses to reduce adverse public wellbeing and economic impacts of climate change is an organizational priority for Peninsula Clean Energy; and

WHEREAS, Peninsula Clean Energy's Strategic Vision calls for a goal to "deliver 100% carbon-free electricity every hour of every day;" and

WHEREAS, shifting electric vehicle charging from on-peak hours helps to better align renewable energy and energy demand, in support of Peninsula Clean Energy's Strategic Vision goals; and

WHEREAS, Peninsula Clean Energy has conducted a pilot project in 2020 to test managed charging through vehicle telematics; and

WHEREAS, the Peninsula Clean Energy Board approved a second phase of the electric vehicle managed charging pilot in June 2021 with a total budget not to exceed \$550,000 over two years; and

WHEREAS, Peninsula Clean Energy has an interest in testing various customer incentives to participate in a potential residential managed charging program and gather data to help inform program design.

WHEREAS, Peninsula Clean Energy has collaborated with faculty from the University of California, Davis to design the proposed customer experiment in phase two of the electric vehicle managed charging pilot and wishes to continue this collaboration and utilize the University of California, Davis for data analysis and evaluation; and

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to finalize and execute the agreement with the University of California, Davis in an amount not to exceed \$220,000 over two years and in a form approved by the General Counsel.

* * * * * *

AGREEMENT BETWEEN THE PENINSULA CLEAN ENERGY AUTHORITY AND THE UNIVERSITY OF CALIFORNIA, DAVIS

This Agreement is entered into this 1st day of November, 2021, by and between the Peninsula Clean Energy Authority, a joint powers authority of the state of California, hereinafter called "PCEA," and The University of California, Davis hereinafter called "Grantee"

* * *

Whereas, pursuant to Section 6508 of the Joint Exercise of Powers Act, PCEA may contract with independent contractors for the furnishing of services to or for PCEA; and Whereas, it is necessary and desirable that Grantee be retained for the purpose of Electric Vehicle Managed Charging Experimental Design Guidance and Analysis.

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

1. Exhibits and Attachments

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

Exhibit A—Services

Exhibit B—PCE Obligations

Exhibit C—Budget and Invoicing Schedule

Exhibit D—Non-Disclosure Agreement (Executed)

2. Services to be performed by Grantee

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

3. Payments

In consideration of the services provided by Grantee in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, PCEA shall make payments to Grantee as shown in Exhibit C. PCEA reserves the right to withhold final payment if PCEA determines that the quantity or quality of the work performed does the meet the terms and conditions of this Agreement. In no event shall PCEA's total fiscal obligation under this Agreement exceed two hundred and twenty thousand dollars (\$220,000).

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from November 1, 2021, through November 1, 2024.

5. <u>Termination; Availability of Funds</u>

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

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

6. <u>Intellectual Property and Ownership of Work Product</u>

PCEA shall and does own all titles, rights, and interests in all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations therefore in the form as delivered to PCEA as project deliverables as described in Exhibit A ("Delivered Work Products") created by Grantee and any subcontractors under this Agreement. Grantee hereby assigns all titles, rights, and interests in all Delivered Work Products to PCEA. At the end of this Agreement, or in the event of termination, in accordance with Exhibit A, all Delivered Work Products shall be promptly delivered to PCEA. Grantee has a license to use Delivered Work Products for non-commercial educational and research purposes. Work Products shall not include customer's personally-identifiable information and Grantee cannot retain any customer personally-identifiable information upon the expiration of this Agreement.

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

Grantee may retain its rights to and ownership of pre-existing or open-source materials.

7. Relationship of Parties

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

8. Hold Harmless

a. General Hold Harmless

Grantee shall indemnify and save harmless PCEA and its officers, agents, and employees, from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Grantee under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following in proportion to and to the extent such claims, suits, or actions result from the intentional acts or willful negligence of Grantee:

- (A) injuries to or death of any person, including Grantee or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Grantee's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of PCEA and/or its officers, agents, employees, or servants. However, Grantee's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which PCEA has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

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

9. Assignability and Subcontracting

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

10. Payment of Permits/Licenses

Grantee bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Grantee's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

11. W-9 Form and Submission of Invoices

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

12. Insurance

a. General Requirements

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

b. Workers' Compensation and Employer's Liability Insurance

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

c. Liability Insurance

Grantee shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Grantee and all of its employees/officers/agents while performing work covered by this Agreement from any

and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Grantee's operations under this Agreement, whether such operations be by Grantee, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

Yes	Comprehensive General Liability (Applies to all agreements)	\$1,000,000
No	Motor Vehicle Liability Insurance	\$1,000,000
No	Professional Liability Insurance	\$1,000,000

PCEA and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to PCEA and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the PCEA or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, PCEA, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

13. Compliance With Laws

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

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

14. Non-Discrimination and Other Requirements

a. General Non-discrimination

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

b. **Equal Employment Opportunity**

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

c. Section 504 of the Rehabilitation Act of 1973

Grantee shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Employee Benefits

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

e. <u>Discrimination Against Individuals with Disabilities</u>

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Grantee and any subcontractor shall abide by the requirements of 41 C.F.R. 60–741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by

covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. <u>History of Discrimination</u>

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

- X No finding of discrimination has been issued in the past 365 days against Grantee by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- Finding(s) of discrimination have been issued against Grantee within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Grantee shall provide PCEA with a written explanation of the outcome(s) or remedy for the discrimination.

g. Reporting; Violation of Non-discrimination Provisions

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

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

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

To effectuate the provisions of this Section, the Chief Executive Officer shall have the authority to offset all or any portion of the amount described in this Section against

amounts due to Grantee under this Agreement or any other agreement between Grantee and PCEA.

15. Confidential Information

- (a) Grantee shall maintain in confidence and not disclose to any third party or use in any manner not required or authorized under this Agreement any and all Confidential Information held by PCEA.
- (b) The term "Confidential Information" includes all information, documents, and materials owned by PCEA, including technical, financial, business, or PCEA customer information, which is not available to the general public, as well as information derived from such information. Information received by Grantee shall not be considered Confidential Information if: (i) it is or becomes available to the public through no wrongful act of Grantee; (ii) it is already in the possession of Grantee and not subject to any confidentiality agreement between the Parties; (iii) it is received from a third party without restriction for the benefit of PCEA and without breach of this Agreement; (iv) it is independently developed by Grantee; (v) it is disclosed pursuant to a requirement of law, including, but not limited to, the California Public Records Act (Cal. Gov't Code Section 6250, et seq.); or (vi) is disclosed to or by a duly empowered government agency, or a court of competent jurisdiction after due notice and an adequate opportunity to intervene is given to PCEA, unless such notice is prohibited.
- (c) As practicable, PCEA shall mark Confidential Information with the words "Confidential" or "Confidential Material" or with words of similar import, or, if that is not possible, PCEA shall notify the Grantee (for example, by cover e-mail transmitting an electronic document) that the material is Confidential Information. PCEA's failure or delay, for whatever reason, to mark or notify Grantee at the time the material is produced shall not take the material out of the coverage of this Agreement.
- (d) Grantee will direct its employees, contractors, consultants, and representatives who have access to any Confidential Information to comply with the terms of this Section.
- (e) Upon termination or expiration of this Agreement, Grantee shall, at PCEA's exclusive direction, either return or destroy all such Confidential Information and shall so certify in writing, provided, however, any Confidential Information
 - found in drafts, notes, studies, and other documents prepared by or for PCEA or its representatives, or
 - b. found in electronic format as part of Grantee's off-site or on-site data storage/archival process system, will be held by Grantee and kept subject to the terms of this provision or destroyed at Grantee's option. The obligations of this provision will survive termination or expiration of this Agreement.

16. <u>Data Security</u>

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

17. Retention of Records; Right to Monitor and Audit

- (a) Grantee shall maintain all required records relating to services provided under this Agreement for three (3) years after PCEA makes final payment and all other pending matters are closed, and Grantee shall be subject to the examination and/or audit by PCEA, a Federal grantor agency, and the State of California.
- (b) Grantee shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by PCEA.
- (c) Grantee agrees upon reasonable notice to provide to PCEA, to any Federal or State department having monitoring or review authority, to PCEA's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

18. Merger Clause; Amendments

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

19. Controlling Law; Venue

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

20. Notices

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

In the case of PCEA, to:

Name/Title: Jan Pepper, Chief Executive Officer

Address: 2075 Woodside Road, Redwood City, CA 94061

Telephone: 650-260-0100

Email: jpepper@peninsulacleanenergy.com

In the case of Grantee, to:

Name/Title: Ahmad Hakim-Elahi, Ph.D, J.D.

Address: 1850 Research Park Drive, Ste. 300, Davis, CA 95618

Telephone: 530-754-7700

Email: awards@ucdavis.edu

21. <u>Electronic Signature</u>

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

22. No Recourse Against PCEA's Member Agencies

Grantee acknowledges and agrees that PCEA is a Joint Powers Authority, which is a public agency separate and distinct from its member agencies. All debts, liabilities, or

obligations undertaken by PCEA in connection with this Agreement are undertaken solely by PCEA and are not debts, liabilities, or obligations of its member agencies. Grantee waives any recourse against PCEA's member agencies.

* * *

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

PENINSULA CLEAN ENERGY AUTHORITY

By:
Chief Executive Officer, Peninsula Clean Energy Authority
Date:

The Regents of the University of California, Davis
Grantee's Signature
Date:

Exhibit A

Grantee shall provide the following services:

<u>Overview</u>

Peninsula Clean Energy's (PCE) mission is to reduce greenhouse gas (GHG) emissions in San Mateo County. Emissions from transportation are the largest source of GHGs within the county with the transportation sector accounting for approximately 60% of emissions. In addition to decarbonization transportation, PCE also strives to provide 100% renewable energy on a 24/7 time-coincident basis and is investigating EV charge management in support of this goal.

PCE is piloting residential EV charge management through the use of telematics-based platforms. After a successful proof of concept test, PCE is exploring a larger pilot that also experiments with various customer incentives to help inform a future residential EV charge management program.

This contract constitutes a research grant to the University of California, Davis (UCD), Davis Energy and Economics Program (DEEP). UCD will assist PCE in designing the experiment to be utilized in the next phase of the managed charging pilot to provide PCE with actionable insight into customer behavior in various managed charging environments, advise during the experiment, and perform data analysis and evaluation.

Objectives:

- 1. Determine how various incentive options influence customer enrollment, retention, behavior, and satisfaction in a managed charging program.
- Evaluate load shifting potential and cost/benefit through telematics-based managed charging platform by various customer segments and vehicle types.
- 3. Understand customer charging behavior through data obtained via telematics system.
- 4. Identify challenges to load shifting in current rate tariff structures and propose opportunities for potential improvements.
- 5. Gain insight into other customer charging or energy use behavior in other experimental components to be determined mutually by PCE and UCD.

Grantee Tasks

Grantee shall provide the following:

1 Administrative Tasks

1.1 **Program Meetings**

Participate in regular program review meetings with the designated PCE contract administrator as determined to review progress and achieve objectives.

1.2 Quarterly Progress Reports and Invoices

Provide a progress report, which outlines major milestones, tasks, objectives, and an invoice every quarter. See Exhibit B for more details.

2 Experiment Preparation

2.1 **Setup Tasks**

Coordinate with PCE to develop and execute any additional agreements for the Managed Charging Pilot. These shall include, but are limited to:

- 1. Execution of PCE Non-Disclosure Agreement
- 2. Development, application, and administration of agreement(s) with the Institutional Review Board (IRB), as necessary
- 3. Other agreements or materials, as needed

2.2 Experimental Design

Grantee shall facilitate the experimental development process in collaboration with PCE, including ongoing meetings, and design experiment, to ensure experiment meets -PCE objectives with reasonable effort to PCE staff and complies with best practices for experimental design and operations. When completed by the Grantee, the final experimental design, delivered to PCE in the form of a slide deck (or other format to be determined), will be reviewed by PCE and PCE will provide final approval or changes to be made for final approval. The experiment will include:

- 1. A control group(s)
- Varying participation incentives and/or electricity price incentives, including an option for no upfront participation incentive, to test incentive impacts on initial recruitment and enrollment. Other incentives may be further determined.
- 3. Design elements that will elicit ex ante (anticipated) estimates of willingness-to-pay for managed charging services.
- 4. A number of managed charging treatment groups (exact number of treatment groups to be determined) that evaluate:
 - a. The relative load impacts from customers that receive different incentives (e.g. flat rebate, performance-driven rebate such as a discount on energy during certain times, no incentive, etc.)
 - b. Customer enrollment and retention rates
 - c. Other variables to be determined
- 5. A customer survey, described further below.

Grantee will deliver a proposed outline of the experiment, subject to PCE review and approval.

Grantee will provide guidance to PCE in the development of a customer recruitment strategy for the managed charging experiment, including:

- 1. Recommendation for the appropriate number of customers needed to be recruited to satisfy experimental objectives
- Recommendation for participation and/or other incentives needed to meet recruitment targets based on prior experience with participant recruitment for experiments

2.3 **Survey Development**

Design and develop customer survey(s) that:

- 1. Assesses customer perceptions of managed charging
- 2. Ex post (revelated) value to the customer to participate in managed charging
- 3. Perceived benefits and barriers to managed charging
- 4. Customer satisfaction
- 5. Other metrics to be determined

3 Experiment Support and Operations

3.1 Experiment Operations

Administer experiment in collaboration with PCE and third parties as relevant, including:

- 1. Assigning customers into randomized control and treatment groups
- 2. Monitoring customer charging behaviors based on data provided as specified in Exhibit B
- 3. Advise PCE on adjustments or iterations needed during the experiment

4 Experiment Analysis & Evaluation

4.1 Data Evaluation & Final Report

Evaluate data from the experiment, provided by PCE as specified in Exhibit B, and produce report on data evaluation to PCE, including:

- 1. Charging summary overview, including breakdowns of:
 - a. Charging speeds (e.g. Level 1, Level 2, etc.)
 - b. Load profiles
 - c. Average plug-in and charge durations
 - d. Average charging start and stop times
- 2. Observed aggregate load shift

- 3. Observed load shift by treatment groups, evaluating the relative impact of each treatment group and total cost/benefit of each treatment
- 4. Observed load shift, isolated by other relevant factors, including:
 - a. EV type (e.g. PHEV vs BEV)
 - b. EV battery sizes
 - c. Home charging speed (L1 vs L2)
 - d. Type of vehicle (e.g. Tesla vs other EVs)
- 5. Customer retention in various treatment groups
- 6. Customer perceptions and understanding of various incentives, managed charging, etc.
- 7. Customer satisfaction and observations from UCD-developed customer survey
- 8. Other significant charging behaviors or observations in the experiment

The final report, subject to PCE review and approval, will be delivered to PCE in a slide deck and narrative report and will include:

- 1. An executive summary with key data summarized (e.g. load shift potential in PCE territory by incentive option)
- 2. Detailed analyses for the variables mentioned above with key data presented graphically and extrapolations to PCE service territory, including margins of error
- 3. Conclusions from the experiment and implications for the implementation of a managed charging program, including expected costs to enroll and retain customers and achieve various levels of load shifting
- 4. Customer survey analysis and relevant implications for a managed charging program
- 5. Summary of experimental methodology and procedures, hypotheses tested and assumptions made, lessons learned, operational challenges, data shortcomings, etc.

5 Schedule

Grantee will complete tasks per the schedule below.

Task	Months Following Contract Execution
Finalize experimental design	3
Customer recruitment	3 – 7
Experiment runs	7 – 16
Evaluation and Report	18

6 Project Deliverables

The project deliverables include:

- 1. Experimental Design Document
- 2. Customer Survey Questions

- 3. Customer Survey Raw Results
- 4. Customer Survey Analysis
- 5. Final Report

7 Research Team

The research team will consist of the individuals named below, at a minimum. Personnel may be added or removed, subject to PCE approval.

1. David S. Rapson, University of California, Davis

Exhibit B

PCE Obligations

In consideration of the services provided by Grantee described in Exhibit A and subject to the terms of the Agreement, PCE shall:

- Provide access to customer data for purposes of analysis in the EV Managed Charging experiment, subject to applicable laws and Non-Disclosure Agreement(s). Customer data shall include, but is not limited to:
 - a. Data from the telematics managed charging platform, provided to UCD on a monthly basis, or other frequency to be mutually determined by PCE and UCD, and subject to the technical abilities of the selected telematics-based managed charging contractor, such as:
 - i. Customer provided data, including vehicle type, homecharging configuration (e.g. Level 1, Level 2, etc.), and other customer data to be determined.
 - ii. Residential and non-residential charging data, including geospatial location, plug-in and plug-out times, charging start and stop times, total energy dispensed per session, average charging speeds, average battery state of charge at end of charge sessions, and other charging data to be determined.
 - iii. Managed charging performance data, including peak-load reduction attributable to managed charging platform, observed charging load profiles, counter-factual charging load profiles (if available), customer opt-outs, and other managed charging performance to be determined.
 - iv. Other relevant data from the telematics-based managed charging platform, including travel details such as daily vehicle-miles travelled, non-residential charging events, and other relevant data to be determined.
 - b. Anonymized, customer residential advanced metering infrastructure (AMI) data on a monthly basis. These data will be in hourly format, or other format to be determined, per meter, for the duration of the experiment and pre-experiment baseline period to be determined, and will include in which rate tariff each meter is enrolled. Account information relating to each meter will include Census Block Group, ZIP and distribution feeder ID (in a format that can be matched to geographic location of the feeder).
- 2. Procure and retain a telematics-based managed charging platform(s) for the duration of the experiments. Managed charging platforms may utilize one or more than one telematics-based systems to conduct managed

- charging with PCE customer EVs. Selection of the managed charging platform(s) is at the sole discretion of PCE.
- 3. Provide funding for customer incentives, both upfront and ongoing, for the duration of the experiment.
- 4. Conduct customer outreach engagement and marketing for the purposes of recruiting participants in the experiments.
- 5. Send communications to PCE customers associated with the experiment, including satisfaction surveys, etc.
- 6. Develop any agreements with participating customers as deemed necessary by PCE.
- 7. Facilitate coordination with relevant third parties (e.g. billing platforms).
- 8. Allow for anonymized data and findings from the experiment to be used by the Academic team for the purpose of publications to journals and other sources.

Exhibit C

Budget and Invoicing Schedule

In consideration of the services provided by Grantee described in Exhibit A and subject to the terms of the Agreement, PCE shall pay Grantee per the schedule outlined below:

Date	Amount
Contract execution	\$60,000
Final experimental design (est. 3	\$15,000
months after contract execution)	
Experiment begins (est. 6 months	\$15,000
after contract execution)	
Experiment + 3 months (est. 9 months	\$15,000
after contract execution)	
Experiment + 6 months (est. 12	\$15,000
months after contract execution)	
Experiment ends (est. 9 months) (est.	\$15,000
15 months after contract execution)	
Delivery of draft report and analysis	\$15,000
(est. 18 months after contract	
execution)	
Delivery of final report to PCE	\$70,000

Exhibit D

NON-DISCLOSURE AGREEMENT BETWEEN PENINSULA CLEAN ENERGY AND THE UNIVERSITY OF CALIFORNIA, DAVIS AND THE UNIVERSITY OF CHICAGO REGARDING CONFIDENTIAL CUSTOMER INFORMATION

This Non-Disclosure Agreement ("Agreement") is entered into by and between Peninsula Clean Energy ("PCE"), the University of California, Davis ("Grantee"), and the University of Chicago ("Grantee Sub Contractor") as of the date of final signature below ("Effective Date"). As used herein PCE and Grantee may each be referred to individually as a "Party" and collectively as "Parties." The provisions of this Agreement and PCE's Customer Confidentiality Policy govern the disclosure of PCE's confidential customer information to Grantee ("Disclosure Provisions").

The Parties hereby mutually agree that:

- 1. Subject to the terms and conditions of this Agreement, current proprietary and confidential information of PCE regarding customers of PCE ("PCE Customers") may be disclosed to Grantee from time to time in connection herewith as provided by the Disclosure Provisions and solely for the purposes set forth on Schedule A. Such disclosure is subject to the following legal continuing representations and warranties by Grantee:
 - (a) Grantee and Grantee Sub-Contractor represent and warrant that it has all necessary authority to enter into this Agreement, and that it is a binding enforceable Agreement according to its terms;
 - (b) Grantee and Grantee Sub-Contractor represent and warrant that the authorized representative(s) executing this Agreement is authorized to execute this Agreement on behalf of the Grantee; and
 - (c) Grantee and Grantee Sub-Contractor confirm their understanding that the information of PCE Customers is of a highly sensitive confidential and proprietary nature, and that such information will be used as contemplated under the Disclosure Provisions solely for the purposes set forth on Schedule A and that any other use of the information is prohibited.
 - (d) Grantee and Grantee Sub-Contractor represent and warrant that they will implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for purposes not set forth on Schedule A.
- 2. The confidential and proprietary information disclosed to Grantee and/or Grantee Sub-Contractor in connection herewith may include, without limitation, the following information about PCE Customers: (a) names; (b) addresses; (c)

telephone numbers and email addresses; (d) service agreement numbers and account numbers; (e) meter and other identification numbers; (f) PCE-designated account numbers; (g) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption, HP load, and other data detailing electricity or gas needs and patterns of usage); (h) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (i) payment / deposit status; (j) number of units; and (k) other similar information specific to PCE Customers individually or in the aggregate (collectively, "Confidential Information"). For avoidance of doubt, the results of Grantee and/or Grantee Sub-Contractor's use of the Confidential Information, which may include but is not limited to any analyses, reports, and other materials, which are based on but do not include Confidential Information (collectively, "Results"), are not Confidential Information. Grantee and/or Grantee Sub-Contractor retains the right to make its Results publicly available, in formats such as, but not limited to, presentation or publication in an academic journal. The parties understand that the Results discussed herein with be anonymized and shall not contain individually identifying information of PCE Customers.

- 3. Except for electric and gas usage information provided to Grantee and/or Grantee Sub-Contractor pursuant to this Agreement, Confidential Information does not include information that Grantee and/or Grantee Sub-Contractor proves (a) was properly in the possession of Grantee and/or Grantee Sub-Contractor at the time of disclosure; (b) is or becomes publicly known through no breach of this Agreement by Grantee and/or Grantee Sub-Contractor, its employees or representatives; or (c) was independently developed by Grantee and/or Grantee Sub-Contractor, its employees or representatives without access to any Confidential Information.
- 4. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Grantee and/or Grantee Sub-Contractor, or used for any purpose other than the purposes set forth on Schedule A.
- 5. Grantee and/or Grantee Sub-Contractor shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Grantee and/or Grantee Sub-Contractor shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth on Schedule A. Specifically, Grantee and Grantee Sub-Contractor shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of Grantee and Grantee Sub-Contractor who have a "need to know" such Confidential Information in the course of their duties with respect to the Grantee and Grantee Sub-Contractor program and who are bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, Grantee and/or Grantee Sub-

Contractor shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement in order to understand their obligations under the terms of this Agreement. Grantee and Grantee Sub-Contractor shall not disclose Confidential Information or otherwise make it available, in any form or manner, to any other person or entity that is not Grantee and Grantee Sub-Contractor's employee or representative (a "Third Party"), except where PCE has provided express written consent to Grantee and/or Grantee Sub-Contractor to disclose Confidential Information to a Third Party and that Third Party has separately entered into a nondisclosure agreement with PCE.

- 6. Notwithstanding Paragraph 5 above, Grantee and/or Grantee Sub-Contractor may disclose Confidential Information to the extent required by an order, subpoena, or lawful process requiring the disclosure of such Confidential Information issued by a court or other governmental authority of competent jurisdiction, provided that Grantee and/or Grantee Sub-Contractor notifies PCE immediately upon receipt thereof to allow PCE to seek protective treatment for such Confidential Information.
- 7. Grantee and/or Grantee Sub-Contractor shall immediately notify PCE if it reasonably believes that there has been unauthorized access to the Confidential Information by a non-authorized person and/or entity that could reasonably result in the use, disclosure, or theft of the Confidential Information.
- 8. It shall be considered a material breach of this Agreement if Grantee and/or Grantee Sub-Contractor engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Grantee and/or Grantee Sub-Contractor understand that if PCE finds that Grantee and/or Grantee Sub-Contractor are engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement PCE shall promptly cease all disclosures of Confidential Information to Grantee and/or Grantee Sub-Contractor. Grantee and/or Grantee Sub-Contractor further understand that if PCE receives a customer complaint about Grantee and/or Grantee Sub-Contractor's misuse of data or other violation of the Disclosure Provisions, PCE shall promptly cease disclosing that customer's information to Grantee and/or Grantee Sub-Contractor and shall notify the California Public Utilities Commission of the complaint.
- 9. Grantee and/or Grantee Sub-Contractor shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by PCE directly against such employees or representatives for improper disclosure and/or use. In no event shall Grantee and/or Grantee Sub-Contractor or their individual employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Grantee and/or Grantee Sub-Contractor shall immediately notify PCE in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by any party and/or any of its employees or

- representatives. However, nothing in this Agreement shall obligate the PCE to monitor or enforce the Grantee and/or Grantee Sub-Contractor's compliance with the terms of this Agreement.
- 10. Grantee and/or Grantee Sub-Contractor shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.
- 11. Within ten (10) business days of receipt of PCE's written request, and at PCE's option, Grantee and/or Grantee Sub-Contractor will either return to PCE all tangible Confidential Information, including but not limited to all electronic files, documentation, notes, plans, drawings, and copies thereof, or will provide PCE with written certification that all such tangible Confidential Information of PCE has been destroyed.
- 12. Grantee and/or Grantee Sub-Contractor acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to PCE and/or PCE Customers, the amount of which may be difficult to assess. Accordingly, Grantee and/or Grantee Sub-Contractor hereby confirms that the PCE may be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Grantee and/or Grantee Sub-Contractor or their individual employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the PCE, in law or equity.
- 13. Each party shall be responsible for its own acts or omissions and the acts or omissions of its officers, directors, and employees to the extent permitted by law.
- 14. When Grantee and/or Grantee Sub-Contractor fully performs the purposes set forth on Schedule A, or if at any time Grantee and/or Grantee Sub-Contractor ceases performance or PCE requires that Grantee and/or Grantee Sub-Contractor cease performance of the purposes set forth on Schedule A, Grantee and/or Grantee Sub-Contractor shall promptly return or destroy (with written notice to PCE itemizing the materials destroyed) all Confidential Information then in its possession at the request of PCE. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement for a period of three (3) years.
- 15. PCE represents and warrants that it has obtained all necessary permissions and has the authority to provide the Confidential Information to Grantee and/or Grantee Sub-Contractor for the purposes contemplated by this Agreement. PCE further warrants that its provision of the Confidential Information to Grantee and/or Grantee Sub-Contractor is in accordance with its obligations under California Public Utilities Commission (CPUC) Decision No. 12-08-045.

- 16. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties hereto. This Agreement shall not be assigned, however, without the prior written consent of the non-assigning Party, which consent may be withheld due to the confidential nature of the information, data and materials covered.
- 17. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, understandings, communications, correspondence and representations, whether oral or written. This Agreement shall not be amended, modified or waived except by an instrument in writing, signed by both Parties, and, specifically, shall not be modified or waived by course of performance, course of dealing or usage of trade. Any waiver of a right under this Agreement shall be in writing, but no such writing shall be deemed a subsequent waiver of that right, or any other right or remedy.
- 18. The parties agree to remain silent on the matter of governing law.

[Remainder of Page Intentionally Left Blank - Signature Page to Follow]

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as of the Effective Date.

BY:			
	Janis C. Pepper,	CEO	
GRAN	NTEE		
BY:	(G:)		
	(Signature)		
	(Name, Title)		
	(Address)		
	(Address)		
GRAN	TEE SUB CON	TRACTOR	
BY:			
	(Signature)		
	(Name, Title)		
	(Address)		
	(Address)	USE OF CUSTOME	R INFORMATION

PENINSULA CLEAN ENERGY

Grantee's Purposes for Use of PCE Customer Information

Grantee will use the data described in this agreement to evaluate the impacts of energy pricing plans among PCE's customer base. Grantee will collaborate with PCE to design, implement, and analyze the results of randomized controlled trials designed to expose PCE customers to pilot rate schedules. Grantee will also conduct surveys with customers in the experimental sample. Grantee

will report the results of these analyses, which shall not contain any personally identifiable information, in at least (but not limited to) one academic paper, intended for publication in a top journal.

Grantee Products and Deliverables

Refer to Exhibit A, Section 6 "Project Deliverables" of this contract.



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: October 22, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

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

SUBJECT: Resolution to Make Findings Allowing Continued Remote Meetings

Under Brown Act

RECOMMENDATION:

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

BACKGROUND:

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which rescinded his prior Executive Order N-29-20 and set a date of October 1, 2021 for public agencies to transition back to public meetings held in full compliance with the Brown Act. The original Executive Order provided that all provisions of the Brown Act that required the physical presence of members or other personnel as a condition of participation or as a quorum for a public meeting were waived for public health reasons. If these waivers fully sunset on October 1, 2021, legislative bodies subject to the Brown Act would have to contend with a sudden return to full compliance with in-person meeting requirements as they existed prior to March 2020, including the requirement for full physical public access to all teleconference locations from which board members were participating.

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

AB 361 also requires that, if the state of emergency remains active for more than 30 days, the agency must make findings by majority vote every 30 days to continue using

the bill's exemption to the Brown Act teleconferencing rules. The findings are to the effect that the need for teleconferencing persists due to the nature of the ongoing public health emergency and the social distancing recommendations of local public health officials. Effectively, this means that agencies, including PCEA, must agendize a Brown Act meeting once every thirty days to make findings regarding the circumstances of the emergency and to vote to continue relying upon the law's provision for teleconference procedures in lieu of in-person meetings.

AB 361 provides that Brown Act legislative bodies must return to in-person meetings on October 1, 2021, unless they choose to continue with fully teleconferenced meetings because a specific declaration of a state or local health emergency is appropriately made. AB 361 allows for meetings to be conducted virtually *as long as* there is a gubernatorially-proclaimed public emergency in combination with (1) local health official recommendations for social distancing or (2) adopted findings that meeting in person would present risks to health. AB 361 is effective immediately as urgency legislation and will sunset on January 1, 2024.

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

DISCUSSION:

Because local rates of transmission of COVID-19 are still in the "substantial" tier as measured by the Centers for Disease Control, it is recommended that the Peninsula Clean Energy Board avail itself of the provisions of AB 361 allowing continuation of online meetings by adopting findings to the effect that conducting in-person meetings would present an imminent risk to the health and safety of attendees. A resolution to that effect, and directing staff to return each 30 days with the opportunity to renew such findings, is attached hereto.

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

* * * * * *

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

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

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

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

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

WHEREAS, California Department of Public Health ("CDPH") and the federal Centers for Disease Control and Prevention ("CDC") caution that the Delta variant of COVID-19, currently the dominant strain of COVID-19 in the country, is more transmissible than prior variants of the virus, may cause more severe illness, and that even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations (https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html); and,

WHEREAS, the CDC has established a "Community Transmission" metric with 4 tiers designed to reflect a community's COVID-19 case rate and percent positivity; and,

WHEREAS, the County of San Mateo currently has a Community Transmission metric of "substantial" which is the second most serious of the tiers; and,

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

WHEREAS, on September 25, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with

AB 361. Out of an abundance of caution given AB 361's narrative that describes each legislative body's responsibility to reauthorize remote meetings, staff and counsel bring this resolution to the attention of the Board of Directors, and;

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

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that

- 1. The recitals set forth above are true and correct.
- The Board finds that meeting in person would present imminent risks to the health or safety of attendees.
- 3. Staff is directed to return no later than thirty (30) days after the adoption of this resolution with an item for the Board to consider making the findings required by AB 361 in order to continue meeting under its provisions.
- Staff is directed to take such other necessary or appropriate actions to implement the intent and purposes of this resolution.

* * * * * *



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: October 14, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Kim Le, Senior Manager of Data and Technology

SUBJECT: Amendment of Contract with NewGen for Additional Services

RECOMMENDATION:

Approval of the Board for an amendment to the contract with NewGen to add Phase 2 services for ongoing support and other analyses by increasing the amount of the contract by \$49,000 to a not-to-exceed amount of \$145,000 and extending the term through October 31, 2022.

BACKGROUND:

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

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

DISCUSSION:

Peninsula Clean Energy has been in contract with NewGen since February 2021 to build a functional data warehouse, and NewGen has successfully delivered on Phase 1. The foundation and pipelines of a data management system have been established, and PCE Staff have the means for extracting data across various data sources.

PCE would like to continue our contractual relationship with NewGen for a Phase 2 to maintain and enhance the current system as well as develop an analysis engine, to help us make data-driven decisions.

FISCAL IMPACT:

The cost of the contract to be increased by \$49,000 (above the original contract amount of \$96,000) to a revised not-to-exceed an amount of \$145,000).

STRATEGIC PLAN:

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

Organizational Excellence: Objective C, Data and Technology

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

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

* * * * * *

TO ADD PHASE 2 SERVICES FOR ONGOING SUPPORT AND OTHER ANALYSES

AND INCREASE THE NOT-TO-EXCEED AMOUNT TO \$145,000

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

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

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

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

WHEREAS, Peninsula Clean Energy is now seeking to amend the contract with NewGen to include services for ongoing support and analysis for an additional amount

of \$49,000 (not to exceed \$145,000), an amount which exceeds the delegated threshold of \$100,000 per PCEA's policy; and

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

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to execute the contract amendment of Peninsula Clean Energy's data warehouse contract with NewGen to increase the not to exceed amount to \$145,000.

* * * * * *



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: October 19, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: None

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

FROM: Jan Pepper, Chief Executive Officer

SUBJECT: CEO Report

REPORT

Staffing Updates:

I am very pleased to announce two new additions to the PCE team:

- Sandra Benetti is joining Peninsula Clean Energy as the Associate Manager, Community Relations in Los Banos, effective November 1.
- Blake Herrschaft is joining Peninsula Clean Energy as our Building Electrification Programs Manager, effective November 29.

PCE is currently recruiting for one position:

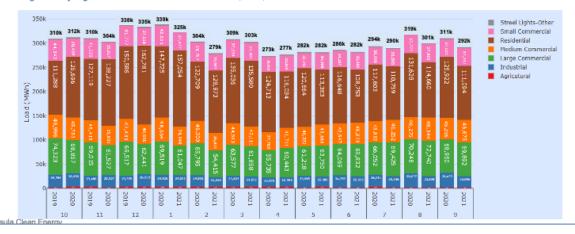
Account Services Specialist/Analyst

Impact of COVID-19 on PCE Load

Attached to this report are summary graphs of the impact of COVID-19 on PCE's load. The first graph, "Monthly Load", shows the change in load on a monthly basis from October 2020 through September 2021. There was a 6% decrease in Peninsula Clean Energy's load in August-September 2021 compared to August-September 2020. However load in August and September of 2020 was significantly higher than forecast due to the heatwaves, fires, and smoke. The second graph, "Monthly Load Changes by Customer Class", shows that commercial and residential loads were significantly lower in August-September 2021 compared to 2020 due to the heatwaves experienced in 2020. The third graph, "Load Shapes (PCE)", shows the change overall in our load on an hourly basis. The 2021 load is still lower than 2019 in all hours of the day.

Monthly Load

- 3% decrease in PCE's load in October 2020 March 2021 (Post-COVID) compared to October 2019 March 2020 (Pre-COVID)
- Almost same amount of load in April 2021 July 2021 compared to April 2020 July 2020
- 6% decrease in PCE's load in August-September 2021 compared to August-September 2020. Load in August and September of 2020
 was significantly higher than forecast due to heatwaves, fires, and smokes.



Monthly Load Changes by Customer Class

- Decrease in C&I load, increase in residential load in each month compared to same month in the previous year until March 2021.
- For April-July, we noticed an increase in C&I load in 2021 compared to 2020 and a decrease in residential load in 2021 compared to 2020.
- In August-September 2021, Residential and Industrial load was significantly lower compared to 2020, mainly due to the heatwaves that we experienced in 2020.

Agricutural	10%	-8%	-7%	-8%	-1%	-12%	-7%	26%	3%	-9%	5%	4%
Industrial	12%	7%	13%	-1%	-15%	-8%	4%	-8%	-8%	-11%	-21%	-22%
Small Commercial	-13%	-13%	-10%	-14%	-15%	0%	10%	7%	4%	2%	0%	1%
Medium Commercial	-9%	-12%	-14%	-18%	-21%	-6%	10%	9%	7%	6%	4%	3%
Large Commercial	-7%	-11%	-10%	-12%	-17%	-3%	8%	4%	3%	5%	4%	1%
Residential	13%	9%	8%	6%	5%	0%	-7%	-6%	-7%	-6%	-13%	-12%
Street Lights-Other	0%	-1%	-1%	0%	-5%	-1%	0%	0%	-2%	-4%	-4%	-3%
PCE	1%	-2%	-1%	-4%	-8%	-2%	1%	0%	-1%	-1%	-6%	-6%
Month	10	11	12	1	2	3	4	5	6	7	8	9

* For months 10-12, the heatmap shows how much load in 2020 was lowenhigher compared to same month in 2019. For months 1-9, it shows how much load in 2021 was lowenhigher compared to same month in 2020.

Peninsula Clean Energy

Load Shapes (PCE) · In June-July, 2021 load scaled down compared to 2019 load. 2021 load is higher in morning peak hours but lower in afternoon and late evening hours compared to 2020 load. · In August-September, 2021 load was lower compared to 2019 and 2020 load in afternoon and late evening hours. 600 500 € 400 300 400 300 e 200 ලි 200 100 100 -2021 -2021 9 11 13 15 17 19 21 23 11 13 15 17 19 21 23 600 500 500

> 5 7 9 11 13 15 17 Hour

19 21 23

Reach Codes

Peninsula Clean Energy

€ 400 300

200 100

Attached to this report is an updated table showing the status of Reach Code adoption by Peninsula Clean Energy jurisdictions. Additional information is that the Half Moon Bay City Council has directed their staff to develop building codes for new and existing buildings. Council presentations are in progress with Atherton and Belmont.

7 9 11 13 15 17 19 21 23 Hour

Member Agency	Reach Code Status	Building (proposed)	EV
Brisbane	Adopted	All-electric w/ exceptions	MUD 1xL2/ unit
Burlingame	Adopted	All-electric w/ exceptions	PCE model code (variant)
Daly City	Adopted	All-electric w/ exceptions	PCE model code
East Palo Alto	Adopted	All-electric w/ exceptions	PCE model code (variant)
Millbrae	Adopted	All-electric w/ exceptions	PCE model code (variant)
Menio Park	Adopted	All-electric w/ exceptions	(existing EV code)
Pacifica	Adopted	All-electric w/ exceptions	(existing EV code)
County of San Mateo	Adopted	All-electric w/ exceptions	PCE model code
Redwood City	Adopted	All-electric w/ exceptions	PCE model code
San Mateo	Adopted	All-electric w/ exceptions (updated)	Increase EV capable
San Carlos	Adopted	All-electric w/ exceptions (updated)	PCE model code
South San Francisco	Adopted	All-electric w/ exceptions (residential)	PCE model code
Colma	Adopted	Prewiring required	Increase EV capable
Portola Valley	1st reading TBD	(All-electric w/ exceptions)	(existing EV code)
Belmont, Half Moon Bay	Under development		
Atherton, Foster City, Hillsborough, San Bruno	Staff discussions or Council briefing done		
Woodside	Declined		

PCE Board Retreat - Saturday, September 25

On behalf of all the Peninsula Clean Energy staff, we would like to thank the board for their active participation in the retreat last month. We appreciate the dedication you continue to have for what we are doing and your willing participation in additional subcommittees to dive deeper into the goals we have set for this organization.

Other Meetings and Events Attended by CEO

Attended October 8 and October 20 boards meeting of CC Power. The notes from these board meeting are found in this agenda package.

Participated in the "Defining Tiers of Decarbonization Collaborative Sessions" held on September 27 and October 20, sponsored by the Smart Electric Power Alliance (SEPA).

Participated in weekly and monthly CalCCA Board and Executive Committee meetings.

Participated in SV5 (formerly called MAG5) meetings.



PENINSULA CLEAN ENERGY JPA Board Correspondence

DATE: October 14, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Peninsula Clean Energy Citizens Advisory Committee

SUBJECT: Citizens Advisory Committee Report

<u>SUMMARY</u>

The Peninsula Clean Energy Citizens Advisory Committee (CAC) recognizes and honors Desiree Thayer for her leadership as Chair of the Committee as well as her leadership in San Mateo County's environmental education movement.

BACKGROUND

The Citizens Advisory Committee (CAC) elected Desiree Thayer of Burlingame for a one-year term as its Chair in 2019 and re-elected her for a subsequent term in 2020. According to an informal agreement among Citizens Advisory Committee members, a Chair can serve up to two consecutive terms.

The Citizens Advisory Committee would like to formally recognize and honor Desiree for her exemplary leadership and acknowledge her additional contributions to the organization and our community.

DISCUSSION

At its meeting on October 14th, 2021, the Citizens Advisory made the following resolution:

Whereas, the Peninsula Clean Energy Citizens Advisory Committee (CAC) elected Desiree Thayer of Burlingame for a one-year term as its Chair in 2019 and re-elected her for a subsequent term in 2020; and

Whereas, Desiree has exhibited exemplary leadership during her tenure as CAC Chair through her vision in facilitating the CAC in goal-setting, humble diplomacy in leading its meetings, goodwill in liaising with Peninsula Clean Energy staff, and clearheaded impartiality in reporting to the Board of Directors; and

Whereas, Desiree has made significant contributions to Peninsula Clean Energy's community outreach in her sustained volunteerism teaching local businesses and residents about the organization through the Burlingame Citizens Environmental Council, even during the COVID pandemic; and

Whereas, Desiree also plays a leadership role in environmental education by helping to launch and lead the Youth Climate Ambassadors Leadership Program in Burlingame, scaling it up across San Mateo County, and serving as a model for the state and the nation; now therefore

Be it resolved, Peninsula Clean Energy Citizens Advisory Committee recognizes and honors Desiree Thayer as an invaluable climate action leader San Mateo County.



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: October 28, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Andy Stern, Chief Financial Officer, Peninsula Clean Energy

SUBJECT: Approve the Audited Financial Statements for Fiscal Year 2020-2021

RECOMMENDATION:

Approve the Audited Financial Statements for Fiscal Year 2020-2021.

BACKGROUND:

Peninsula Clean Energy's (PCE) financials for the Fiscal Year ending June 30, 2021 were audited by the independent auditors Pisenti and Brinker LLP (Auditors).

The PCE Audit and Finance Committee reviewed the draft audited financial statements at its meeting on October 12, 2021. The Audit and Finance Committee discussed the audited financial statements at length and some members met with representatives of Pisenti and Brinker LLP. After discussion, a resolution was passed to recommend approval by the full Board.

FISCAL IMPACT:

No fiscal impact

STRATEGIC PLAN:

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

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

ATTACHMENTS

A. Audited Financial Statements for Fiscal Year 2020-2021

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

* * * * * *

RESOLUTION TO APPROVE THE AUDITED FINANCIAL STATEMENTS FOR FISCAL YEAR 2020-2021

RESOLVED, by the Peninsula Clean Energy Authority of the County of San

Mateo, State of California, that

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

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

WHEREAS, Pisenti and Brinker, LLP conducted the fieldwork to audit the financials for the fiscal year ending June 30, 2021; and

WHEREAS, the draft audited financial statements were reviewed by the Audit and Finance Committee on October 13, 2020; and

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

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Chair of the Board of Directors is hereby authorized and directed to accept the audited financial statements for fiscal year 2020-2021 for and on behalf of the Peninsula Clean Energy Authority.

* * * * * *

[CCO-113499]

FINANCIAL STATEMENTS FISCAL YEARS ENDED JUNE 30, 2021 AND 2020 WITH REPORT OF INDEPENDENT AUDITORS

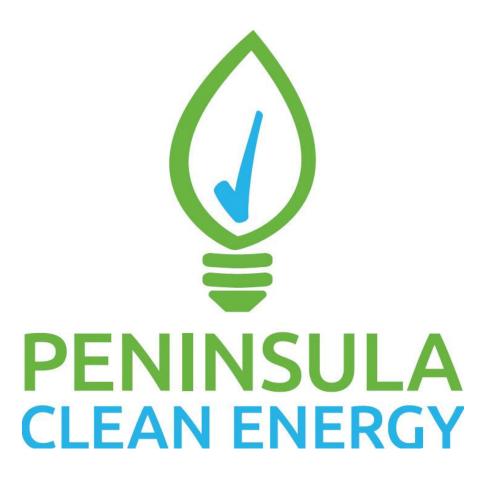


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Independent Auditor's Report

To the Board of Directors Peninsula Clean Energy Authority Redwood City, California

Report on the Financial Statements

We have audited the accompanying financial statements of Peninsula Clean Energy Authority (Peninsula), as of and for the years ended June 30, 2021 and 2020, and the related notes to the financial statements, which collectively comprise Peninsula's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America. This responsibility includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Peninsula as of June 30, 2021 and 2020, and the changes in financial position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.



Independent Auditor's Report (continued)

Other Matters

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis as listed in the table of contents be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

wente a Brinku LLP

Santa Rosa, California October 20, 2021

PENINSULA CLEAN ENERGY AUTHORITY MANAGEMENT'S DISCUSSION AND ANALYSIS YEARS ENDED JUNE 30, 2021 AND 2020

The Management's Discussion and Analysis provides an overview of Peninsula Clean Energy Authority's financial activities as of and for the years ended June 30, 2021, and 2020. The information presented here should be considered in conjunction with the audited financial statements.

BACKGROUND

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

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

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

PENINSULA CLEAN ENERGY AUTHORITY MANAGEMENT'S DISCUSSION AND ANALYSIS YEARS ENDED JUNE 30, 2021 AND 2020

Financial reporting

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

Contents of this report

This report is divided into the following sections:

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

FINANCIAL HIGHLIGHTS

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

	2021	2020	2019	
Current assets				
Cash and cash equivalents	\$ 11,704,409	\$ 16,051,116	\$ 48,873,644	
Investments	16,672,184	81,408,338	65,195,764	
Other current assets	45,556,431	74,461,769	58,204,377	
Total current assets	73,933,024	171,921,223	172,273,785	
Noncurrent assets				
Capital assets, net	343,640	427,683	335,445	
Investments	137,275,212	80,169,968	-	
Other noncurrent assets	248,976	134,840	135,355	
Total noncurrent assets	137,867,828	80,732,491	470,800	
Total assets	211,800,852	252,653,714	172,744,585	
Current liabilities	29,408,881	61,988,549	31,048,989	
Noncurrent liabilities	1,593,433	1,593,433	1,556,468	
Total liabilities	31,002,314	63,581,982	32,605,457	
Net position				
Investment in capital assets	343,640	427,683	335,445	
Restricted for security collateral	4,449,194	5,618,194	13,165,799	
Unrestricted	176,005,704	183,025,855	126,637,884	
Total net position	\$180,798,538	\$189,071,732	\$140,139,128	

Current assets

Current assets were approximately \$73,933,000 at the end of 2021 and were mostly comprised of cash and cash equivalents of \$11,704,000, accounts receivable of \$18,410,000, investments of \$16,672,000, accrued revenue of \$10,955,000, and restricted cash of \$4,449,000. The \$16,672,000 in current investments at the end of 2021 marked a significant drop from \$81,408,000 categorized as current at the end of 2020. While Peninsula Clean Energy did draw on a portion of its investments to cover operating costs, the primary reason for this change was an investment strategy change to invest in more investments with a maturity longer than one year that are accounted for as noncurrent assets. Another major cause of the decrease in current assets from 2020 to 2021 was the return of a \$26,800,000 supplier deposit during 2021.

Capital assets

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

Investments - noncurrent

During 2021, Peninsula Clean Energy increased its investments with maturities of over one year. These investments are valued at \$137,275,000 and are reported as noncurrent assets in the Statement of Net Position. See Note 5 of the financial statements for further discussion regarding investments.

Other noncurrent assets

Other noncurrent assets held fairly stable from 2020 to 2021. This account consists of various deposits for regulatory and other operating purposes expected to be held longer than a year. Included are deposit postings with the California Public Utilities Commission (CPUC), rent deposits, and collateral held by Peninsula Clean Energy from energy suppliers.

Current liabilities

Current liabilities consist mostly of the cost of electricity delivered to customers that is not yet due to be paid by Peninsula Clean Energy and deposits with energy suppliers. During 2020, Peninsula Clean Energy received a \$26,800,000 deposit from an energy supplier that was held as collateral until the supplier satisfied specified performance obligations. Peninsula Clean Energy returned the deposit to the supplier in 2021, which accounts for the majority of the reduction in current liabilities. Other components of current liabilities include trade accounts payable, taxes and surcharges due to governments, and various other accrued liabilities.

Noncurrent liabilities

Various contracts entered into by Peninsula Clean Energy require the supplier to provide Peninsula Clean Energy with a security deposit. These deposits will be returned by Peninsula Clean Energy at the completion of the related contract or as other milestones are met. There were no changes in 2021 as compared to 2020.

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

	2021	2020	2019
Operating revenues	\$ 228,101,324	\$ 278,092,535	\$ 259,781,823
Investment and other income	76,452	2,268,796	2,074,258
Total income	228,177,776	280,361,331	261,856,081
Operating expenses	236,311,470	231,337,227	206,912,110
Charitable contributions	50,000	-	-
Finance costs	89,500	91,500	170,333
Total expenses	236,450,970	231,428,727	207,082,443
Change in net position	\$ (8,273,194)	\$ 48,932,604	\$ 54,773,638

Operating revenues

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

Investment income decreased as a result of a reduction of market interest rates.

Operating expenses

Peninsula Clean Energy's largest expense each year was the purchase of electricity delivered to retail customers. Peninsula Clean Energy procures energy from a variety of sources and focuses on maintaining a balanced renewable power portfolio at competitive costs. Certain electricity costs increased from 2020 to 2021 while the volume of energy purchased from 2020 to 2021 experienced a small decrease. The ending result was a relatively stable overall cost in electricity from 2020 to 2021. Expenses for staff compensation, contract services, and other general and administrative expenses increased each year as the organization continued to grow to support its business demands. In particular, certain incentives and rebates paid out to customers for transportation and electrification programs increased from 2020 to 2021 as the related programs came to maturity. The cost increase in this category is reported with general and administration expenses.

ECONOMIC OUTLOOK

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

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

On October 22, 2020, the Board approved a resolution adding the City of Los Banos as a member of Peninsula Clean Energy. Peninsula Clean Energy plans to start servicing electricity to the customers of Los Banos on April 1, 2022.

In March 2020, like many other businesses and economies, Peninsula Clean Energy's business was impacted by the effects of COVID-19. Those effects included an overall electricity load reduction, and resulting lower revenues, as a result of reduced economic activity and changed customer use patterns.

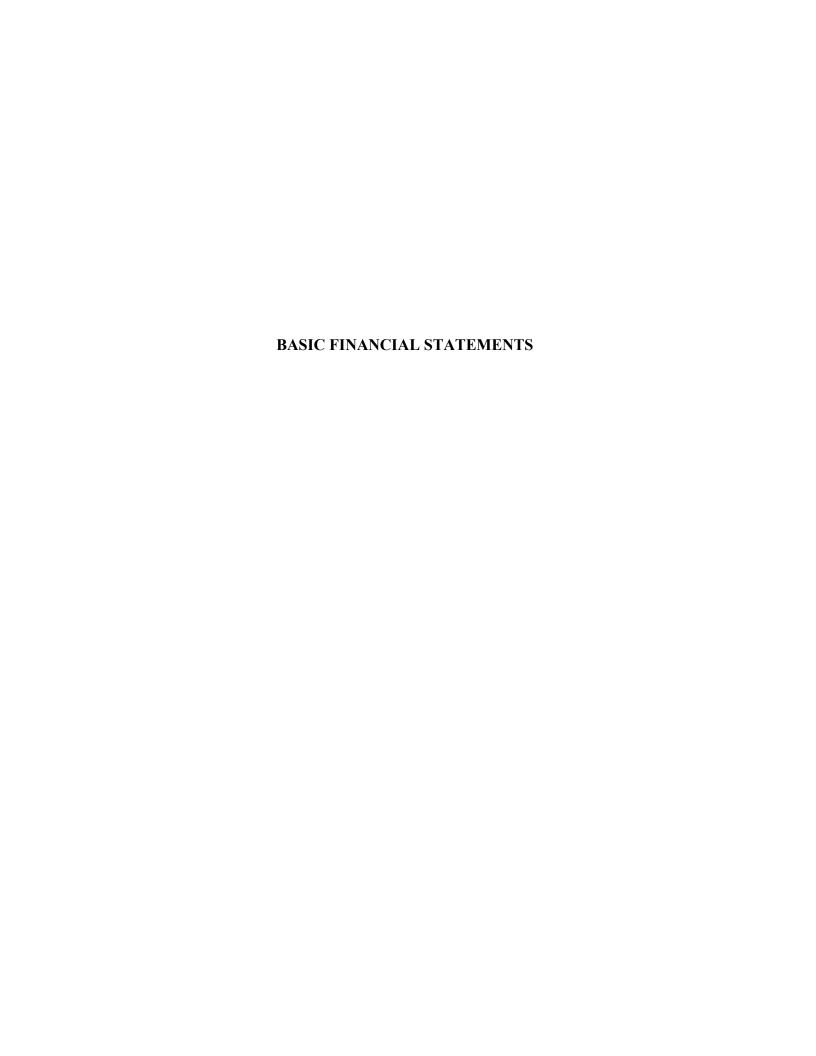
REQUEST FOR INFORMATION

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

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

Respectfully submitted,

Janis Pepper, Chief Executive Officer



PENINSULA CLEAN ENERGY AUTHORITY STATEMENTS OF NET POSITION JUNE 30, 2021 AND 2020

	2021	2020	
ASSETS			
Current assets			
Cash and cash equivalents	\$ 11,704,409	\$ 16,051,116	
Accounts receivable, net of allowance	18,409,996	22,908,592	
Accrued revenue	10,955,011	13,741,725	
Investments	16,672,184	81,408,338	
Other receivables	4,389,125	1,735,534	
Prepaid expenses	3,571,212	3,689,358	
Deposits	3,781,893	-	
Restricted cash	4,449,194	32,386,560	
Total current assets	73,933,024	171,921,223	
Noncurrent assets			
Capital assets, net of depreciation	343,640	427,683	
Investments	137,275,212	80,169,968	
Deposits and other assets	248,976	134,840	
Total noncurrent assets	137,867,828	80,732,491	
Total assets	211,800,852	252,653,714	
LIABILITIES			
Current liabilities			
Accrued cost of electricity	23,574,255	28,835,532	
Accounts payable	1,247,108	1,209,764	
Other accrued liabilities	1,103,134	2,064,351	
User taxes and energy surcharges due to other governments	748,987	857,389	
Supplier deposits - energy suppliers	2,735,397	29,021,513	
Total current liabilities	29,408,881	61,988,549	
Noncurrent liabilities			
Supplier deposits - energy suppliers	1,593,433	1,593,433	
Total liabilities	31,002,314	63,581,982	
NET POSITION			
Investment in capital assets	343,640	427,683	
Restricted for security collateral	4,449,194	5,618,194	
Unrestricted	176,005,704	183,025,855	
Total net position	\$ 180,798,538	\$ 189,071,732	
			

PENINSULA CLEAN ENERGY AUTHORITY STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET POSITION YEARS ENDED JUNE 30, 2021 AND 2020

		2021	2020		
OPERATING REVENUES					
Electricity sales, net	\$	225,451,521	\$	275,534,022	
Green electricity premium		2,649,803		2,558,513	
Total operating revenues		228,101,324		278,092,535	
OPERATING EXPENSES					
Cost of electricity		213,833,819		216,065,641	
Contract services		10,531,713		8,819,490	
Staff compensation		5,637,450		4,522,471	
General and administration		6,217,548		1,836,501	
Depreciation		90,940		93,124	
Total operating expenses		236,311,470		231,337,227	
Operating income (loss)		(8,210,146)		46,755,308	
NONOPERATING REVENUES (EXPENSES)					
Miscellaneous income		35,636		2,511	
Interest and investment income		40,816		2,266,285	
Charitable contributions		(50,000)		-	
Finance costs		(89,500)		(91,500)	
Nonoperating revenues (expenses), net		(63,048)		2,177,296	
CHANGE IN NET POSITION		(8,273,194)		48,932,604	
Net position at beginning of year		189,071,732		140,139,128	
Net position at end of year	\$	180,798,538	\$	189,071,732	

PENINSULA CLEAN ENERGY AUTHORITY STATEMENTS OF CASH FLOWS YEARS ENDED JUNE 30, 2021 AND 2020

	2021	2020
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from customers	\$ 239,450,678	\$ 286,315,796
Receipts from supplier security deposits	4,974,578	27,156,416
Payments to suppliers for electricity	(258,110,256)	(212,273,709)
Payments for other goods and services	(16,537,928)	(10,906,287)
Payments for staff compensation	(5,460,310)	(4,382,683)
Payments of taxes and surcharges to other governments	(4,136,810)	(4,652,257)
Payments of charitable contributions	(50,000)	
Net cash provided (used) by operating activities	(39,870,048)	81,257,276
CASH FLOWS FROM NON-CAPITAL		
FINANCING ACTIVITIES		
Finance costs paid	(89,500)	 (91,500)
Net cash (used) by non-capital		
financing activities	(89,500)	 (91,500)
CASH FLOWS FROM CAPITAL AND RELATED		
FINANCING ACTIVITIES		
Payments to acquire capital assets	(22,061)	 (211,215)
CASH FLOWS FROM INVESTING ACTIVITIES		
Proceeds from investment sales	140,659,234	190,855,243
Investment income received	1,828,256	2,116,407
Purchase of investments	(134,789,954)	 (287,527,978)
Net cash provided (used) by investing activities	7,697,536	(94,556,328)
Net change in cash and cash equivalents	(32,284,073)	(13,601,767)
Cash and cash equivalents at beginning of year	48,437,676	 62,039,443
Cash and cash equivalents at end of year	\$ 16,153,603	\$ 48,437,676
Reconciliation to the Statement of Net Position		
Cash and cash equivalents (unrestricted)	\$ 11,704,409	\$ 16,051,116
Restricted cash	4,449,194	 32,386,560
Cash and cash equivalents	\$ 16,153,603	\$ 48,437,676

PENINSULA CLEAN ENERGY AUTHORITY STATEMENTS OF CASH FLOWS (CONTINUED) YEARS ENDED JUNE 30, 2021 AND 2020

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

	 2021	 2020	
Operating income (loss)	\$ (8,210,146)	\$ 46,755,308	
Adjustments to reconcile operating income (loss) to net			
cash provided (used) by operating activities			
Depreciation expense	90,940	93,124	
Revenue adjusted for allowance for uncollectible accounts	996,988	177,235	
Nonoperating miscellaneous income	35,636	2,511	
Charitable contributions considered an operating			
activity for cash flow purposes only	(50,000)	-	
(Increase) decrease in:			
Accounts receivable	3,501,608	976,046	
Accrued revenue	2,786,714	2,419,696	
Other receivables	(2,679,401)	(1,065,367)	
Prepaid expenses	118,146	620,260	
Deposits	(3,896,029)	276,085	
Increase (decrease) in:			
Accrued cost of electricity	(5,261,283)	4,406,575	
Accounts payable	52,514	187,209	
Other accrued liabilities	(961,217)	1,675,587	
User taxes and energy			
surcharges due to other governments	(108,402)	(4,484)	
Supplier security deposits	(26,286,116)	24,737,491	
Net cash provided (used) by operating activities	\$ (39,870,048)	\$ 81,257,276	

1. REPORTING ENTITY

Peninsula Clean Energy is a joint powers authority created on February 29, 2016. As of June 30, 2021, parties to its Joint Powers Agreement consist of the following local governments:

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

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

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

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

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

BASIS OF ACCOUNTING

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

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

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

CASH AND CASH EQUIVALENTS

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

PREPAID EXPENSES AND DEPOSITS

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

CAPITAL ASSETS AND DEPRECIATION

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

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

SUPPLIER DEPOSITS – ENERGY SUPPLIERS

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

NET POSITION

Net position is presented in the following components:

Investment in capital assets: This component of net position consists of capital assets, net of accumulated depreciation and reduced by outstanding borrowings that are attributable to the acquisition, construction, or improvement of those assets. Peninsula Clean Energy did not have any such outstanding borrowings as of June 30, 2021 and 2020.

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

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

OPERATING AND NON-OPERATING REVENUES

Operating revenues include revenue derived from the provision of energy to retail and wholesale customers. Many of Peninsula Clean Energy's retail customers have opted to purchase a 100% renewable electricity product and pay a \$.01 per kilowatt hour premium. Revenues derived from this premium are reported throughout these financial statements as "Green electricity premium."

Investment income is considered "non-operating revenue."

REVENUE RECOGNITION

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

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

OPERATING AND NONOPERATING EXPENSES

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

ELECTRICAL POWER PURCHASED

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

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

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

STAFFING COSTS

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

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

INCOME TAXES

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

ESTIMATES

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

RECLASSIFICATIONS

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

3. CASH AND CASH EQUIVALENTS

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

At the end of each year, Peninsula Clean Energy had restricted cash that was held as collateral for letters of credit posted by Peninsula Clean Energy and for supplier security deposits received by Peninsula Clean Energy.

4. ACCOUNTS RECEIVABLE

Accounts receivable were as follows as of June 30:

	2021	2020
Accounts receivable from customers	\$20,372,167	\$23,873,775
Allowance for uncollectible accounts	(1,962,171)	(965,183)
Net accounts receivable	\$18,409,996	\$22,908,592

The majority of account collections occur within the first few months following customer invoicing. Peninsula Clean Energy estimates that a portion of the billed accounts will not be collected. Peninsula Clean Energy continues collection efforts on accounts in excess of *de minimis* balances regardless of the age of the account. Although collection success generally decreases with the age of the receivable, Peninsula Clean Energy continues to have success in collecting older accounts. The allowance for uncollectible accounts at the end of a period includes amounts billed during the current and prior fiscal years. Peninsula Clean Energy expects lower than historical average collections success due to the economic impacts of COVID-19 and has increased the allowance for uncollectible accounts accordingly. During fiscal year 2021 Peninsula Clean Energy recorded a combined \$3,000,000 in accounts receivable write-offs and increases to its allowance for uncollectible accounts.

5. INVESTMENTS

During the years ended June 30, 2021, and 2020, Peninsula Clean Energy purchased investments with original maturities of three months or more. As of the years ended, the fair value of investments were as follows:

	2021	2020
Current Investments:		
U.S. Treasury Securities	\$ 16,567,184	\$ 56,235,021
Corporate bonds	-	25,173,317
Municipal bonds	105,000	
Total current investments	\$ 16,672,184	\$ 81,408,338
	2021	2020
Noncurrent Investments:		
U.S. Treasury Securities	\$ 95,313,500	\$ 63,515,713
Corporate bonds	34,917,691	16,546,997
Municipal bonds	7,044,021	107,258
Total noncurrent investments	\$ 137,275,212	\$ 80,169,968

5. INVESTMENTS (continued)

FAIR VALUE MEASUREMENT

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

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

As of June 30, 2021 and 2020, Peninsula Clean Energy's investments are considered Level 1 inputs.

CUSTODIAL CREDIT RISK

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

INTEREST RATE RISK

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

5. INVESTMENTS (continued)

INTEREST RATE RISK (continued)

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

		Investment maturities				
Investment type	Fair value	Less than 1 year 1-5 ye				
U.S. Treasury Securities	\$ 111,880,684	\$ 16,567,184	\$ 95,313,500			
Corporate bonds	34,917,691	-	34,917,691			
Municipal bonds	7,149,021	105,000 7,044				
	\$ 153,947,396	\$ 16,672,184	\$ 137,275,212			

Following is a summary of investment maturities as of June 30, 2020:

		Investment	maturities
Investment type	Fair value	Less than 1 year	1-5 years
U.S. Treasury Securities	\$ 119,750,734	\$ 56,235,021	\$ 63,515,713
Corporate bonds-U.S.	27,737,862	11,190,865	16,546,997
Corporate bonds-foreign	13,982,452	13,982,452	-
Municipal bonds	107,258	- 107,2	
	\$ 161,578,306	\$ 81,408,338	\$ 80,169,968

6. CAPITAL ASSETS

Capital asset activity for the years ended June 30, 2021 and 2020 was as follows:

	Furniture &		Leasehold		Ac	cumulated	
	Equipment		Improvements		Depreciation		 Total
Balances at June 30, 2019	\$	364,550	\$	104,669	\$	(133,774)	\$ 335,445
Additions		75,134		108,564		(91,460)	92,238
Balances at June 30, 2020		439,684		213,233		(225,234)	427,683
Additions		6,897				(90,940)	 (84,043)
Balances at June 30, 2021	\$	446,581	\$	213,233	\$	(316,174)	\$ 343,640

7. DEBT

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

8. DEFINED CONTRIBUTION RETIREMENT PLAN

Peninsula Clean Energy provides retirement benefits through the County of San Mateo 401(a) Retirement Plan (Plan). The Plan is a defined contribution (Internal Revenue Code 401(a)) retirement plan established to provide benefits at retirement to employees of certain qualified employers admitted by the Plan. The Plan is administered by the Massachusetts Mutual Life Insurance Company. As of June 30, 2021, there were 30 plan members. Peninsula Clean Energy is required to contribute 6% of annual covered payroll and up to an additional 4% of annual covered payroll to match employee contributions. Peninsula Clean Energy contributed \$395,000 and \$332,000 during the years ended June 30, 2021 and 2020, respectively. Plan provisions and contribution requirements are established and may be amended by the Board of Directors.

9. RISK MANAGEMENT

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

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

10. PURCHASE COMMITMENTS

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

The following table details the obligations to purchase existing energy, renewable, and resource adequacy (RA) contracts as of June 30, 2021:

Year ending June 30,		
2022	\$	194,000,000
2023		176,000,000
2024		136,000,000
2025		108,000,000
2026		99,000,000
2027-45		841,000,000
Total	\$1	,554,000,000

As of June 30, 2021, Peninsula Clean Energy had outstanding non-cancelable commitments to professional service providers through June 2024, for services yet to be performed. Fees associated with these contracts are based on volumetric activity and are expected to be approximately \$10.1 million.

11. OPERATING LEASE

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

Rental expense under this lease was \$512,000 and \$428,000 for the years ended June 30, 2021 and 2020, respectively,

As of June 30, 2021, future minimum lease payments under this lease were projected as follows:

Year ending June 30,

2022	\$ 516,000
2023	531,000
2024	547,000
2025	564,000
2026	581,000
2027	 148,000
Total	\$ 2,887,000

12. FUTURE GASB PRONOUNCEMENTS

The requirements of the following GASB Statements are effective for years ending after June 30, 2021:

GASB has approved GASB Statement No. 87, Leases, GASB 94, Public-Private and Public-Public Partnerships and Availability Payment Arrangements, GASB 96, Subscription-Based Information Technology Arrangements; and GASB No. 97, Certain Component Unit Criteria and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans. When they become effective, application of these standards may restate portions of these financial statements.



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: October 15, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer

Siobhan Doherty, Director of Power Resources

SUBJECT: Approve Resolution Delegating Authority to Chief Executive Officer

to Execute Power Purchase and Sale Agreement for Renewable

Supply with Arica Solar, LLC, and any necessary ancillary

documents with a Power Delivery Term of 15 years starting at the Commercial Operation Date on or about April 1, 2024, in an amount

not to exceed \$215 million.

RECOMMENDATION:

Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase Agreement for Renewable Supply Arica Solar, LLC, and any necessary ancillary documents with a Power Delivery Term of 15 years starting at the Commercial Operation Date on or about April 1, 2024, in an amount not to exceed \$215 million.

BACKGROUND:

The Board set a goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy by 2025. Staff conducted a preliminary analysis of the necessary resources to attain this goal and found that Peninsula Clean Energy will need to procure renewable supply from solar resources paired with battery energy storage. Pairing solar with energy storage allows the project to shift power delivery from the middle of the day to the evening peak when it is needed. It would also provide flexibility to Peninsula Clean Energy's supply portfolio to store and deliver energy at times that would help us to meet our 24/7 renewable goal. The Arica project would be the second solar project paired with energy storage to be added to Peninsula Clean Energy's supply portfolio.

2020 Renewable Request for Offers

Peninsula Clean Energy launched a request for offers (RFO) in 2020 targeting procurement of renewable energy via long-term contracts, which provide better value

than short-term contracts, ensure compliance with the renewable portfolio standard (RPS) long-term contracting mandates, and expand the amount of renewable energy serving California.

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

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

Staff reviewed shortlisted projects with the CEO and CFO and then entered into exclusive negotiations with the shortlisted projects. Staff retained Winston & Strawn law firm to support negotiations for this project. Peninsula Clean Energy has worked with Winston on the majority of our existing PPAs to date. Throughout 2021, Peninsula Clean Energy has been working with the project developer on negotiating the power contract.

Additionally, staff met with a Board subcommittee in February 2021 and June 2021 to review the status of the RFO and the shortlisted projects. Per Peninsula Clean Energy's Policy 15 Energy Supply Procurement Authority¹, any power procurement contracts greater than 5 years must be approved by the Board of Directors.

Overview of Project

Project Name	Arica Solar, LLC
Technology	Solar + Li-Ion Storage
Solar Capacity	100 MW
Storage Capacity	50 MW / 200MWh
Commercial Operation Date	4/1/2024
Developer	Clearway Energy Group
Location	Riverside County, CA

The Arica project is a 100 MW solar and 50 MW / 200 MWh lithium-ion battery storage facility located near Desert Center, CA in Riverside County. The Commercial Operation Date is April 1, 2024. The project is expected to deliver enough energy to meet approximately 8.1% of Peninsula Clean Energy's energy needs and will provide Portfolio Content Category (PCC) 1 energy to meet Peninsula Clean Energy's RPS requirements.

The project has an executed interconnection agreement with Full Capacity Deliverability Status (FCDS) for the energy storage component, meaning it will provide resource adequacy attributes to Peninsula Clean Energy in addition to energy benefits. The project will interconnect to SCE's Red Bluff substation. The project is sited on desert

¹ Full policy is available here: https://www.peninsulacleanenergy.com/wp-content/uploads/2020/01/PCE-Policy-15-Revised-01-23-20-Procurement-Authority-FINAL.pdf

land owned by the Bureau of Land Management ("BLM") within a Solar Energy Zone and a proposed BLM CA Development Focus Area. Clearway has exclusive site control for the project development. The project is expected to start construction by July 2023.

Under the contract, Peninsula Clean Energy will pay for the output of the solar generating portion of the project at a fixed-price rate per MWh and will pay for the use of the storage portion of the project at a fixed-price rate per kW-month, both with no escalation, for the full term of the contract (15 years). Peninsula Clean Energy is entitled to all product attributes from the facility, including energy, renewable energy, ancillary services, and resource adequacy.

Developer

The project is being developed by Clearway Energy Group (Clearway). Clearway is a U.S.-based renewable energy company that operates a portfolio of 4.7 GW of renewable energy projects across 25 states including more than 1,500 MW in California. Clearway also has more than 9 GW of projects under development.

Arica Solar is wholly owned by the parent company Clearway Renew LLC, which is wholly owned by Clearway Energy Group LLC. Clearway Energy Group LLC is wholly owned by Global Infrastructure Partners (GIP), an independent fund manager that invests in infrastructure assets and businesses in both OECD and select emerging markets. GIP is one of the world's largest infrastructure investors and currently manages \$71 billion in assets on behalf of its global investor base. The companies in GIP's equity portfolios have combined annual revenues greater than \$41 billion and employ approximately 58,000 people.

Clearway Energy Group LLC also has a publicly traded affiliate, Clearway Energy, Inc. (NYSE: CWEN), which serves as a holding company/yield vehicle for operating assets and gives the Clearway family of companies a full life-cycle interest in our projects. Clearway intends to be the long-term owner and operator of the project.

Environmental Review

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

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

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

For this project, the analysis showed that the project was not located in a protected area based on the USGS Protected Areas Database² (PAD-US). Additionally, the project is not located in an area not suitable for renewable energy development as identified by the Renewable Energy Transmission Initiative (RETI)³.

This project is located in an area identified as suitable for renewable energy development as part of the Desert Renewable Energy Conservation Plan (DRECP). The DRECP is focused on 10.8 million acres of public lands in the desert regions of seven California counties and is a landscape-level plan that streamlines renewable energy development while conserving unique and valuable desert ecosystems and providing outdoor recreation opportunities. The DRECP is a collaborative effort between the BLM, Fish and Wildlife Service, California Energy Commission and California Department of Fish and Wildlife.

Workforce Requirements

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

DISCUSSION:

The Strategic Plan approved by the Board in 2020 set Peninsula Clean Energy's Priority One to "design a power portfolio that is sourced by 100% renewable energy by 2025 that aligns supply and consumer demand on a 24x7 basis". Solar paired with storage will play a key role in meeting Peninsula Clean Energy's renewable energy goals.

This project will help Peninsula Clean Energy meet its customers' large renewable energy demand, while maintaining competitiveness. To date, Peninsula Clean Energy has entered into nine long-term renewable contracts, which make up approximately 42.5% of overall load, as shown in the table below:

Long-Term Renewable Contracts Contributing to Peninsula Clean Energy's Load

Project	RE MW	Status	Commercial Operation Date	Term (Yrs)	County	Approx. % of Load Served in 2025
Wright Solar	200	Operating	January-2020	25	Merced	14.4%

 $^{^2 \ \}mathsf{USGS} \ \mathsf{PAD}\text{-}\mathsf{US} \colon \underline{\mathsf{https://www.usgs.gov/core-science-systems/science-analytics-and-synthesis/gap/science/protected-areas}$

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³ RETI: https://reti.databasin.org/

Mustang 2 Solar	100	Operating	November-2020	15	King	7.8%
Chaparral Solar	100	Development	December-2023	15	Kern	8.0%
					Sonoma	
Geysers Geothermal	35	Operating	July-2022	10	& Lake	8.2%
Sky River Wind	30	Operating	September-2021	20	Kern	3.1%
Hatchet Small Hydro	7.5	Operating	March-2017	20	Shasta	0.4%
Bidwell Small Hydro	2	Operating	March-2017	17	Shasta	0.3%
Roaring Small Hydro	2	Operating	March-2017	17	Shasta	0.2%
Clover Small Hydro	1	Operating	April-2018	15	Shasta	0.1%
Total Contracted						42.5%
Arica Solar	100	Development	April-2024	15		8.1%
Total With Pending						50.6%

The Arica project is a 100 MW renewable generating resource, covering an additional 8.1% of Peninsula Clean Energy's overall demand. This contract will enable Peninsula Clean Energy to come closer to reaching its internal goal to be 100% renewable as well as its regulatory obligations under SB 100 and SB 350, which requires that 65% of Renewables Portfolio Standard (RPS)-compliance related renewable energy supply be sourced from long-term contracts beginning in the 2021-2024 compliance period.

FISCAL IMPACT:

The financial impact of adding the Arica project to Peninsula Clean Energy's portfolio of supply resources is a decrease in expected supply costs since procuring long-term and bundled resources are significantly less expensive than procuring short-term renewable products.

The fiscal impact of the Arica project will not exceed \$215 million over the 15-year term of the Agreement.

STRATEGIC PLAN:

The Arica project supports the following objectives in Peninsula Clean Energy's strategic plan:

- Priority 1: Design a power portfolio that is sourced by 100% renewable energy by 2025 that aligns supply and consumer demand on a 24/7 basis
- Power Resources Goal 1: Secure sufficient, low-cost, clean sources of electricity that achieve Peninsula Clean Energy's priorities while ensuring reliability and meeting regulatory mandates

ATTACHMENTS:

Arica Solar Power Purchase Agreement (Redacted Version)

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

* * * * * *

RESOLUTION DELEGATING AUTHORITY TO CHIEF EXECUTIVE OFFICER TO EXECUTE POWER PURCHASE AND SALE AGREEMENT FOR RENEWABLE SUPPLY WITH ARICA SOLAR, LLC, AND ANY NECESSARY ANCILLARY DOCUMENTS WITH A POWER DELIVERY TERM OF 15 YEARS BEGINNING AT THE COMMERCIAL OPERATION DATE ON OR ABOUT APRIL 2, 2024, IN AN AMOUNT NOT TO EXCEED \$215 MILLION.

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

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

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

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

WHEREAS, consistent with its mission of reducing greenhouse gas emissions by expanding access to sustainable and affordable energy solutions, Peninsula Clean Energy seeks to execute a Power Purchase and Sale Agreement with Arica Solar, LLC (Contractor), to procure 100 MW of power generation and 50 MW of storage resource from the Arica solar plus storage project, based on Contractor's desirable offering of products, pricing, and terms; and

WHEREAS, the Arica project will contribute toward the Board's goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy by providing renewable generation for a term of fifteen years starting on or about April 1, 2024; and

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

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute the Agreements and any other ancillary documents required for said purchase of power from the Contractor.

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

Execute the Agreements and any ancillary documents with the Contractor with terms consistent with those presented, in a form approved by the General Counsel; and for a power delivery term of up to fifteen years, in an amount not to exceed \$215 million.

* * * * * *

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Arica Solar, LLC, a Delaware limited liability company

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

<u>Description of Generating Facility and Storage Facility</u>: A separately metered 100 MW portion of an approximately 263 MW solar photovoltaic electric generating facility located in Riverside County, California (as further defined herein, the "Generating Facility"), plus a separately metered 200 MWh and 50 MW AC energy storage facility with at least four (4) hours of continuous discharging at the maximum rate of discharge, which is a portion of a larger energy storage facility, located at the same site as the Generating Facility in Riverside County, California (as further defined herein, the "Storage Facility").

<u>Guaranteed Commercial Operation Date</u>: April 1, 2024, as may be extended in accordance with Exhibit B.

Milestones:

Milestone	Completion Date
Site Control	12/31/2021
Procure Major Equipment	12/31/2021
Conditional Use Permit	12/31/2021
Phase II Interconnection Study Results	Complete
Executed Interconnection Agreement	Complete
Financial Close	
Expected Construction Start Date	
Initial Synchronization	
Obtain Full Capacity Deliverability Status	2/1/2024
Expected Commercial Operation Date	4/1/2024

Delivery Term: 15 Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

Monthly Expected Energy:

Month	Expected Energy (MWh)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

<u>Guaranteed Storage Capacity</u>: 50 MW AC at four (4) hours of continuous discharging at the maximum rate of discharge (200 MWh).

Guaranteed PV Capacity: 100 MW AC capacity measured at the Delivery Point.

Guaranteed Interconnection Capacity: 100 MW

Contract Price:

The "Renewable Rate" shall be:

Contract Year	Renewable Rate (\$/MWh)
1-15	

The "Storage Rate" shall be as specified below:

Contract Years	Storage Rate (\$/kW-month)
All	

P	ro	di	u	ct:

- x PV Energy
- x Discharging Energy
- x Green Attributes:
 - Portfolio Content Category 1 X
 - Portfolio Content Category 2
- x Future Environmental Attributes
- x Capacity Attributes
- x Storage Product

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- **Energy Only Status**
- X Full Capacity Deliverability Status
 - a) If Full Capacity Deliverability Status is selected, provide the Expected FCDS Date: February 1, 2024
 - b) Guaranteed RA Amount:

Scheduling	<u>Coordinator</u> :	Buyer	or	Buyer'	's Agent
		•		•	•

Develop <u>ment Security</u>

Performance Security:

<u>Damage Payment</u>: The amount equal to

Notice Addresses:

Seller:

Arica Solar, LLC, c/o Solar Asset Management LLC 4900 Scottsdale Road, Suite 5000 Scottsdale, AZ 85251

Attention: VP Asset Management

Phone No.:

Email:

With a copy to:

Arica Solar, LLC, c/o Solar Asset Management LLC 5790 Fleet Street, Suite 200

Carlsbad, CA 92008

Attention: General Counsel

Phone No.:

Email:

Scheduling:

Arica Solar, LLC, c/o Solar Asset Management LLC

4900 Scottsdale Road, Suite 5000

Scottsdale, AZ 85251

Attention: VP Asset Management

Phone No.

Email:

Buyer:

Peninsula Clean Energy Authority 2075 Woodside Road

Redwood City, CA 94061

ATTN: Director of Power Resources

Phone No.: 650-260-0005

Email: contracts@peninsulacleanenergy.com

With a copy to:

Peninsula Clean Energy Authority

400 County Center, 6th Floor

Redwood City, CA 94063

Attention: David Silberman, General Counsel

Fax No.: (650) 363-4034 Phone No.: (650) 363-4749

Email: dsilberman@smcgov.org

[Signatures on following page.]

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

SELLER Arica Solar, LLC	BUYER Peninsula Clean Energy Authority		
By:	By: PCE Executive Officer		
Title:			

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POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement ("<u>Agreement</u>") is entered into as of [______] (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 intends to develop, design, construct, own or otherwise have control over, and operate the electric generating and energy storage facility as described in Exhibit A (the "Facility"); and

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

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

ARTICLE 1 DEFINITIONS

- 1.1 <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.
 - "Adjusted Energy Production" has the meaning set forth in Exhibit F.
- "<u>Affiliate</u>" 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.
 - "Affiliate Manager" has the meaning set forth in Section 6.3(a).
 - "Aggregate Capability Constraint" has the meaning set forth in the CAISO Tariff.
- "<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.
- "<u>Ancillary Services</u>" means ancillary services as defined in the CAISO Tariff that are associated with the Facility and any related services, and include Frequency Regulation, Frequency Response, Voltage Control, VAR Dispatch, and Power Factor Correction (as each is defined in the CAISO Tariff).

- "Automated Dispatch System" or "ADS" has the meaning set forth in the CAISO Tariff.
- "Availability Incentive Payment" has the meaning set forth in the CAISO Tariff.
- "Available Generating Capacity" means the capacity from the Generating Facility, expressed in whole MWs, that is available at a particular time to generate Energy.
- "<u>Available Storage Capacity</u>" means the capacity from the Storage Facility, expressed in whole MWs, that is available at a particular time to charge and discharge Energy.
- "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.
- "<u>Buyer Bid Curtailment</u>" means any curtailment of the Generating Facility arising out of or resulting from the manner in which Buyer bids, offers or schedules the Generating Facility, the Energy or any Products, or in which Buyer fails to do so, where all of the following occurs:
- (a) the CAISO provides notice, including through ADS, to a Party or the Scheduling Coordinator for the Generating Facility, requiring the Party to deliver less PV Energy from the Generating Facility than is reflected in the VER Forecast for the Generating 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 VER Forecast for the Generating Facility; and

- (c) no other circumstances exist that constitute a Scheduled Maintenance, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a).
- "Buyer Curtailment Order" means (i) the instruction from Buyer to Seller to reduce delivery of PV Energy by the amount, and for the period of time set forth in such order, for reasons unrelated to a Scheduled Maintenance, Forced Facility Outage, Force Majeure Event and/or Curtailment Order, which instruction may be communicated to Seller in writing by electronic notice or other commercially reasonable means
- "Buyer Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces delivery of PV Energy pursuant to or as a result of (i) Buyer Bid Curtailment or (ii) a Buyer Curtailment Order.
- "Buyer Default" means a failure by Buyer (or its agents) to perform its obligations hereunder.
 - "Buyer's WREGIS Account" has the meaning set forth in Section 4.9(a).
 - "CA Compliance Action" has the meaning set forth in Section 3.13.
- "CAISO" means the California Independent System Operator Corporation or any successor entity performing similar functions.
- "CAISO Approved Facility Meter" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy delivered by the Facility to the Delivery Point less Electrical Losses and Station Use, in accordance with the CAISO Tariff.
 - "CAISO Charges Invoice" has the meaning set forth in Section 4.3(d).
- "CAISO Grid" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.
- "CAISO Operating Order" means the "operating order" defined in Section 37.2.1.1 of the CAISO Tariff.
- "CAISO Tariff" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.
- "California Renewables Portfolio Standard" or "RPS" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015) and 100 (2018) codified in, *inter alia*, California Public Utilities

Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

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

- "<u>CEC</u>" means the California Energy Commission, or any successor agency performing similar statutory functions.
- "CEC Final Certification and Verification" means that the CEC has certified the Generating Facility as an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard, meeting all applicable requirements for certified facilities set forth in the RPS Eligibility Guidebook, Ninth Edition (or its successor), and that all Energy generated by the Generating Facility qualifies as generation from an Eligible Renewable Energy Resource.
- "CEC Precertification" means that the CEC has issued a precertification for the Generating 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.
- "Charging Energy" means all PV Charging Energy and Grid Charging Energy, less Station Use and Electrical Losses, if any, delivered to the Storage Facility pursuant to a Charging Notice, as measured by the Storage Facility Meter. All Charging Energy shall be used solely to charge the Storage Facility, and, during the Recapture Period, all Charging Energy shall be solely PV Charging Energy.
- "Charging Notice" means the operating instruction, and any subsequent updates, given by Buyer or the CAISO, directing the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that (a) any such operating instruction shall be in accordance with

Section 4.6 and the Operating Restrictions, and (b) during the Recapture Period only, if, during a period when the Storage Facility is instructed to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable "Charging Notice", such "Charging Notice" shall (for purposes of this Agreement) be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. For the avoidance of doubt, any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order, or Curtailment Order.

- "Co-located Resource" has the meaning set forth in the CAISO Tariff.
- "Commercial Operation" has the meaning set forth in Exhibit B.
- "Commercial Operation Date" has the meaning set forth in Exhibit B.
- "Commercial Operation Delay Damages" means an amount equal to
- "Compliance Actions" has the meaning set forth in Section 3.13.
- "Compliance Expenditure Cap" has the meaning set forth in Section 3.13.
- "Confidential Information" has the meaning set forth in Section 19.1.
- "Construction Start" has the meaning set forth in Exhibit B.
- "Construction Start Date" has the meaning set forth in Exhibit B.
- "Contract Price" means each of the Renewable Rate and the Storage Rate.
- "Contract Term" has the meaning set forth in Section 2.1(a).
- "Contract Year" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.
- "Control" (including, with correlative meanings, the terms "Controlled by" and "under common Control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast more than fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of more than fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.
- "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

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

"CPM" has the meaning set forth in the CAISO Tariff.

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

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

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

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

"Curtailment Order" means any of the following:

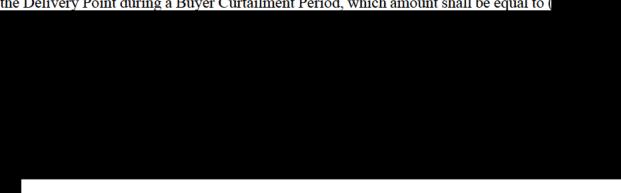
- a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail Energy deliveries for any reason other than a Buyer Bid Curtailment;
- b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if the Facility is interconnected 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 by or delivered from the Facility for such time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, 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.

"Daily Delay Damages" means an amount equal to

- "<u>Damage Payment</u>" means a liquidated damages payment in the amount indicated in the Cover Sheet.
 - "<u>Day-Ahead Forecast</u>" has the meaning set forth in <u>Section 4.4(c)</u>.
 - "Day-Ahead LMP" means the LMP for the Day-Ahead Market.
 - "Day-Ahead Market" has the meaning set forth in the CAISO Tariff.
 - "Day-Ahead Schedule" has the meaning set forth in the CAISO Tariff.
- "<u>Deemed Delivered Energy</u>" means the amount of Energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility and delivered to the Storage Facility or the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to



- "**Defaulting Party**" has the meaning set forth in Section 11.1(a).
- "Deficient Month" has the meaning set forth in Section 4.9(e).
- "<u>Delivery Point</u>" means the PNode designated by the CAISO for the Generating Facility and the PNode designated by the CAISO for the Storage Facility, as applicable.
- "<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.
 - "<u>Development Cure Period</u>" has the meaning set forth in <u>Exhibit B</u>.
- "<u>Development Security</u>" means (i) cash or (ii) a Letter of Credit in the amount specified on the Cover Sheet, deposited with Buyer in conformance with <u>Section 8.7</u>.

"<u>Discharging Energy</u>" means all Energy delivered to the Delivery Point from the Storage Facility, net of Station Use and Electrical Losses, as measured by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as PV Charging Energy or Grid Charging Energy.

"Discharging Notice" means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MWh rate to a specified Stored Energy Level, provided that (a) any such operating instruction or updates shall be in accordance with Section 4.6 and the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer's SC or the CAISO to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such "Discharging Notice" shall (for purposes of this Agreement) be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer issues a further modified Discharging Notice. For the avoidance of doubt any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order, or Curtailment Order.

"Early Termination Date" has the meaning set forth in Section 11.2(a).

"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, including losses associated with (i) delivery of PV Energy to the Delivery Point, (ii) delivery of Charging Energy to the Storage Facility, and (iii) delivery of Discharging Energy to 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.

"Energy" means metered electrical energy measured in MWh.

"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).

"Excused Event" has the meaning set forth in Exhibit L.

"Excused Hours" has the meaning set forth in Exhibit L.

"Expected Commercial Operation Date" has the meaning set forth on the Cover Sheet.

"Expected Construction Start Date" has the meaning set forth on the Cover Sheet.

- "Expected Energy" has the meaning set forth in Section 4.8.
- "Expected FCDS Date" means the date set forth in the deliverability section of the Cover Sheet which is the date the Storage Facility is expected to achieve Full Capacity Deliverability Status.
- "<u>Facility</u>" means the Generating Facility and the Storage Facility, as described more fully in Exhibit A attached hereto.
- "<u>Facility Energy</u>" means the sum of PV Energy and Discharging Energy during any Settlement Interval or Settlement Period, as measured by the CAISO Approved Facility Meter.
- "<u>FERC</u>" means the Federal Energy Regulatory Commission or any successor government agency.
 - "Flexible Capacity" has the meaning set forth in the CAISO Tariff.
- "<u>Flexible Resource Adequacy Benefits</u>" means the attributes, however defined, of a resource that can be used to satisfy the flexible resource adequacy obligations of a load serving entity, including Flexible Capacity.
 - "FMM Schedule" has the meaning set forth in the CAISO Tariff.
 - "Force Majeure Event" has the meaning set forth in Section 10.1(a).
- "Forced Facility Outage" means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from generating or delivering power to the Delivery Point or providing Storage Product and that is not the result of a Force Majeure Event.
- "Forward Certificate Transfers" has the meaning set forth in the WREGIS Operating Rules.
 - "Full Capacity Deliverability Status" has the meaning set forth in the CAISO Tariff.
 - "Full Network Model" has the meaning set forth in the CAISO Tariff.
- "Future Environmental Attributes" shall mean any and all emissions, air quality or other environmental attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) investment or production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the

Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

"GA Compliance Action" has the meaning set forth in Section 3.13.

"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.

"Generating Facility" means the separately metered 100 MW portion of the photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver PV Energy to the Delivery Point or to the Storage Facility, including Seller's rights and interests in Shared Facilities; provided that the "Generating Facility" does not include the Storage Facility or the portions of Shared Facilities other than Seller's rights and interests thereto.

"Generating Facility Meter" means the CAISO approved revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment, and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of PV Energy generated by the Generating Facility and calculated as delivered to Buyer at (i) the Delivery Point or (ii) the Storage Facility as PV Charging Energy. For clarity, the Facility may contain multiple measurement devices and calculations that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and calculations and the aggregated data of all such measurement devices and calculations, taken together.

"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) investment or production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. 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.

"Grid Charging Energy" means Charging Energy supplied from the CAISO Grid.

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

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

"Guaranteed Energy Production" has the meaning set forth in Section 4.8.

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

"Guaranteed PV Capacity" means the amount set forth on the Cover Sheet, as may be adjusted pursuant to Exhibit B.

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

"Guaranteed Round Trip Efficiency" has the meaning set forth in Exhibit P.

"Guaranteed Storage Availability" has the meaning set forth in Section 4.12(a).

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

"Guarantor" means, with respect to Seller,

or (b) any other Person in Buyer's sole and reasonable discretion.

"<u>Guaranty</u>" means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as <u>Exhibit Q</u> or in such other form as is reasonably acceptable to Buyer.

"Hybrid Resource" has the meaning set forth in the CAISO Tariff.

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

"Indemnified Party" has the meaning set forth in Section 17.1(a).

"Indemnifying Party" has the meaning set forth in Section 17.1(a).

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

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

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

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

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

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

"<u>Interconnection Facilities</u>" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System (or PTO's distribution system, as applicable) in accordance with the Interconnection Agreement.

"Interest Rate" has the meaning set forth in Section 8.2.

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

"<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>kWh</u>" means kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"<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, and includes the CAISO Tariff.

"Lender" means, collectively, (A) in the case of Seller, any Person (i) providing senior or subordinated construction, interim, back leverage 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, (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility, and/or

, and (B) in the case of Buyer, any Person (i) providing senior or subordinated short-term or long-term debt or equity financing or refinancing for or in connection with the business or operations of Buyer, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form, and any trustee or agent acting on their behalf, and/or (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations.

"<u>Letter(s) of Credit</u>" 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 (a) substantially similar to the letter of credit set forth in <u>Exhibit K</u> or (b) otherwise reasonably acceptable to Buyer.

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

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

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

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

"Lost Output" has the meaning set forth in Exhibit F.

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

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

"Minimum Round Trip Efficiency" has the meaning set forth in Exhibit P.

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

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

"<u>MW</u>" means megawatts measured in alternating current, unless expressly stated in terms of direct current.

"<u>MWh</u>" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"<u>Negative LMP</u>" means, in any Settlement Period or Settlement Interval, the LMP in the Real-Time Market is less than zero dollars (\$0).

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

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

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

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

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

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

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

"<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 the Southern California Edison Company.

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

"Performance Measurement Period" has the meaning set forth in Section 4.8.

"<u>Performance Security</u>" means (i) cash, (ii) a Letter of Credit, or (iii) a Guaranty, in the amount specified on the Cover Sheet, deposited with Buyer in conformance with <u>Section 8.8</u>.

"Performance Security End Date" has the meaning set forth in Section 8.8.

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

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

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

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

"Portfolio Content Category 2" or "PCC2" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource

consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

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

"Primary Availability" has the meaning set forth in Exhibit L.

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

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

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

"PV Charging Energy" means Charging Energy that is supplied from the Generating Facility.

"<u>PV Energy</u>" means all Energy produced by the Generating Facility, as measured by the Generating Facility Meter after adjustment to exclude (a) all Electrical Losses, and (b) all Energy that serves Station Use or is stored in the Storage Facility to serve Station Use.

(b) is not a public utility regulated by the CPUC or an Affiliate thereof, and (c) has, or retains to operate the Facility a Person that has, at least two (2) years of experience operating at two (2) or more electricity generating facilities of the same technology and with at least as much generating capacity as the Facility.

"RA Deficiency Amount" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.9(b).

"RA Guarantee Date" means the Commercial Operation Date.

"Qualified Transferee" means an entity that (a) has a

"RA Plan" means the RA plan, or similar or successor filing, that a Scheduling Coordinator representing resources providing Resource Adequacy Benefits submits to the CAISO

or other applicable Governmental Authority pursuant to applicable Laws in order for the Resource Adequacy Benefits, including any Local Capacity Area Resource Adequacy Benefits and Flexible Resource Adequacy Benefits, to count towards a load serving entity's resource adequacy obligations.

"RA Shortfall" means the difference, expressed in kW, of (i)

"RA Shortfall Month" means the applicable calendar month following the RA Guarantee Date during which Seller fails to provide System Resource Adequacy Benefits in an amount equal to or greater than the Guaranteed RA Amount as required hereunder for purposes of calculating an RA Deficiency Amount under Section 3.9(b).

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

"Real-Time LMP" means the LMP for the Real-Time Market.

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

"Recapture Period" means the period ending on

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

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

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

"Renewable Rate" has the meaning set forth on the Cover Sheet, as may be adjusted by Section 3.3.

"Replacement Green Attributes" has the meaning set forth in Exhibit F.

"Replacement RA" means System Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Storage Facility with respect to the applicable month

in which an RA Deficiency Amount is due to Buyer. Replacement RA shall not be provided from any generating facility or unit that utilizes coal or coal materials as a source of fuel.

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

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

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

"Round Trip Efficiency Adjustment" has the meaning set forth in Exhibit P.

"<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.

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

"<u>Scheduled Maintenance</u>" means any planned outage or scheduled maintenance of all or a portion of the Facility by Seller, planned or scheduled in accordance with Section 6.1.

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

"Secondary Availability" has the meaning set forth in Exhibit L.

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

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

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

"Seller's WREGIS Account" has the meaning set forth in Section 4.9(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.

"Shared Facilities" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from Seller's Facility (which is excluded from Shared Facilities) to the Delivery Point, that are used in common with Other Facilities, as applicable.

"Shared Facilities Agreement" has the meaning set forth in Section 6.3(a).

"Shared Facilities Counterparty" means any counterparty to a Shared Facilities Agreement with Seller.

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

"<u>Site</u>" means the real property on which the Facility is or will be located, as further described in <u>Exhibit A</u>, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date Certificate to Buyer, in substantially the form of the Form of Construction Start Date Certificate in Exhibit J.

"<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" has the meaning given in the tariff of the retail provider of energy for the Facility and reflects (a) the electric energy that is used within the Facility (including to power the lights, motors, control systems, thermal regulation equipment and other electrical loads) and that is necessary for operation of the Facility; and (b) the electric energy that is consumed within the Facility's electric energy distribution system as losses (other than any losses that are Electrical Losses).

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

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

"Storage Capacity Payment" has the meaning set forth in Section 3.3(d).

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

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

"Storage Facility Meter" means the CAISO approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of (i) PV Charging Energy, (ii) Grid Charging Energy, (iii) Discharging Energy and (iv) Energy that serves Station Use. For clarity, the Facility may include multiple measurement devices and calculations that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and calculations and the aggregated data of all such measurement devices and calculations, taken together.

"Storage Product" means (a) the ability of the Storage Facility to accept and store Charging Energy and to deliver Discharging Energy in accordance with the terms of this Agreement, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services (as defined in the CAISO Tariff), if any, in each case arising from or relating to the Storage Facility.

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

"<u>Stored Energy</u>" means the electric energy in the Storage Facility available to be discharged as Discharging Energy.

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

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

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

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

"System Resource Adequacy Benefits" means the attributes, however defined, of a resource that can be used to satisfy the resource adequacy obligations of a load serving entity, other

than Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits, expressed in kW.

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

"<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.

"Terminated Transaction" has the meaning set forth in Section 11.2(a).

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

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

"<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.

"Ultimate Parent" means

"<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 4.9(e).

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

"<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, and references to a LMP shall mean the LMP at the Delivery Point unless expressly provided otherwise;
- (k) the expression "and/or" when used as a conjunction shall connote "any or all of";
- (l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating

Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

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

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

- (a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("Contract Term").
- (b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under <u>Article 19</u> 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 Delivery Term shall not commence until Seller completes each of the following conditions:
- (a) Seller shall have installed and commissioned generating equipment with a nameplate capacity of no less than of the Guaranteed PV Capacity;
- (b) Seller shall have installed and commissioned storage equipment with a capacity of no less than of the Guaranteed Storage Capacity;
- (c) Seller shall have delivered to Buyer certificates from a licensed professional engineer substantially in the form of <u>Exhibits I-1</u> and <u>I-2</u>;
- (d) 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;
- (e) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement, including all modifications and amendments thereto, delivered to Buyer;
- (f) Seller shall have delivered to Buyer a copy of all environmental impact reports, studies or assessments prepared by or obtained by Seller or its Affiliates, the conditional use permit or other principal land use approval for the Facility, and a certificate signed by an

authorized representative of Seller stating that Seller is in compliance with the requirements of the conditional use permit or other principal land use approval;

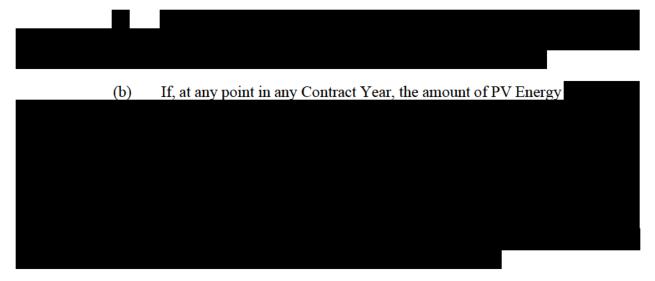
- (g) Seller has received CEC Precertification;
- (h) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable 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;
- (i) Seller shall have caused the Generating Facility and the Storage Facility to be included in the Full Network Model and has ability to offer Bids into CAISO Day-Ahead Markets and Real-Time Markets in respect of each of the Generating Facility and the Storage Facility.
- (j) Seller shall have completed all necessary steps to provide Ancillary Services from the Facility, including completing the certification and testing requirements in Section 8.3.4 and Appendix K of the CAISO Tariff with respect to the provision of Ancillary Services:
- (k) Seller has delivered to Buyer, the most recent version of (i) any solar resource report prepared by a third party consultant, and (ii) any report by an independent engineer in connection with the financing of the construction or permanent operation of the Facility,
 - (1) Seller has delivered the Performance Security to Buyer; and
- (m) Seller has paid Buyer for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any.
- 2.3 <u>Progress Reports</u>. The Parties agree time is of the essence in regards to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in <u>Exhibit G</u>. Seller shall also provide Buyer with any reasonably requested documentation (subject to reasonable confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.
- 2.4 <u>Remedial Action Plan</u>. If Seller misses three (3) or more Milestones or misses any one (1) by more than ninety (90) days, Seller shall submit to Buyer, within ten (10) Business Days of such third missed Milestone completion date (or the ninetieth (90th) day after the missed

Milestone completion date, as applicable), a remedial action plan ("Remedial Action Plan"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), and Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B and Section 11.1(b)(ii), so long as Seller complies with its obligations under this Section 2.4, then Seller shall not be considered in default of its obligations under this Agreement as a result of missing such Milestone(s).

Facility Configuration. The Parties agree that the Facility configuration will be as 2.5 Co-located Resources with separate CAISO Resource IDs and separate CAISO approved revenue quality meters for each of the Storage Facility and Generating Facility. Seller shall design and configure the Facility metering and equipment (although not necessarily the software associated therewith) to accommodate being able to function in a Co-located Resource or Hybrid Resource configuration using the best available information at the time of meter installation. Not more than once per Contract Year during the Delivery Term, Buyer may request that Seller convert the Storage Facility from a Co-located Resource to a Hybrid Resource (or, if previously converted to a Hybrid Resource, back to a Co-located Resource). Upon such request, Seller shall determine in its commercially reasonable discretion, taking into account any operational or design limitations of the Facility and any CAISO-approved process for conversion of a Co-Located Resource to a Hybrid Resource or vice versa, whether such a conversion is possible and, if so, the anticipated costs associated with such a conversion. Seller shall provide an estimate of such costs and expenses, including lost revenue, and the associated scope of work, if such a conversion is possible, for Buyer's review within thirty (30) days after Buyer's request for the conversion. If Buyer agrees to be responsible for the reasonably incurred and documented costs and expenses associated with the identified scope of work, Seller shall request that CAISO convert the Storage Facility from the configuration then in effect to the other configuration. Buyer shall reimburse Seller for its reasonably incurred and documented costs and expenses associated with the identified scope of work, including lost revenue, to effectuate the conversion and the Parties shall cooperate in good faith to amend this Agreement to accommodate such conversion while maintaining the expected economic benefit to Seller arising out of this Agreement. Once Buyer approves the costs and expenses for reimbursement, the conversion shall be completed within the timeline in the CAISO's administrative process. In addition to the other limitations specified in this Section 2.5, if such request or such conversion of the Storage Facility from a storage facility co-located with solar to a hybrid solar and storage facility is not permitted by CAISO or any Governmental Authority, or reasonably could be expected to have an adverse impact on the expected economic benefit to Seller arising out of this Agreement, including any physical modification of the Facility, that is not compensated for by Buyer, Seller shall provide notice of the same to Buyer with a reasonably detailed explanation and Seller shall not be required to effectuate the conversion.

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. Buyer shall re-sell all of the Energy purchased hereunder (other than Charging Energy), and may, at its sole discretion, resell or use for another purpose all or a portion of the remainder of the Product, provided that such resale or use for another purpose will not relieve Buyer of any of its obligations under this Agreement. Except for Deemed Delivered Energy, Buyer has no obligation to pay Seller for any Product that is not delivered to the Delivery Point as a result of any circumstance, including an outage of the Facility, a Force Majeure Event, or a Curtailment Order. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except with respect to Replacement RA under <u>Section</u> 3.9.
- 3.2 <u>Sale of Green Attributes</u>. Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all of the Green Attributes produced by the Facility during the Delivery Term and any Green Attributes associated with Test Energy.
- 3.3 <u>Compensation</u>. Buyer shall compensate Seller for the Product in accordance with this Section 3.3.



(c) If during any Settlement Interval, Seller delivers PV Energy in excess of the product of the Installed PV 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").

(d)

3.4 **Imbalance Energy**.

- (a) Buyer and Seller recognize that from time to time the amount of Facility Energy will deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Subject to Section 3.4(b), to the extent there are such deviations, any CAISO costs or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.
- (b) If Seller is not in compliance with EIRP or Sections 4.3, 4.4(c), 4.4(d), 4.5, 4.6, or 4.11, or if Imbalance Energy results from any outage or reduction in the availability of the Facility that is not communicated to Buyer at least one hour prior to the deadline to submit Schedules to CAISO, then Seller will be responsible for and shall pay directly or promptly reimburse Buyer (and Buyer may offset amounts owed to Seller) for the aggregate Imbalance Energy charges assessed, net of the aggregate Imbalance Energy revenues earned, during such period of noncompliance and reasonably attributable to such noncompliance within the applicable Contract Year. At Buyer's request, Seller will cooperate with Buyer to develop a written administrative protocol to effectuate the Parties' agreement with respect to Imbalance Energy and scheduling.
- 3.5 <u>Ownership of Renewable Energy Incentives</u>. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.6 Future Environmental Attributes.

(a) The Parties acknowledge and agree that as of the Effective Date, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Buyer shall have the right to obtain such Future Environmental Attributes without any adjustment to the Contract Price paid by Buyer under this Agreement. Subject to Section 3.15, Seller shall take all reasonable actions necessary to realize the full value of such

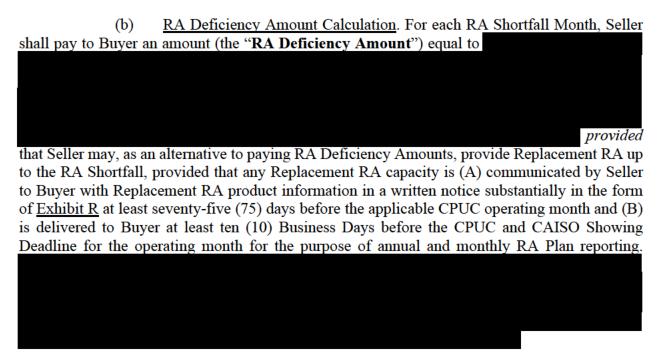
Future Environmental Attributes for the benefit of Buyer, and shall cooperate with Buyer in Buyer's efforts to do the same.

- (b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any incremental expenses incurred by Seller associated with providing such Future Environmental Attributes 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 <u>Test Energy</u>. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Green Attributes and Capacity Attributes on an as-available basis.
- 3.8 <u>Capacity Attributes</u>. Seller shall request Full Capacity Deliverability Status in connection with the Storage Facility in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.
- (a) Subject to <u>Section 3.13</u>, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility throughout the Delivery Term, and any Capacity Attributes from the Facility associated with any Test Energy.
- (b) Subject to <u>Section 3.13</u>, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Storage Facility from the CAISO and shall perform all actions necessary to ensure that the Storage Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, and in connection with any Test Energy, subject to <u>Section 3.13</u>, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer from the Storage Facility.
- (c) Subject to <u>Section 3.13</u>, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.
- (d) For the duration of the Delivery Term, Seller shall maintain an interconnection capacity under its Interconnection Agreement of at least the amount of the Guaranteed Interconnection Capacity.
- (e) If, as a result of Scheduled Maintenance or otherwise, CAISO requires RA Substitute Capacity in connection with Seller's provision of Resource Adequacy Benefits to Buyer from the Storage Facility, Seller shall provide such RA Substitute Capacity in accordance with applicable CAISO requirements. Seller acknowledges and agrees that any failure by Seller to provide such RA Substitute Capacity may result in CAISO rejecting or cancelling Scheduled

Maintenance or other outage of the Storage Facility. Buyer shall notify Seller within two (2) Business Days after becoming aware of an obligation by Seller to provide RA Substitute Capacity and shall use commercially reasonable efforts to notify Seller before submitting its Supply Plan. Upon request by Seller, Buyer shall use commercially reasonable efforts to secure, on Seller's behalf, RA Substitute Capacity; provided that Seller shall reimburse Buyer for all out-of-pocket costs, including broker and outside counsel costs, associated with such RA Substitute Capacity. If Seller declines to provide RA Substitute Capacity, and notifies Buyer to that effect no less than five (5) Business Days before the applicable Showing Deadline, then Buyer will not include the Storage Facility (or, if applicable, the portion of the Storage Facility) in its Supply Plan for the Facility and Seller's sole liability will be payment of the RA Deficiency Amount for such RA Shortfall pursuant to Section 3.9.

3.9 Resource Adequacy Failure.

(a) <u>RA Deficiency Determination</u>. Notwithstanding Seller's obligations set forth in <u>Section 4.3</u> or anything to the contrary herein, the Parties acknowledge and agree that if Seller has indicated that the Storage Facility will have Full Capacity Deliverability Status on the Cover Sheet, but has failed to obtain such status for the Storage Facility by the RA Guarantee Date, or if Seller otherwise fails to provide System Resource Adequacy Benefits in an amount equal to or greater than the Guaranteed RA Amount as required hereunder, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer or provide Replacement RA for the Capacity Attributes that Seller failed to convey to Buyer.



3.10 <u>CEC Certification and Verification</u>. Subject to <u>Section 3.13</u>, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Precertification and CEC Final Certification and Verification for the Facility. Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for CEC Final

Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall, subject to Section 3.13, obtain and maintain throughout the remainder of the Delivery Term the CEC Final Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Precertification or CEC Final Certification and Verification for the Facility. For the first one hundred eighty (180) days of the Delivery Term, provided that Seller has obtained and maintained CEC Precertification, Buyer shall pay Seller the Renewable Rate for PV Energy according to Section 3.3 regardless of whether Seller has obtained CEC Final Certification and Verification. If Seller has not obtained CEC Final Certification and Verification within one hundred eighty (180) days after the Commercial Operation Date, Buyer will compensate Seller for PV Energy at the lower of (i) the Renewable Rate, as adjusted according to Section 3.3, or (ii) the Day-Ahead LMP, for the remainder of the Delivery Term, or until Seller obtains CEC Final Certification and Verification. If Seller obtains CEC Final Certification and Verification after one hundred eighty (180) days after the Commercial Operation Date, Buyer will thereafter begin paying Seller the Renewable Rate for PV Energy according to Section 3.3, and, if such CEC Final Certification and Verification relates back to all PV Energy delivered by Seller during the Delivery Term, will reimburse Seller for the difference between (x) any reduced amounts paid to Seller for PV Energy under this Section 3.10 due to Seller's failure to obtain CEC Final Certification and Verification within one hundred eighty (180) days after the Commercial Operation Date, and (y) the amount that would have been paid to Seller had Seller timely obtained CEC Final Certification and Verification within one hundred eighty (180) days after the Commercial Operation Date. If Seller has not obtained CEC Final Certification and Verification within one (1) year of the Commercial Operation Date, then an Event of Default shall occur, Buyer shall have all remedies available under this Agreement, including under Section 11.2, and, in the event that Buyer terminates this Agreement under Section 11.2, Seller shall reimburse Buyer, in addition to any other amounts owed, in an amount equal to the difference between (a) the amount paid by Buyer to Seller for PV Energy during the first one hundred eighty (180) days of the Delivery Term, and (b) the amount that would have been paid if the price for energy delivered during the first one hundred eighty (180) days of the Delivery Term were the Day-Ahead LMP.

- 3.11 <u>Eligibility</u>. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Generating 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 Generating Facility's output delivered to Buyer to the Delivery Point and to the Storage Facility as PV Charging Energy qualifies under the requirements of the California Renewables Portfolio Standard and Portfolio Content Category 1. 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 <u>Section 3.13</u>, Seller shall also take all other actions necessary to ensure that the Energy produced from the Generating 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 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 with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Green Attributes (any action required to be taken by Seller to comply with such change in Law, a "<u>GA Compliance Action</u>") or Capacity Attributes (any action required to be taken by Seller to comply with such change in Law, a "<u>CA Compliance Action</u>", which together with GA Compliance Actions is a "<u>Compliance Action</u>"), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with (i) all such GA Compliance Actions shall be capped at

and (ii) all such CA Compliance Actions shall be capped

("Compliance Expenditure Cap").

If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "Accepted Compliance Costs"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.13 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Contract Term.

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



- 3.14 <u>Guaranteed Interconnection Capacity</u>. Seller shall enable the Aggregate Capability Constraint and sub-Aggregate Capability Constraints with CAISO so as to ensure that the Buyer has the exclusive right to use the Guaranteed Interconnection Capacity.
- 3.15 **Project Configuration and Grid Charging**. After the Recapture Period, if Buyer elects to provide Charging Energy from a source other than the Generating Facility, including Grid Charging Energy, (i) Buyer will be responsible for the costs of Energy relating to the charging of the Storage Facility from a source other than the Generating Facility (not including any Imbalance Energy costs for which Seller is otherwise responsible) and (ii) PV Energy delivered by Seller to the Delivery Point will be fully paid for by Buyer (unless Buyer is otherwise not required to pay for such PV Energy hereunder).

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 at the Delivery Point all Product. Each Party shall perform all obligations under this Agreement, including all generation, scheduling, and transmission services, in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.
- (b) <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. Seller shall, at Buyer's request and at Seller's sole expense, take all actions and execute all documents or instruments necessary to ensure that the Facility is certified in the Center for Resource Energy Solutions Green-e certification program, or successor program.
- (c) <u>Station Use</u>. Seller may serve Station Use from Energy produced by the Facility only to the extent permissible in accordance with the CAISO Tariff and subject to the following requirements and restrictions:
- (i) Seller shall not bill Buyer and Buyer will not pay Seller for any Energy that serves Station Use, and Seller shall bear all costs associated with Energy that serves Station Use, including (A) any Energy produced by the Generating Facility that serves Station Use; (B) any Stored Energy or Energy discharged from the Storage Facility that serves Station Use during periods when such service is permissible in accordance with the CAISO Tariff; and/or (C) any CAISO costs or Imbalance Energy costs incurred to serve Station Use;
- (ii) Seller shall be responsible for the accurate metering and accounting for Energy used to serve Station Use to ensure that records and invoices to Buyer are accurate and do not improperly bill Buyer for Energy that serves Station Use;
- (iii) Seller shall ensure that any use of Stored Energy or Energy discharged from the Storage Facility to serve Station Use complies with and does not interfere

with or impair Buyer's or the CAISO's dispatch of or schedule for the Facility, and if Seller fails to comply with such requirements, then, without prejudice to Buyer's other rights and remedies hereunder, Seller shall reimburse Buyer for (A) any charges, costs, and penalties imposed by the CAISO for the Storage Facility's failure to comply with dispatch instructions, the CAISO schedule, or any CAISO requirements; and (B) any loss of revenue if the CAISO adjusts dispatch instructions due to the use of Stored Energy or Energy discharged from the Storage Facility to serve Station Use, in each case only to the extent imposed or incurred as a direct result of Seller's use of Stored Energy or Energy discharged from the Storage Facility to serve Station Use;

- (iv) Any use of Energy generated by the Generating Facility, Energy discharged from the Storage Facility or Stored Energy for Station Use shall not (A) reduce Seller's obligations to achieve the Guaranteed Storage Availability and Guaranteed Round Trip Efficiency, or (B) count toward limits specified in the Operating Restrictions; and
- (v) Seller shall provide to Buyer upon Buyer's request all records and data, including detailed meter, charging, discharging, and state of charge data, that may be necessary or useful for Buyer to verify that service of Station Use occurred in compliance with this Section 4.1(c), and to calculate and verify the accuracy of invoices and amounts required to be reimbursed hereunder.

4.2 Title and Risk of Loss.

- (a) <u>Energy</u>. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Title to and risk of loss related to the Grid Charging Energy, if any, shall pass and transfer from Buyer to Seller at the Storage Facility Meter.
- (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.

Buyer as Scheduling Coordinator for the Facility. Upon initial (a) synchronization of the Facility to the CAISO Grid, subject to Section 2(a) of Exhibit B, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the initial synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility effective as of the initial synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the initial synchronization of the Facility to the CAISO Grid. On and after initial synchronization of the Facility to the CAISO Grid, subject to Section 2(a) of Exhibit B, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's

Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

- (b) <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.
- <u>CAISO Costs and Revenues</u>. Except as otherwise set forth below and in Section 3.4(b) and Section 3.7, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties or fees resulting from any failure by Seller to abide by the CAISO Tariff or this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be the Seller's responsibility.
- CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement, including Section 3.4(b). CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under Section 4.3(e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

- (e) <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 Buyer and Buyer's designated Scheduling Coordinator 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. Except to the extent required to comply with Law or the CAISO Tariff, 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 Generating Capacity forecasts shall include availability and updated status of key equipment for the Generating Facility. Seller shall use commercially reasonable efforts to forecast the Available Generating Capacity and expected Energy of the Generating Facility and Available Storage Capacity of the Storage Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).
- (a) <u>Annual Forecast of Expected PV Energy</u>. 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 PV Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.
- (b) Monthly Forecast of Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Generating Capacity and Available Storage Capacity in each case for each day of the following month in a form reasonably acceptable to Buyer.

- on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Available Generating Capacity (or if requested by Buyer, the expected PV Energy) and Available Storage Capacity for each hour of the immediately succeeding day ("Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Available Generating Capacity (or if requested by Buyer, the expected PV Energy) and Available Storage Capacity.
- Real-Time Available Capacity. During the Delivery Term, Seller shall (d) notify Buyer of any changes in Available Generating Capacity and/or Available Storage Capacity of one (1) MW or more, whether due to Forced Facility Outage, Force Majeure Event 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 Generating Capacity and/or Available Storage Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity and/or Available Storage Capacity, as applicable, the expected end date and time of such event, the expected Available Generating Capacity and/or Available Storage Capacity, as applicable, in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These notices and changes to Available Generating Capacity and/or Available Storage Capacity shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.4(d), then Seller shall send such communications by telephone and e-mail to Buyer.
- (e) <u>Hybrid Resource Forecast Requirements</u>. In the event that the Storage Facility and the Generating Facility are in Hybrid Resource configuration, Seller shall use commercially reasonable efforts to provide such information as is needed by Buyer or the CAISO to fully make use of Hybrid Resource functionality, or as is otherwise reasonably requested by Buyer.

4.5 <u>Dispatch Down/Curtailment.</u>

(a) <u>General</u>. Seller agrees to reduce the Generating Facility's generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; provided that Seller is not required to reduce such amount to the extent such reduction or any such Buyer Curtailment Order or notice is inconsistent with the limitations of the Facility set out in the Operating Restrictions. Buyer has no obligation to purchase or pay for any Product delivered in violation of any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment,

or for any Product that could not be delivered to the Delivery Point due to a Force Majeure Event.

- (b) <u>Buyer Curtailment.</u> Buyer shall have the right to order Seller to curtail deliveries of PV Energy or Discharging Energy to the Delivery Point through Buyer Curtailment Orders pursuant to a Dispatch Notice delivered to Seller, which also shall be deemed to terminate any outstanding Discharging Notices, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with all Buyer Curtailment Periods at the applicable Renewable Rate.
- (c) <u>Failure to Comply</u>. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is an amount equal to the absolute value of the Negative LMP, if any, for the Buyer Curtailment Period or Curtailment Period, times the amount of MWh of Facility Energy delivered to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, and (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

4.6 **Charging and Discharging Energy**.

- (a) Buyer will be the Scheduling Coordinator for the Storage Facility and will have sole and exclusive rights to charge and discharge the Storage Facility and to bid and schedule the Storage Facility in CAISO markets, subject to the terms of this Agreement, including the Operating Restrictions. During the Recapture Period, the Storage Facility shall be charged using only PV Charging Energy and shall not be charged using Grid Charging Energy. Seller shall install such switches, equipment, software or other technology as is required under the CAISO Tariff so that CAISO will not allow the Storage Facility to be charged using Grid Charging Energy during the Recapture Period.
- (b) Seller shall comply with Charging Notices and Discharging Notices that comply with the terms of this Agreement. Upon receipt of a valid Charging Notice, Seller shall deliver the PV Charging Energy to, or accept the Grid Charging Energy at, the Storage Facility, as applicable, in accordance with the terms of this Agreement (including the Operating Restrictions), at the times and in the quantities specified in such Charging Notice. Upon receipt of a valid Discharging Notice, Seller shall deliver the Discharging Energy to the Delivery Point in accordance with the terms of this Agreement (including the Operating Restrictions), at the times and in the quantities specified in such Discharging Notice.
- (c) Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided that Buyer's right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including Operating Restrictions, and the forecasted availability of PV Charging Energy. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.

- (d) Seller shall not charge the Storage Facility during the Contract Term other than pursuant to a valid Charging Notice or in connection with a Storage Capacity Test (for which Seller may request a Charging Notice from Buyer), or pursuant to a notice from CAISO, the PTO, or any other Governmental Authority. If, during the Contract Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice (except as permitted in the first sentence of this Section 4.6(d)), or (ii) charges the Storage Facility in violation of the first or second sentence of Section 4.6(b), then, in addition to any other costs and charges for which Seller is responsible, including Imbalance Energy costs and other amounts specified in Section 4.3(c), and without limiting any of Buyer's other rights under this Agreement:
 - (i) Seller shall be responsible for all Energy costs associated with such charging of the Storage Facility;
 - (ii) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy) (including PV Energy if used as Charging Energy);
 - (iii) the Monthly Storage Availability calculation shall be affected to the extent specified in $\underline{\text{Exhibit } L}$.
- (e) Subject to compliance with the CAISO Tariff, other applicable Laws and the Operating Restrictions, Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.
- other than pursuant to a valid Discharging Notice or in connection with a Storage Capacity Test (for which Seller may request a Charging Notice from Buyer), or pursuant to a notice from CAISO, the PTO, or any other Governmental Authority. Discharging for Station Use may occur only as specified in Section 4.1(c). In the case of a Storage Capacity Test, Buyer shall pay for costs associated with the Charging Energy (including PV Charging Energy at the Renewable Rate, if applicable) and may retain any revenue from the discharge of such Energy (adjusted for efficiency losses) pursuant to a valid Discharging Notice. If, during the Contract Term, Seller (i) discharges the Storage Facility to a Stored Energy Level less than the Stored Energy Level provided for in the Discharging Notice (except as permitted in the first or second sentence of this Section 4.6(f)), or (ii) discharges the Storage Facility in violation of the first or second sentence of this Section 4.6(f), then, in addition to any other costs and charges for which Seller is responsible, including Imbalance Energy costs and other amounts specified in Section 4.3(c), and without limiting any of Buyer's other rights under this Agreement:
 - (i) Buyer shall retain any positive revenues received from CAISO or otherwise associated with such discharge;
 - (ii) Seller shall be responsible for and reimburse Buyer for all

Energy costs associated with charging the Storage Facility to the Stored Energy Level specified by Buyer before the discharge; and

- (iii) the Monthly Storage Availability calculation shall be affected to the extent specified in $\underline{\text{Exhibit } L}$.
- Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Discharging Notices applicable to such Settlement Interval (but not over Charging Notices which are consistent with such Curtailment Orders, Buyer Curtailment Orders, or Buyer Bid Curtailments), and Seller shall have no liability for violation of this Section 4.6 or any Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment, or other instruction or direction from a Governmental Authority or the PTO unless caused by Seller's fault or negligence. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order consistent with the Operating Restrictions.
- (h) Notwithstanding any other provision of this Agreement, during the Recapture Period:
 - (i) the Storage Facility shall only be charged using PV Charging Energy and shall not be charged using any Grid Charging Energy; provided, that if CAISO requires Seller to charge the Storage Facility using Grid Charging Energy, Seller shall comply with such CAISO requirements and Buyer will not be liable for any damages, costs, or losses, including as it relates to the loss of tax or other financial benefits or incentives arising therefrom;
 - (ii) Buyer shall not instruct Seller to charge the Storage Facility using Grid Charging Energy unless, in Buyer's role as Scheduling Coordinator for the Facility, as required by CAISO. Seller shall not be required to comply with any instruction, order, Charging Notice, or other communication requesting or requiring the Storage Facility to be charged from any source other than the Generating Facility, unless required by CAISO, and the Parties shall cooperate to address and resolve any of the foregoing to be consistent with this Section 4.6(h);
 - (iii) Seller shall be responsible for designing, constructing, operating, and maintaining the Facility in a manner that both complies with this <u>Section 4.6(h)</u> and includes the physical components that will accommodate a future Buyer request to charge the Storage Facility with Grid Charging Energy after the Recapture Period; and
 - (iv) Buyer, in its role as Scheduling Coordinator, shall use commercially reasonable efforts and cooperate with Seller to prevent a CAISO-directed order to use Grid Charging Energy during the Recapture Period.
- 4.7 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit F:

- (a) <u>Facility Maintenance</u>. Seller shall be permitted to reduce deliveries of Product during any period of and to the extent required by Scheduled Maintenance on the Facility previously agreed to between Buyer and Seller.
- (b) <u>Forced Facility Outage</u>. Seller shall be permitted to reduce deliveries of Product during and to the extent required by any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration and extent (if known) of any Forced Facility Outage.
- (c) <u>System Emergencies and other Interconnection Events</u>. Seller shall be permitted to reduce deliveries of Product during any period of and to the extent required by System Emergency, Buyer Curtailment Period, or upon Notice of a Curtailment Order, or pursuant to the terms of the Interconnection Agreement or applicable tariff. In the event of a System Emergency, anticipated System Emergency, or other event or circumstance in which CAISO determines that there is or may be an imminent need for Energy supplies on the CAISO Grid, Seller shall use reasonable efforts to make the Product fully available, including by cancelling or deferring any Facility maintenance.
- (d) <u>Force Majeure Event</u>. Seller shall be permitted to reduce deliveries of Product during and to the extent required by 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 <u>Section 6.2</u>.
- 4.8 Expected Energy and Guaranteed Energy Production. The quantity of PV Energy that Seller expects to be able to deliver to Buyer at the Delivery Point or the Storage Facility during each Contract Year is set forth on the Cover Sheet ("Expected Energy"). Seller shall be required to deliver to Buyer at the Delivery Point or the Storage Facility an amount of PV Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below) in any period of two (2) consecutive Contract Years during the Delivery Term ("Performance Measurement Period"). "Guaranteed Energy Production" means an amount of PV Energy, as measured in MWh, equal to for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent that Seller was unable to deliver PV Energy as a result of any Force Majeure Events, Buyer Default, Curtailment Periods and Buyer Curtailment Periods; to effectuate the foregoing excuse, Seller shall be deemed to have delivered to Buyer (1) the Deemed Delivered Energy in respect of Buyer Curtailment Periods, and (2) an amount of Energy determined in accordance with Exhibit F in respect of Lost Output. In addition, for purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer, in the first Contract Year of each Performance Measurement Period following a Performance Measurement Period as to which Seller has paid damages calculated in accordance with Exhibit F, the Energy in the amount equal to the greater of the amount of PV Energy actually delivered in such Contract Year, less Excess MWh, or of the Expected Energy for such Contract Year. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay

Buyer damages calculated in accordance with Exhibit F.

- 4.9 <u>WREGIS</u>. Seller shall, at its sole expense, but subject to <u>Section 3.13</u>, 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 PV Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification, issuance, and transfer of such WREGIS Certificates to Buyer, and Buyer shall be given sole title to all such WREGIS Certificates. In addition:
- (a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the accounts of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account") Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account and all expenses associated therewith.
- (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. Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for creation of a WREGIS Certificate.
- (c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the PV Energy for such calendar month as evidenced by the Generating 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 <u>Section 8.2</u>, Buyer shall make an invoice payment for a given month in accordance with <u>Section 8.2</u> before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this <u>Section 4.9</u>. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with <u>Section 8.2</u>.
- (e) A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates issued to Buyer for a calendar month as compared to the PV Energy, either delivered (i) to the Delivery Point or (ii) to the Storage Facility as PV Charging Energy, for the same calendar month ("Deficient Month"). If any WREGIS Certificate Deficit occurs, then the amount of PV Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided that the foregoing reduction shall not apply to the extent the WREGIS Certificate Deficit was caused

by the fault or negligence of Buyer; provided, further, however, that Buyer shall pay Seller for any PV Energy that is delivered by Seller without corresponding WREGIS Certificates at a price equal to the lesser of (i) the Renewable Rate, or (ii) the Day-Ahead LMP; provided, further, that such adjustment shall not apply to the extent that Seller resolves the WREGIS Certificate Deficit such that the amount of the WREGIS Certificates matches the amount of PV Energy within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer, and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller has not reimbursed Buyer. Without limiting Seller's obligations under this Section 4.9, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission. Seller shall use commercially reasonable efforts to rectify any WREGIS Certificate Deficit as expeditiously as possible.

- or applies the WREGIS Operating Rules in a manner inconsistent with this <u>Section 4.9</u> after the Effective Date, the Parties promptly shall modify this <u>Section 4.9</u> 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 PV Energy in the same calendar month. For the avoidance of doubt, this <u>Section 4.9(f)</u> shall apply to any change or clarification to the WREGIS Operating Rules after the Effective Date that requires any round trip efficiency losses, or losses associated with Buyer's decision to issue a Charging Notice, to reduce the total amount of WREGIS Certificates available to be created by the Facility.
- (g) Seller warrants that all necessary steps to allow the Renewable Energy Credits to be issued to Buyer and tracked in WREGIS will be taken prior to the first delivery under the contract.
- 4.10 Financial Statements. If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's, or Seller's Guarantor's if a Guaranty is being provided pursuant to the terms of this Agreement, annual report containing audited consolidated financial statements for such fiscal year, if available, and if not available within such one hundred twenty (120) days, no later than one hundred eighty (180) days after the end of such fiscal year (or, in the case of Seller, if Seller does not prepare audited financial statements, unaudited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Seller's, or Seller's Guarantor's if a Guaranty is being provided pursuant to the terms of this Agreement, quarterly report containing unaudited consolidated financial statements for such fiscal quarter, if available, and if not available within such sixty (60) days, no later than one hundred twenty (120) days after the end of such fiscal quarters.

4.11 Access to Data and Installation and Maintenance of Weather Station.

(a) 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 directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the

CAISO meter(s) at the Facility.

- (b) Seller shall comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the EIRP, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder. Seller shall provide to Buyer all such data required to be submitted to CAISO at the same time as it is required to be submitted to CAISO.
- (c) Seller agrees and acknowledges that Buyer may seek and obtain from third parties, including from the Participating Transmission Owner, any information relevant to its duties as Scheduling Coordinator and that Buyer, as Scheduling Coordinator, requires timely and accurate information concerning the Facility and its potential output in order to meet its obligations to provide accurate forecasts of output. Seller shall execute within a commercially reasonable timeframe upon request such instruments as are reasonable and necessary to enable Buyer to obtain from third parties, including the Participating Transmission Owner, information concerning Seller and the Facility that may be necessary or useful to Buyer in furtherance of Buyer's duties as Scheduling Coordinator for the Facility.
- (d) No later than ninety (90) days before the anticipated Commercial Operation Date, Seller shall use commercially reasonable efforts to provide, to the extent available, six (6) months of recorded meteorological data to Buyer, in a form reasonably acceptable to Buyer, from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to elevation, latitude and longitude of the weather station, and any other data reasonably requested by Buyer to the extent available.
- 4.12 **Storage Availability and Efficiency.** The provisions of this <u>Section 4.12</u> apply during the Delivery Term.
- (a) <u>Storage Availability</u>. During the Delivery Term, the Storage Facility shall maintain an Monthly Storage Availability (calculated in accordance with <u>Exhibit L</u>) during each month of no less than (the "<u>Guaranteed Storage Availability</u>"). If, in any month after the Commercial Operation Date, the Monthly Storage Availability is less than the Guaranteed Storage Availability, then, except as provided in <u>Section 11.1(b)(vi)</u>, Buyer's sole and exclusive remedy for such shortfall shall be the application of the Storage Availability Adjustment to reduce the Storage Capacity Payment due for the Storage Product as provided in <u>Section 3.3(d)</u>.
- shall maintain a Round Trip Efficiency (calculated in accordance with Exhibit P) during each month of no less than the Guaranteed Round Trip Efficiency. If, in any month during the Delivery Term, the Round Trip Efficiency is less than the Guaranteed Round Trip Efficiency, then, except as provided in Section 11.1(b)(vii), Buyer's sole and exclusive remedy (and Seller's sole and exclusive liability) for such shortfall shall be the adjustment of the monthly Storage Capacity Payment for the Storage Product as provided in Section 3.3(d).

4.13 **Storage Capacity Tests.**

- (a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with <u>Exhibit M</u>. Thereafter, Seller and Buyer shall have the right to conduct additional Storage Capacity Tests in accordance with <u>Exhibit M</u>.
- (b) Buyer shall have the right to send one or more representatives to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representatives witnessing any Storage Capacity Test.
- (c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit M. If the actual capacity determined pursuant to a Storage Capacity Test deviates from the then current Storage Capacity, then the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Capacity) shall become the new Storage Capacity, effective as of the first day of the month following the completion of the Storage Capacity Test, for all purposes under this Agreement, including compensation under Section 3.3(d) until the next such Storage Capacity Test.
- 4.14 <u>Storage Facility Modifications</u>. Seller shall not modify or supplement all or any part of the Storage Facility without Buyer's prior written consent, which consent shall be not be unreasonably withheld, conditioned or delayed; provided that Seller may, without Buyer's consent, conduct the foregoing only to the extent they are routine maintenance, augmentation, improvement, replacements, or repairs undertaken in accordance with Prudent Operating Practice that do not change the Storage Facility's ability to meet the performance specifications of this Agreement or the Operating Requirements and do not have any impact on Buyer's ability to receive Product from the Facility or charge or discharge the Storage Facility in the manner provided for in this Agreement; provided further that Seller shall provide Buyer with prior written notice of any augmentation of the Storage Facility or replacement of any inverter comprising or involving or more of the Installed Storage Capacity.
- 4.15 <u>Ancillary Services</u>. Seller shall maintain compliance with the applicable certification and testing requirements in Section 8.3.4 and Appendix K of the CAISO Tariff and otherwise maintain the ability to provide Ancillary Services.
- 4.16 <u>Workforce Agreement</u>. The Parties acknowledge that in connection with Buyer's energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, or similar agreement, providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof.

ARTICLE 5 TAXES

5.1 <u>Allocation of Taxes and Charges</u>. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to delivery or making available to Buyer, including on

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

- 5.2 <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.
- Ownership. Seller shall be the owner of the Facility for federal income tax purposes and, as such, Seller (or its Affiliates or Lenders) shall be entitled to all depreciation deductions associated with the Facility and to any and all Renewable Energy Incentives or other tax benefits associated with the Facility, including any such tax credits or tax benefits under the Internal Revenue Code of 1986, as amended. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended. The Parties will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of the Product from the Seller or that this agreement is anything other than a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended.

ARTICLE 6 MAINTENANCE OF THE FACILITY

- 6.1 <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.
- (a) Seller shall arrange for any non-emergency maintenance that reduces the Available Generating Capacity and/or Available Storage Capacity of the Facility by more than to occur only between October 1 and May 31 of each year, unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside months of June through September or (iii) the Parties agree otherwise in writing. Seller shall provide Buyer with its schedule of Scheduled Maintenance no later than October 1 prior to each calendar year. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to adjusting the timing of Scheduled Maintenance. Seller may modify its schedule of Scheduled Maintenance upon reasonable advance

notice to Buyer, subject to reasonable requests of Buyer and consistent with <u>Section 4.4</u> and this Section 6.1.

- (b) Seller shall use commercially reasonable efforts to schedule maintenance outages (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.
- Maintenance of Health and Safety. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit D Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 **Shared Facilities.**

- Seller shall obtain and maintain throughout the Delivery Term any and all (a) interconnection and transmission service rights and permits required to effect delivery of all Facility Energy to the Delivery Point. During the Delivery Term, the Interconnection Agreement shall provide for sufficient interconnection capacity to ensure that at all times there is available or allocable solely to the Facility interconnection capacity that is no less than the Guaranteed PV Capacity. The Parties acknowledge that the Facility may deliver Energy through Shared Facilities and that ownership and use of any Shared Facilities may be subject to a co-tenancy or similar sharing agreement (collectively, "Shared Facilities Agreement(s)"), under which Shared Facilities Agreements an Affiliate of Seller may act as a manager on behalf of Seller ("Affiliate Manager"). If there are Shared Facilities, Seller shall ensure that, during the startup period of the Facility and throughout the Delivery Term, Seller shall have sufficient interconnection capacity and rights under or through the Interconnection Agreement and the Shared Facilities Agreements, if any, to interconnect the Facility with the CAISO Grid and fulfill its obligations under this Agreement. In connection with the Interconnection Agreement and the Shared Facilities Agreements, if any, the following shall apply:
 - (i) The Shared Facilities Agreements (if any) shall provide that:
 - (A) the Affiliate Manager and any Shared Facilities Counterparty shall fully indemnify Seller for any liability arising out of its respective acts or omissions in regards to its respective performance obligations under the Shared Facilities Agreement in which such party is a counterparty with Seller,
 - (B) Seller shall have the right to correct, remedy, mitigate, or otherwise cure any omission, failure, breach or default by the Affiliate Manager or any Shared Facilities Counterparty that would negatively impact Seller's obligations under this Agreement or under any Shared Facilities Agreement in which Seller is a counterparty, and
 - (C) any instruction from the CAISO or the Participating Transmission Owner to curtail energy deliveries in a manner that does not specify the

curtailment levels applicable to the Facility or any Other Facility(ies) shall be allocated between the Facility and any Other Facility(ies) that have achieved commercial operation on a pro rata basis based upon their respective energy delivery forecasts for the applicable period, except (A) when such pro rata allocation would be in violation of the applicable curtailment instruction, or (B) to the extent that the need for the curtailment can be attributed to the Facility or any Other Facility.

- (ii) Seller shall, or shall cause any Shared Facilities Counterparty to, apply for and expeditiously seek FERC's acceptance of any Shared Facilities Agreement(s), if required.
- (iii) Except with respect to an assignment or collateral assignment of the Interconnection Agreement, Shared Facilities or Shared Facilities Agreement(s) to a Person to which this Agreement is assigned pursuant to Article 14 or Article 15, Seller shall not assign or transfer Seller's rights or obligations under the Interconnection Agreement or any Shared Facilities Agreement that would limit or otherwise adversely affect the Guaranteed Interconnection Capacity or that would otherwise impact Seller's ability to satisfy its obligations under this Agreement, to any Person without the prior written consent of Buyer, which consent shall not be unreasonably withheld; provided that consent to an assignment of this Agreement to a Person shall also be deemed a consent to the assignment or other transfer by Seller of its interest in the Shared Facilities to such Person.
- (b) As between Buyer and Seller under this Agreement, Seller shall be responsible for all costs and charges directly caused by, associated with, or allocated to Seller, any Shared Facilities Counterparty or the Affiliate Manager under the Shared Facilities Agreement, if any, and the CAISO Tariff, in connection with the interconnection of the Facility to the Participating Transmission Owner's electric system and transmission of electric energy from the Facility to the Participating Transmission Owner's electric system.
- (c) Seller shall, as counterparty to the Interconnection Agreement, or shall cause any Shared Facilities Counterparty, as applicable, to comply with the CAISO Tariff, including securing and maintaining in full force and effect all required CAISO agreements, certifications and approvals, and ensuring that the Aggregate Capability Constraint is in effect.

ARTICLE 7 METERING

7.1 **Metering**.

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), the Facility shall have separate CAISO Resource IDs for each of the Generating Facility and the Storage Facility. Seller shall measure the following using CAISO-approved meters and CAISO-approved methodologies: the amount of Facility Energy produced by the Facility; the amount of PV Energy produced by the Generating Facility; the amount of Charging Energy and Discharging Energy; and the amount of Grid Charging Energy. The CAISO Approved Facility Meter shall be installed on the low side of the Seller's transformer and maintained at Seller's cost. The meters 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 each of the Generating Facility, the Storage Facility, and 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.

- The foregoing Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include as the sole meters for the Facility, the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement will not result in Buyer (as the Scheduling Coordinator) violating, or incurring any costs, penalties, or charges under, the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs, or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned, or withheld. In the case of preceding clause (iii), until the Parties agree on an alternative approach, Seller shall be responsible for all CAISO costs, penalties, and charges that result from Seller's compliance with the automatic adjustments of Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement, and in connection with any automatic adjustment to a Discharging Notice set forth in the definition of Discharging Notice, if any such automatic adjustment is prohibited by CAISO, then Seller shall instead reduce deliveries of PV Energy to the Delivery Point as necessary to avoid exceeding the Interconnection Capacity Limit and such reductions shall be treated as Lost Output.
- Meter Verification. If Seller has reason to believe there may be a meter malfunction, Seller may test the meter. Annually, upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 <u>Invoicing</u>. Seller shall deliver an invoice to Buyer for Product no later than ten (10) days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify

the generation of Product by the Generating Facility and the Storage Facility for any Settlement Period during the preceding month, the amount of Product in MWh produced by the Facility as read by the Generating Facility Meter, Storage Facility Meter, and CAISO Approved Facility Meter, the amount of Replacement RA delivered to Buyer, the calculation of Deemed Delivered Energy and Adjusted Energy Production, and the Renewable Rate applicable to such Product; (b) records and calculations sufficient to show the calculation of the Storage Capacity Payment, including calculations of any applicable Storage Availability Adjustment and Round Trip Efficiency Adjustment; and (c) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount. Invoices shall be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

- 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 twenty-five (25) 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 <u>Section 8.4</u> is waived if Notice of the adjustment is not provided within twelve (12) months after the invoice is rendered or subsequently adjusted.

- Billing Disputes. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement, or adjust any invoice for any arithmetic or computational error, within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a party other than the Party seeking the adjustment and such party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.
- 8.6 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to $\underline{\text{Exhibits B}}$ and $\underline{\text{F}}$, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.
- 8.7 Seller's Development Security. To secure Seller's obligations under this Agreement, including the obligations of Seller to pay liquidated damages to Buyer as provided in this Agreement, Seller shall deliver Development Security to Buyer in the amount of after the Effective Date. Buyer will have the right to draw upon the Development Security if Seller fails to pay liquidated damages owed to Buyer pursuant to Exhibit B to this Agreement, or if Seller fails to pay a Damage Payment or Termination Payment owed to Buyer pursuant to Section 11.2. Seller shall maintain the Development Security in full force and effect and Seller shall replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have five

- (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.
- Seller's Performance Security. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date, in the amount of . Seller shall maintain the Performance Security in full force and effect and Seller shall replenish the Performance Security (including Performance Security provided in the form of a Guaranty) in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment. Seller shall maintain the Performance Security in full force and effect until the date on which the following have occurred ("Performance Security End Date"): (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of the Performance Security End Date, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Performance Security End Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may replace or change the form of Performance Security to another form of Performance Security from time to time upon reasonable prior written notice to Buyer.
- 8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

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

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

ARTICLE 9 NOTICES

- 9.1 <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) "Force Majeure Event" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

- (b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, or pandemic, including new governmental restrictions that have not previously been imposed related to the disease designated COVID-19 or the related virus designated SARS-CoV-2 or any mutations thereof; 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 include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy Energy at a lower price, or Seller's ability to sell Energy at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) variations in weather, including wind, rain and insolation, within one in fifty (1 in 50) year occurrence; or (ix) Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.
- 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 Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

- 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 <u>Section 2.1(b)</u>, and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

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

- (a) with respect to a Party (the "<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 Articles 14 or 15, as applicable; or
- (vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following: if at any time, Seller delivers or attempts to deliver to the Delivery (i) Point for sale under this Agreement Energy that was not generated or discharged by the Facility; the failure by Seller to achieve the Construction Start Date within after the Guaranteed Construction Start Date or to achieve after the Guaranteed Commercial Operation Date; Commercial Operation within the failure by Seller to timely obtain CEC Final Certification and (iii) Verification in accordance with Section 3.10; (iv) if, in the first six (6) months or the second six (6) months of the first Contract Year, the Adjusted Energy Production amount is not at least of the Expected Energy amount for such Contract Year, and Seller fails to demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the minimum;

- (ix) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment, if such failure is not remedied within five (5) Business Days after Notice thereof;
- (x) if at any time Seller owns, operates or manages any equipment, facility, property or other asset, other than the Facility or the solar energy generating facilities and storage facilities located adjacent to the Facility and interconnected at the same location as the Facility (or assets reasonably related to the development, financing, ownership or operation of the Facility or such other solar energy generating facilities and storage facilities;
- (xi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer (1) cash, (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, or (3) a replacement Guaranty from the Guarantor, solely with respect to the Performance Security, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:
 - (A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;
 - (B) the issuer of such Letter of Credit becomes Bankrupt;
 - (C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
 - (D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
 - (E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
 - (F) such Letter of Credit fails or ceases to be in full force and effect at any time; or
 - (G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.
 - (xii) with respect to any Guaranty provided by Seller for the benefit

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

- (A) if any representation or warranty made by Seller's Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;
- (B) the failure of the Seller's Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;
 - (C) Seller's Guarantor becomes Bankrupt;
- (D) the failure of Seller's Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or
- (E) Seller's Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of the Guaranty.
- 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 ("<u>Early Termination Date</u>") that terminates this Agreement (the "<u>Terminated Transaction</u>") and ends the Delivery Term effective as of the Early Termination Date;
- (b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller under Section 11.1(b)(ii)) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);
 - (c) to withhold any payments due to the Defaulting Party under this Agreement;
 - (d) to suspend performance; and/or
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

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

- **Termination Payment**. The Termination Payment ("Termination Payment") for 11.3 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 <u>Article 16</u>.
- 11.6 **Rights And Remedies Are Cumulative**. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this <u>Article 11</u> 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 DAMAGE PAYMENT UNDER <u>SECTION 11.2</u> AND THE TERMINATION PAYMENT UNDER <u>SECTION 11.3</u>, AND AS PROVIDED IN <u>EXHIBIT B</u> AND <u>EXHIBIT F</u>, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES

CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS, AND (UNLESS EXPRESSLY STATED TO THE CONTRARY) AN EXCLUSIVE REMEDY. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

- 13.1 <u>Seller's Representations and Warranties</u>. As of the Effective Date, Seller represents and warrants as follows:
- (a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.
- (b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company 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 <u>Article 15</u>, 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. Any assignment or delegation made without written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 Permitted Assignment; Change of Control of Seller.

- (a) <u>Permitted Assignment of Seller</u>. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (i) an Affiliate of Seller;
- or (iii) subject to <u>Section 15.1</u>, a Lender as collateral. With respect to any assignment of this Agreement by Seller under this <u>Section 14.2(a)</u>, Seller shall provide to Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (A) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment, and (B) in the case of an assignment under <u>Section 14.2(a)(ii)</u> hereof, certifies that such Person meets the definition of a Qualified Transferee.
- (b) <u>Change of Control of Seller</u>. Any Change of Control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this <u>Article 14</u> and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, that

shall, in

each case, not be a Change of Control hereunder. Seller shall give Buyer written notice of any proposed assignment or Change of Control no less than five (5) Business Days before its occurrence.

14.3 <u>Permitted Assignment; Change of Control of Buyer</u>. 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 <u>Section 14.2</u>, 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 <u>Rights of Lender</u>. If a Party grants an interest under this Agreement as permitted by <u>Section 15.1</u>, 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 <u>Section 11.2</u> 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 <u>Sections 11.1</u> or <u>11.2</u> 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 <u>Section 15.2(b)</u>.

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.
- Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.
- 16.3 <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 third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the violation of Law or the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

- (b) Nothing in this <u>Section 17.1</u> 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.
- <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 per occurrence, and an annual aggregate of not less than 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 and/or excess insurance policy in a minimum limit of liability of Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

- (b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than accident. With regard to bodily injury by disease, the 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 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) <u>Construction All-Risk Insurance</u>. For new facilities or existing facilities that are to be re-powered before Commercial Operation, Seller shall maintain or cause to be maintained during the construction or re-powering of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.
- (f) <u>Contractor 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 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 secure and/or pay the premiums for any of the policies of insurance required herein, or fails to maintain such insurance, upon sixty (60) days written notice to Seller of noncompliance, Buyer may, in addition to any other rights it may have under this Agreement or at Law or in equity, secure such policy or policies of insurance for the account of Seller and charge Seller for the premiums paid therefor, or withhold the amount thereof from sums otherwise due from Buyer to Seller. Neither the Buyer's rights to secure such policy or policies nor the securing thereof by Buyer shall

constitute an undertaking by Buyer on behalf of or for the benefit of Seller or others to determine or warrant that such policies are in effect.

ARTICLE 19 CONFIDENTIAL INFORMATION

- Information," whether oral or written, and whether delivered by Seller to Buyer or by Buyer to Seller: (a) proposals and negotiations of the Parties in the negotiation of this Agreement; (b) the terms and conditions of this Agreement; and (c) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" or words of similar import before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.
- Duty to Maintain Confidentiality. The Party receiving Confidential Information shall treat it as confidential, and shall adopt reasonable information security measures to maintain its confidentiality, employing the higher of (a) the standard of care that the receiving Party uses to preserve its own confidential information, or (b) a standard of care reasonably tailored to prevent unauthorized use or disclosure of such Confidential Information. Confidential Information may be disclosed by the recipient if and to the extent such disclosure is required (a) by Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The Party that originally discloses Confidential Information may use such information for its own purposes, and may publicly disclose such information at its own discretion. Notwithstanding the foregoing, Seller acknowledges that Buyer is required to make portions of this Agreement available to the public in connection with the process of seeking approval from its board of directors for execution of this Agreement. Buyer may, in its discretion, redact certain terms of this Agreement as part of any such public disclosure, and will use reasonable efforts to consult with Seller prior to any such public disclosure. Seller further acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seg.). Upon request or demand from any third person not a Party to this Agreement for production, inspection and/or copying of this Agreement or other Confidential Information provided by Seller to Buyer, Buyer shall, to the extent permissible, notify Seller in writing in advance of any disclosure that the request or demand has been made; provided that, upon the advice of its counsel that disclosure is required, Buyer may disclose this Agreement or any other requested Confidential Information, whether or not advance written notice to Seller has been provided. Seller shall be solely responsible for taking whatever steps it deems necessary to protect Confidential Information that is the subject of any Public Records Act request submitted by a third person to Buyer.
- 19.3 <u>Irreparable Injury; Remedies</u>. Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this <u>Article 19</u> 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 <u>Section 12.2</u>, consequential damages.

- 19.4 <u>Disclosure to Lender</u>. Notwithstanding anything to the contrary in this <u>Article 19</u>, 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 <u>Article 19</u> to the same extent as if it were a Party.
- 19.5 <u>Disclosure to Credit Rating Agency</u>. Notwithstanding anything to the contrary in this <u>Article 19</u>, Confidential Information may be disclosed by either Party to any nationally recognized credit rating agency (e.g., Moody's Investors Service, Standard & Poor's, or Fitch Ratings) in connection with the issuance of a credit rating for that Party or its Affiliates, provided that any such credit rating agency agrees in writing to maintain the confidentiality of such Confidential Information.
- 19.6 <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 <u>Binding Effect</u>. 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 Change in Electric Market Design. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. If a change to any Law occurs after the Effective Date, including any rule or requirement of WREGIS, that impacts the number or quality of Resource Adequacy Benefits or Green Attributes (including Renewable Energy Credits) available to Buyer from the Facility, then Buyer may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date, it being understood that (i) Buyer is to receive the maximum amount of Resource Adequacy Benefits and Green Attributes available from the Facility and (ii) Seller's ongoing compliance costs associated with the provision of Resource Adequacy Benefits and Green Attributes available from the Facility, among other things, are subject to the Compliance Expenditure Cap. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 16. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event, and (ii) this Agreement shall remain in full force and effect, subject to any necessary changes, if any, agreed to by the Parties or determined through dispute resolution.

EXHIBIT A

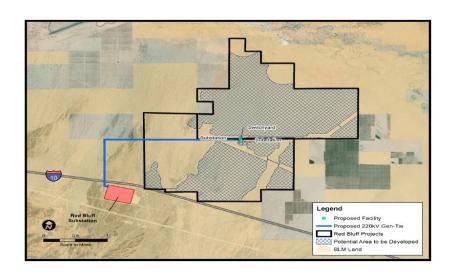
DESCRIPTION OF THE FACILITY

Facility Name: Arica Project

Site Name: Arica Project

Latitude and Longitude: 33.698958, -115.312892

Site Map:



Site includes all or some of the following APNs:

810110014
811160006
811160014
811190010
811190011
811190012
811190015
811190016
811211001
811211002
811212001
811222001
811231006

811190017

County: Riverside County, California

Guaranteed PV Capacity: 100 MW AC (net, at the Delivery Point)

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

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

Maximum Charging Capacity at COD: 50 MW

Maximum Discharging Capacity at COD: 50 MW

Guaranteed Efficiency Rate: See Exhibit P

Ramp Rate: See Exhibit N

Generation Technology:

Storage Technology:

PNode/Delivery Point: The PNode designated by CAISO for each of the

Generating Facility and Storage Facility at the Red Bluff

230 kV substation.

Lithium-ion battery

Point of Interconnection: SCE Red Bluff 230 kV

CAISO Queue Number: Q1302

One-Line Diagram: See Exhibit O.

Additional Information: n/a

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. Seller shall cause construction to begin on the Facility by the Expected Construction Start Date (as such date may be extended by the Development Cure Period, the "Guaranteed Construction Start Date"). Seller shall demonstrate the beginning of construction through execution of Seller's engineering, procurement and construction contract, issuance of a notice to proceed under such contract, mobilization to Site by Seller and/or its designees, and the physical movement of soil at the Site ("Construction Start"). On the date of the beginning of construction (the "Construction Start Date"), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit J hereto.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller
 On or before the tenth (10th) day of each month,

Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Daily Delay Damages shall be Buyer's sole and exclusive remedy for the of the delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's rights pursuant to Section 11.2.

- 2. <u>Commercial Operation of the Facility</u>. "<u>Commercial Operation</u>" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in <u>Section 2.2</u> of the Agreement and (ii) Seller has provided Notice to Buyer that Commercial Operation has been achieved and specifying the "placed in service" date per Internal Revenue Service Requirements of the Facility. The "<u>Commercial Operation Date</u>" shall be the later of (x) sixty (60) days prior to the Expected Commercial Operation Date or (y) the date on which Commercial Operation is achieved.
 - a. Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended on a day-for-day basis by the Development Cure Period (defined below), the "Guaranteed Commercial

Operation Date"). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date. If Seller is able to achieve Commercial Operation more than sixty (60) days prior to the Expected Commercial Operation Date, Seller may provide Buyer notice of the date on which Commercial Operation will occur at least sixty (60) days in advance of the such date, and Buyer will, by the later of ten (10) Business Days following Seller's notice or sixty (60) days in advance of the date upon which Commercial Operation will occur, either (i) permit Commercial Operation to occur and commence the Delivery Term hereunder or (ii) permit Commercial Operation to occur, void Buyer's rights and Seller's obligations in respect of Test Energy, delay the commencement of the Delivery Term until the Expected Commercial Operation Date, permit Seller to sell any Product from the Facility prior to the Expected Commercial Operation Date to third parties, and waive or amend any other provisions of this Agreement reasonably requested by Seller to effectuate the foregoing; provided, that, if Buyer selects option (ii), Seller shall arrange for its own scheduling services and bear all costs and risks associated with such third party sales, and Seller shall operate the Facility in accordance with Prudent Operating Practice and Operating Restrictions and ensure that it is fully able to comply with its obligations herein commencing on the Expected Commercial Operation Date.

- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after the Commercial Operation Date.
- c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Buyer shall retain Daily Delay Damages, as applicable, and Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. The Parties agree that Buyer's retention of Daily Delay Damages and receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for the of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default under Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.
- 3. <u>Termination for Failure to Timely Achieve Construction Start or Commercial Operation</u>. If the Facility has not achieved Construction Start within

after the Guaranteed Construction Start Date or Commercial Operation within after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement pursuant to Sections 11.1(b)(ii) and 11.2(a), which termination shall become effective as provided in Section 11.2(a).

- 4. Extension of the Guaranteed Dates. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis (the "Development Cure Period") for the duration of each of the following delays:
 - a. a Force Majeure Event occurs; or
 - b. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(b) above) shall not exceed : provided, that the cumulative extensions granted under the Development Cure Period may extend to solely to the extent due to a Force Majeure Event related to new governmental restrictions that have not previously been imposed related to COVID-19, and no extension shall be given if the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. Failure to Reach Guaranteed PV Capacity or Guaranteed Storage Capacity. If, Commercial Operation, the Installed PV Capacity is at least of the Guaranteed PV Capacity but less than the Guaranteed PV Capacity, or the Installed of the Guaranteed Storage Capacity Storage Capacity is at least but less than the Guaranteed Storage Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional generating and/or storage capacity such that the Installed PV Capacity and/or the Installed Storage Capacity, as applicable, is increased, but not to exceed the Guaranteed PV Capacity or Guaranteed Storage Capacity. If Seller installs additional storage or generating capacity pursuant to the immediately preceding sentence, Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-2 hereto specifying the new Installed PV Capacity and Installed Storage Capacity. In the event that as of such date, the Installed PV Capacity is still less than the Guaranteed PV Capacity or the Installed Storage Capacity is still less than the Guaranteed Storage Capacity, Seller shall pay "Capacity Damages" to Buyer, in an amount equal to

Guaranteed PV Capacity, Guaranteed Storage Capacity, and other applicable portions of the Agreement shall be reduced based on the ratio of the Installed PV Capacity as of such date to the original Guaranteed PV Capacity or the Installed Storage Capacity as of such date to the original Guaranteed Storage Capacity, as applicable.

6. <u>Buyer's Right to Draw on Development Security</u>. If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof, and Seller shall replenish the Development Security to its full amount within five (5) Business Days after such draw.

EXHIBIT C

RESERVED

EXHIBIT D

EMERGENCY CONTACT INFORMATION

BUYER:

Peninsula Clean Energy Authority 2075 Woodside Road Redwood City, CA 94061

Attn: Director of Power Resources

Phone No.: 650-260-0005

Email: contracts@peninsulacleanenergy.com

SELLER:

Arica Solar, LLC, c/o Solar Asset Management LLC 4900 Scottsdale Road, Suite 5000 Scottsdale, AZ 85251

Attention: VP Asset Management

Phone No.:		
Email:		

EXHIBIT E

[Reserved]

EXHIBIT F

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with <u>Section 4.8</u>, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

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

where:

 \underline{A} = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

 $\underline{\mathbf{B}}$ = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh



 $\underline{\mathbf{D}}$ = the Renewable Rate, in \$/MWh

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

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period.

Additional Definitions:

"<u>Adjusted Energy Production</u>" shall mean the sum of the following: PV Energy + Deemed Delivered Energy + Lost Output – Excess MWh.

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



EXHIBIT G

PROGRESS REPORTING FORM

Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a written Progress Report in the form specified below.

Each Progress Report must include the following items:

- 1. Executive summary.
- 2. Facility description.
- 3. Site plan of the Facility.
- 4. Description of any material planned changes to the Facility or the Site.
- 5. Gantt chart schedule showing progress on achieving each of the Milestones.
- 6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
- 7. Forecast of activities scheduled for the current calendar quarter.
- 8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
- 9. List of issues that are likely to potentially affect Seller's Milestones.
- 10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
- 11. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
- 12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
- 13. Any other documentation reasonably requested by Buyer.

EXHIBIT H RESERVED

EXHIBIT I-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by [licensed professional engineer] ("Engineer") to Peninsula Clean Energy Authority ("Buyer") in accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ ("Agreement") by and between Arica Solar, LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

terms in the Agreement. Engineer hereby certifies and represents to Buyer the following: Seller has installed generating equipment with a nameplate capacity of no less than (1) of the Guaranteed PV Capacity. Seller has installed and commissioned storage equipment with a capacity of at least (2) of the Guaranteed Storage Capacity in accordance with Exhibit M of the Agreement. The Storage Facility is capable of receiving Charging Energy from the Generating Facility (3) and delivering Discharging Energy to the Delivery Point and commissioning of equipment at the Storage Facility has been completed in accordance with the manufacturer's specifications. **(4)** The Generating Facility's testing included a performance test demonstrating peak electrical output of no less than of the Guaranteed PV Capacity at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing. Authorization to parallel the Facility was obtained by the Participating Transmission Owner, [Name of Participating Transmission Owner as appropriate] on [DATE] The Participating Transmission Owner or distribution provider has provided (6)documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on [DATE] The CAISO has provided notification supporting the Facility's Commercial Operation, inclusion in the Full Network Model and authorization to provide Ancillary Services, all in accordance with the CAISO tariff on _____[DATE]____. EXECUTED by [LICENSED PROFESSIONAL ENGINEER] this ______, 20___. [LICENSED PROFESSIONAL ENGINEER]

Date:

EXHIBIT I-2

FORM OF INSTALLED CAPACITY CERTIFICATE

This Certification of Installed Capacity ("<u>Certification</u>") is delivered by [*licensed professional engineer*] ("<u>Engineer</u>") to PENINSULA CLEAN ENERGY AUTHORITY ("<u>Buver</u>") in accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ ("<u>Agreement</u>") by and between ARICA SOLAR, LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

The initial Generating Facility performance test under Seller's engineering, procurement and construction contract or primary solar module supply agreement for the Generating Facility demonstrated peak Generating Facility electrical output of __MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("<u>Installed PV Capacity</u>").

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

EXECU	ΓED by [LICENSED	PROFESSIONAL	ENGINEER]
this	day of	, 20	
			[LICENSED PROFESSIONAL ENGINEER
			By:
			Its:
			Date:

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

		<u>Certification</u> ") of the Constructi ENINSULA CLEAN ENERGY		
		tain Power Purchase and Sale A		
hrr and	llis of that cci	and Davier All comitalized ton	may used in this Contification	(Agreement)
		er and Buyer. All capitalized ter		
define	d herein shall	have the respective meanings as	ssigned to such terms in the	Agreement.
Seller	hereby certific	es and represents to Buyer the fo	ollowing:	
1.	the engineeri	ng, procurement and construction	on contract related to the Fac	cility was executed
	on	;		
2.	the [limited]	notice to proceed with the (attached);	construction of the Facilit	ty was issued on
3.	the Construc	tion Start Date has occurred;		
4.	the precise S	ite on which the Facility is locat	ted is, which must be within	the boundaries of
	the	previously	identified	Site:
	(such descrip	tion shall amend the description	n of the Site in Exhibit A).	
		REOF, the undersigned has exe	ecuted this Certification on	behalf of Seller as
of the	day of	·		
ARIC	A SOLAR, LI	.C		
By:				
Its:				
Date:				

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

	Date: Bank Ref.: Amount: US\$[XXXXXXX] Expiry Date:
Beneficiary:	
Peninsula Clean Energy Authority	
[Address]	
Ladies and Gentlemen: On behalf of [XXXXXXX] ("Applicant"), we, [in issue our Irrevocable Standby Letter of Credit No of Peninsula Clean Energy Authority, Address aggregate sum of U.S. \$[XXXXXXX] (United State to that certain [Agreement] dated as of	o. [XXXXXXX] (the "Letter of Credit") in favor for an amount not to exceed the ates Dollars [XXXXXXX] and 00/100), pursuant (the "Agreement") between Applicant and effective immediately and shall have an initial ate automatic extension provisions herein.
Funds under this Letter of Credit are available to mentioning thereon our Letter of Credit No. [XX purportedly signed by your duly authorized repre	• • •

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer in person, by courier or by fax at **[insert bank address]**. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds.

A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

The document(s) required may also be presented by fax at facsimile no. (xxx) xxx-xxx on or before the expiry date (as may be extended below) on this Letter of Credit in accordance with the terms and conditions of this Letter of Credit. No mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents without the need of originally signed

documents.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to permit this Letter of Credit to be so extended, in which case it will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXXX-XXXX] and have this Letter of Credit available.

[Bank Name]	
[Insert officer name]	
[Insert officer title]	

DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:
The undersigned, a duly authorized representative of Peninsula Clean Energy Authority, Address as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of [XXXXXXX] (the "Applicant"), hereby certifies to the Bank as follows:
1. Applicant and Beneficiary are party to that certain Agreement dated as of [XXXXXXX] (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$
or
Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$, which equals the full available amount under the Letter of Credit, because the Bank has provided notice of its intent to not extend the expiry date of the Letter of Credit and Applicant failed to provide acceptable replacement security to Beneficiary at least thirty (30) days prior to the expiry date of the Letter of Credit.
3. The undersigned is a duly authorized representative of Peninsula Clean Energy Authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.
You are hereby directed to make payment of the requested amount to Peninsula Clean Energy Authority by wire transfer in immediately available funds to the following account:
[Specify account information]
Peninsula Clean Energy Authority
Name and Title of Authorized Representative Date

EXHIBIT L

MONTHLY STORAGE AVAILABILITY

1. Monthly Storage Availability.

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

Monthly Storage Availability (%) =

MONTHLYHRSm - PRIMARY UNAVAILHRSm - SECONDARY UNAVAILHRSm MONTHLYHRSm

where:

m = relevant monthly period for which availability is calculated;

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

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

SECONDARY UNAVAILHRS*m* = the total number of hours in the monthly period that would be PRIMARY UNAVAILHRS*m* but that are caused by Force

Majeure Events or Curtailment Orders not attributable to Seller's fault or negligence. Partial SECONDARY UNAVAILHRS*m* shall be prorated in the same manner as PRIMARY UNAVAILHRS*m*.

"Excused Event" means any period of time during which the Storage Facility was unavailable (on a prorated basis) to deliver Storage Product as a result of (i) limitations contained in the Operating Restrictions, (ii) an annual Storage Capacity Test or measurement of Round Trip Efficiency (as described in Exhibit P) or a Storage Capacity Test performed at Buyer's request, or (iii) Scheduled Maintenance not to exceed in any given Contract Year. For the avoidance of doubt, all hours of unavailability of the Storage Facility attributable to an Excused Event are removed for purposes of the calculation of Monthly Storage Availability.

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

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

- 2. <u>Storage Availability Adjustment</u>. The "<u>Storage Availability Adjustment</u>" shall be calculated as follows and applied to the Storage Capacity Payment due for the next month after the end of the monthly period for which the Monthly Storage Availability is calculated.
- (a) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

Storage Availability Adjustment = 100% (expressed as a decimal)

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

Storage Availability Adjustr	nent =	
rovided, that if the criteria in	the preceding clauses (i) and (ii) ar	re true and the Monthly Stor

Availability is less than the Monthly Storage Availability. Storage Availability Storage Availability.

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

Storage Availability Adjustment = Storage Availability) x 2] + (100% - Secondary Availability) (expressed as a decimal)

(d) If (i) the Monthly Storage Availability is less than the Guaranteed Storage Availability, and (ii) the Primary Availability is less than the Guaranteed Storage then:

Storage Availability Adjustment = 0

EXHIBIT M

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

- A. <u>Commercial Operation Date Storage Capacity Test</u>. Upon no less than ten (10) Business Days' Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this <u>Exhibit M</u> and shall establish the initial Storage Capacity hereunder based on the actual capacity of the Storage Facility determined by such Storage Capacity Test.
- B. <u>Subsequent Storage Capacity Tests</u>. Following the Commercial Operation Date, but not more than once per Contract Year, upon no less than ten (10) Business Days' Notice to Seller, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test and to update the Storage Facility's PMax and other relevant information and values in the CAISO's Master Data File and Resource Data Template (or successor data systems). In addition, Buyer shall have the right to require a retest of the most recent Storage Capacity Test (and to update the Storage Facility's PMax and other relevant information and values as specified above) at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test or any other guaranteed operational characteristics are not being met. Seller shall have the right to perform a Storage Capacity Test or run a retest of any Storage Capacity Test at any time during any Contract Year upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).
- C. Test Results and Re-Setting of Storage Capacity. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.13(c) of this Agreement and Part II(I) below, the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Capacity, as such Guaranteed Storage Capacity may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Capacity, effective as of the first day of the month following completion of the Storage Capacity Test for calculating the payment for the Storage Product and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test, each subsequent Storage Capacity Test, and all re-tests thereof permitted under paragraph B above) shall be conducted in accordance with Prudent Operating Practices and the provisions of this <u>Exhibit M</u>. For ease of reference, a Storage Capacity Test is sometimes referred to in this <u>Exhibit M</u> as a "<u>SCT</u>". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

- A. <u>Test Elements</u>. Each SCT shall include the following test elements:
 - Electrical output at Maximum Discharging Capacity at the Storage Facility Meter and concurrently at the CAISO Approved Facility Meter (MW);
 - Electrical input at Maximum Charging Capacity at the Storage Facility Meter (MW);
 - Amount of time between the Storage Facility's electrical output going from 0 to Maximum Discharging Capacity;
 - Amount of time between the Storage Facility's electrical input going from 0 to Maximum Charging Capacity;
 - Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.
- B. <u>Parameters</u>. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at ten (10) minute intervals:
 - (1) Time;
 - (2) Charging Energy;
 - (3) Discharging Energy;
 - (4) Stored Energy Level (MWh);
 - (5) Station Use.
- C. <u>Site Conditions</u>. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
 - (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
 - (3) Ambient air temperature (°F).
- D. <u>Test Showing</u>. Each SCT must demonstrate that the Storage Facility:
 - (1) successfully started;

- operated for at least four (4) consecutive hours at Maximum Discharging Capacity;
- operated for at least four (4) consecutive hours at Maximum Charging Capacity;
- (4) is able to ramp upward and downward at the contract Ramp Rate;
- (5) has a Storage Capacity of an amount that is, at least, equal to the Maximum Stored Energy Level (as defined in Exhibit A); and
- (6) is able to deliver Discharging Energy to the Delivery Point as measured by the CAISO Approved Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity.

E. Test Conditions.

- (i) <u>General</u>. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity.
- (ii) <u>Abnormal Conditions</u>. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT (including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such SCT in accordance with Part II.F below.
- (iii) <u>Instrumentation and Metering</u>. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.
- (iv) <u>Ambient Temperature</u>. For tests requested by Buyer (and not for any CAISO-initiated test, which shall occur when directed by CAISO), the average ambient temperature, based on an aggregate of 1-minute resolution data collected throughout the SCT, must be within the range of 8 33 degrees Celsius.
- F. <u>Incomplete Test</u>. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

- G. <u>Final Report</u>. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:
 - (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
 - (2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;
 - (3) the level of Installed Storage Capacity, charging capacity, discharging capacity, charging ramp rate, discharging ramp rate, and Stored Energy Level determined by the SCT, including supporting calculations; and
 - (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.F.

- H. <u>Supplementary Storage Capacity Test Protocol</u>. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this <u>Exhibit M</u> with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("<u>Supplementary Storage Capacity Test Protocol</u>"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit M.
- I. Adjustment to Storage Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first four hours of discharge (up to, but not in excess of, the product of (i) the Guaranteed Storage Capacity, as such Guaranteed Storage Capacity may have been adjusted (if at all) under this Agreement, multiplied by (ii) 4 hours) shall be divided by four hours to determine the Storage Capacity, which shall be expressed in MW AC, and shall be the new Storage Capacity in accordance with Section 4.13(c) of this Agreement.

J.



EXHIBIT N

OPERATING RESTRICTIONS

Maximum Cycle Limits: Number of times Buyer may fully charge and discharge the Storage

Facility. A full charge will be deemed to have occurred when the cumulative amount of energy added to the Storage Facility over the course of a calendar year equals the Maximum Stored Energy Level. This could occur in one continuous charge or over multiple charges, even if some energy is discharged in between. The inverse is true

for a full discharge.

Annual: 365 cycles

Ramp Rates: Dmin to Dmax: up to 100%/s

Cmin to Cmax: up to 100%/s

Dmax to Dmin: up to 100%/s

Cmax to Cmin: up to 100%/s

Frequency ramp rate: 100% MW/Hz

Regulation ramp rate: 0-50 MW/min

System Response Time: Idle to Dmax: <1s

Idle to Cmax: <1s

Dmax to Cmax: <1s

Cmax to Dmax: <1s

Dmin to Cmin: <1s

Cmin to Dmin: <1s

Other Operating Limits: The average resting state of charge per Contract Year must be

below

Maximum Stored Energy Level:	200 MWh, number in MWh representing maximum amount of energy that may be charged to the Storage Facility	
Minimum Stored Energy Level:	0 MWh, number in MWh representing the lowest level to which the Storage Facility may be discharged	
Maximum Charging Capacity:	50 MW, number in MW representing the highest level to which the Storage Facility may be charged	
Minimum Charging Capacity:	0.1 MW, number in MW representing the lowest level at which the Storage Facility may be charged	
Maximum Discharging Capacity:	50 MW, number in MW representing the highest level at which the Storage Facility may be discharged	
Minimum Discharging Capacity:	0.1 MW, number in MW representing the lowest level at which the Storage Facility may be discharged	
Maximum State of Charge (SOC) during Charging:	100%	
Minimum State of Charge (SOC) during Discharging:	0%	
Ramp Rate:	Between 85 and 200 MW/minute	
Daily Dispatch Limits	Charging: 2 per day Discharging: 2 per day Partial Charging/Discharging: Maximum number of partial discharging per day defined by Sum[DoD1, DoD2,,] <= 2*full discharged capacity. Maximum Number of partial charging per day defined by "Sum[HoC1, HoC2,,] <= 2*full charged capacity." DoD = depth of discharge of a partial discharging cycle HoC = is the height of charge of a partial charging cycle. For purposes of illustration only, if Storage Facility is 100 MWh, per formula above the limitation would be 200 MWh of discharge per day, meaning Buyer could perform 10 partial discharging cycles of 20 MWh each, i.e. of 20% DoD. The concept is mirrored for instances of partial charging cycles.	
Maximum Time at Minimum Storage Level:	Storage Facility to be idle at minimum storage level (0%) for maximum of consecutively throughout the Delivery Term.	

EXHIBIT O

METERING DIAGRAM

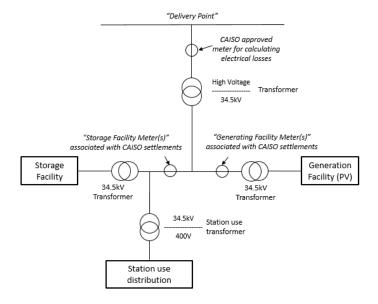


EXHIBIT P

ROUND TRIP EFFICIENCY

"Round Trip Efficiency" is defined as the amount of Energy discharged by the Storage Facility relative to the amount of Charging Energy, measured or calculated as of the most recently completed Storage Capacity Test outlined in Exhibit M at the medium voltage bus by the physical meter installed in the Storage Facility (as depicted in Exhibit O), calculated as shown below:

$$Round\ Trip\ Efficiency\ (RTE) = \frac{Discharging\ Energy\ (MWh)}{Charging\ Energy\ (MWh)}$$

Uncertainties and test tolerance of 0.5% will be applied to the calculation of the Round Trip Efficiency. For purposes of testing the Round Trip Efficiency, the Charging Energy and Discharging Energy shall be measured at the medium voltage bus by the physical meter installed in the Storage Facility. For the avoidance of doubt, Station Use is netted from Discharging Energy and Charging Energy when determining Round Trip Efficiency and for all other purposes in this Agreement.

The monthly Storage Capacity Payment under <u>Section 3.3(d)</u> shall be adjusted by the Round Trip Efficiency Adjustment, expressed as a decimal, based on the Guaranteed Round Trip Efficiency, as follows:

The "Round Trip Efficiency Adjustment" or "RTEAdj" for each month is given by:

If RTE
$$\geq$$
 RTE_M, then $RTE_{Adj} = 100\%$
If RTE $<$ RTE_M and RTE \geq RTE_G, then $RTE_{Adj} = 100\%$
If RTE $<$ RTE_G, then $RTE_{Adj} = 10\%$

where:

RTE = the Round Trip Efficiency as determined by the most recently completed Storage Capacity Test.

 RTE_M = the Minimum Round Trip Efficiency

 RTE_G = the Guaranteed Round Trip Efficiency

The "Minimum Round Trip Efficiency" shall be, with respect to each Contract Year during the Delivery Term, as set forth in the table below:

Contract Year	Minimum Round Trip Efficiency
1	
2	
3	

Contract Year	Minimum Round Trip Efficiency
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

The "<u>Guaranteed Round Trip Efficiency</u>" shall be, with respect to each Contract Year during the Delivery Term,

EXHIBIT Q

FORM OF GUARANTY

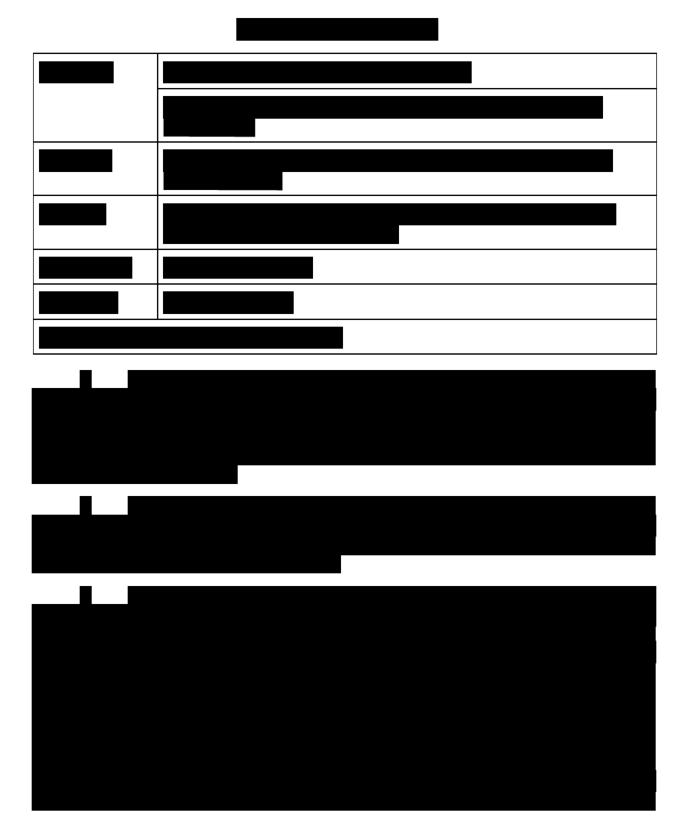
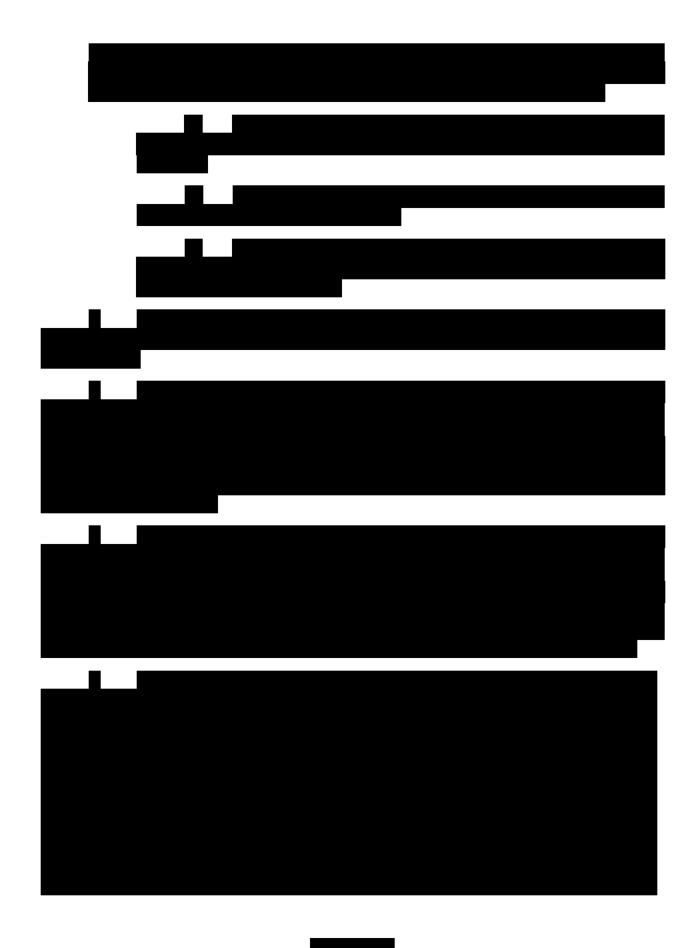


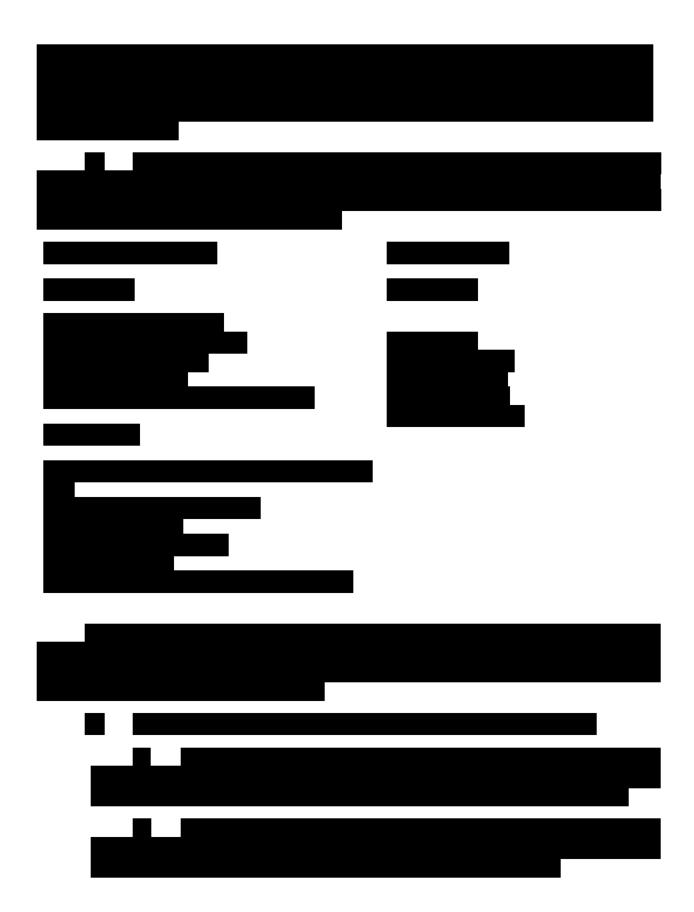


Exhibit Q - 2



Exhibit Q - 3







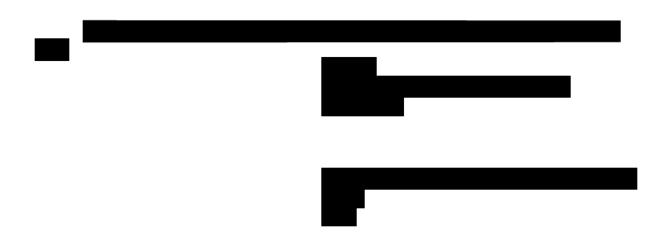




EXHIBIT R

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "Notice") is delivered by Arica Solar, LLC, a Delaware limited
liability company ("Seller") to Peninsula Clean Energy Authority, a California joint powers
authority ("Buyer") in accordance with the terms of that certain Power Purchase and Sale
Agreement dated [] ("Agreement") by and between Seller and Buyer. All capitalized
terms used in this Notice but not otherwise defined herein shall have the respective meanings
assigned to such terms in the Agreement.

Pursuant to Section 3.9(b) of the Agreement, Seller hereby provides the below Replacement RA product information (to be repeated for each unit if more than one):

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

Month	Unit CAISO NQC (MW)	Unit CAISO EFC (MW)	Unit Contract Quantity (MW)	Unit EFC Contract Quantity (MW)
January	(10100)	(10100)	(10100)	Qualitity (IVIVV)
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

ARICA SOLAR, LLC By:______ Its:_____

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

- "CPUC RA Filing Guide" means the Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings published annually by the CPUC.
- "<u>Deliverability Period</u>" means the period in which the unit has rights to deliver energy to the CAISO Grid.
- "<u>Flexible Capacity Category</u>" means the category of Effective Flexible Capacity, as described in the CPUC RA Filing Guide, applicable to the unit.
- "LCR Area (if any)" means the Local Capacity Requirement area, as used in the CPUC RA Filing Guide, applicable to the unit, if any.
- "Prorated Percentage of Unit Factor" means the percentage of the Unit CAISO NQC that is designated as Unit Contract Quantity.
- "<u>Prorated Percentage of Unit Flexible Factor</u>" means the percentage of Unit CAISO EFC that is designated as Unit EFC Contract Quantity.
- "Resource Category" means the Maximum Cumulative Capacity category, as described in the CPUC RA Filing Guide, applicable to the unit.
- "Resource Type" means the type of generating or storage resource.
- "Run Hour Restrictions" means any restrictions on the ability of the unit to run during any hours of the day.
- "<u>Unit CAISO EFC</u>" means the unit's Effective Flexible Capacity, as described in the CPUC RA Filing Guide, as determined by CPUC and CAISO.
- "Unit CAISO NQC" means the NQC for the unit, as determined by CPUC and CAISO.
- "<u>Unit Contract Quantity</u>" means the amount of Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Guaranteed RA Amount.
- "<u>Unit EFC Contract Quantity</u>" means the amount of Flexible Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Guaranteed RA Amount.

" <u>Unit SCID</u> " means the unit	's "Scheduling Coordinator ID	Code", as defined in the CAISO Tariff.



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: October 26, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer

Chelsea Keys, Senior Manager, Power Resources

SUBJECT: Approve Resolution Delegating Authority to Chief Executive Officer

to Execute Power Purchase and Sale Agreement for Renewable Supply with Gonzaga Ridge Wind Farm, LLC, and any necessary ancillary documents with a Power Delivery Term of 15 years starting at the Commercial Operation Date on or about October 31, 2024, in

an amount not to exceed \$204 million.

RECOMMENDATION:

Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase Agreement for Renewable Supply with Gonzaga Ridge Wind Farm, LLC, and any necessary ancillary documents with a Power Delivery Term of 15 years starting at the Commercial Operation Date on or about October 31, 2024, in an amount not to exceed \$204 million.

BACKGROUND:

The Board set a goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy by 2025. Staff conducted a preliminary analysis of the necessary resources to attain this goal and found that Peninsula Clean Energy will need to procure significant amounts of renewable supply from wind resources. There are very few new wind projects being developed in California and there is strong competition to procure wind resources. The Gonzaga project will be the first new wind resource to be added to Peninsula Clean Energy's supply portfolio.

2020 Renewable Request for Offers

Peninsula Clean Energy launched a request for offers (RFO) in 2020 targeting procurement of renewable energy via long-term contracts, which provide better value than short-term contracts, ensure compliance with the renewable portfolio standard

(RPS) long-term contracting mandates, and expand the amount of renewable energy serving California.

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

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

Staff reviewed shortlisted projects with the CEO and CFO and then entered into exclusive negotiations with the shortlisted projects. Staff retained the Winston & Strawn law firm to support negotiations for this project. Peninsula Clean Energy has worked with Winston on the majority of our existing PPAs to date. Throughout 2021, Peninsula Clean Energy has worked with the project developer on negotiating the power contract.

Additionally, staff met with a Board subcommittee in February 2021 and June 2021 to review the status of the RFO and the shortlisted projects. Per Peninsula Clean Energy's Policy 15 Energy Supply Procurement Authority¹, any power procurement contracts greater than 5 years must be approved by the Board of Directors.

Overview of Project

Project Name	Gonzaga Ridge Wind Farm, LLC
Technology	Wind
Wind Capacity	76.35 MW
Commercial Operation Date	10/31/2024
Developer	Scout Clean Energy, LLC
Location	Merced County, CA

The Gonzaga project is located in Pacheco State Park near the San Luis Reservoir. This project will be a partial repower of an existing wind resource that was built in the 1980s. The existing resource is comprised of 162 turbines with 18.4 MW of wind capacity. The new project is planned to have a total capacity of 197.5 MW, of which Peninsula Clean Energy will procure 76.35 MW. There will be additional projects located next to Peninsula Clean Energy's 76.35 MW project which will be metered separately. The new project will require a much smaller footprint than the existing project while providing significantly more wind capacity

The Gonzaga wind project is located in Merced County approximately 10 miles from Peninsula Clean Energy's first operating solar resource, Wright Solar. The Commercial Operation Date is October 31, 2024. The project is expected to deliver enough energy to

¹ Full policy is available here: https://www.peninsulacleanenergy.com/wp-content/uploads/2020/01/PCE-Policy-15-Revised-01-23-20-Procurement-Authority-FINAL.pdf

meet approximately 4.8% of Peninsula Clean Energy's energy needs and will provide Portfolio Content Category (PCC) 1 energy to meet Peninsula Clean Energy's RPS requirements.

The project has an executed interconnection agreement with Full Capacity Deliverability Status (FCDS), meaning it will provide resource adequacy attributes to Peninsula Clean Energy in addition to energy benefits. The project will interconnect to PG&E's Los Banos substation. The project is sited on land designated for wind energy development as it is currently hosting the 18 MW Dollar Wind generating facility. Scout was awarded exclusive site control for the project development from the California Department of Parks and Recreation via a request for proposals process in 2016. The project is expected to start construction by December 2023.

Under the contract, Peninsula Clean Energy will pay for the output of the wind generation at a fixed-price rate per MWh with no escalation, for the full term of the contract (15 years). Peninsula Clean Energy is entitled to all product attributes from the facility, including energy, renewable energy, ancillary services, and resource adequacy.

Developer

The project is being developed by Scout Clean Energy LLC (Scout). Scout is a Colorado-based renewable energy company that operates a portfolio of 1.2 GW of renewable energy projects across 6 states including 840 MW of wind energy that is directly owned by Scout. Scout also has more than 9 GW of wind, solar, and storage projects under development in 15 states.

Gonzaga is wholly owned by the parent company Scout Clean Energy LLC, which is wholly owned by Quinbrook Infrastructure Partners (Quinbrook), a well-capitalized private equity fund with operations in the US, Europe and Australia. Together with Quinbrook, Scout has the financial strength to fund project development for the entire Scout portfolio and provide up to \$1.6 billion in sponsor capacity necessary to own and operate wind energy assets in North America. Quinbrook is managed by a senior team of industry professionals who have collectively invested over \$17 billion equity in energy infrastructure assets since the early 1990s, representing over 36 GW of power supply capacity. Earlier this year, Scout closed on a \$50MM credit facility with KeyBanc, Wells Fargo, and Rabobank.

Environmental Review

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

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

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

For this project, the analysis showed that the project was not located in a protected area based on the USGS Protected Areas Database² (PAD-US). Additionally, the project is not located in an area not suitable for renewable energy development as identified by the Renewable Energy Transmission Initiative (RETI)³.

Gonzaga is unique in that it's located in a state park and the repowering of the existing facility with new turbine technology with significantly higher capacity per turbine will increase the renewable output as much as sevenfold with a much smaller project footprint. The California Department of Parks and Recreation (CDPR) is the Lead Agency under the California Environmental Quality Act (CEQA) for the Gonzaga Ridge Wind Repowering Project (Project). The CEQA Environmental Impact Report (EIR) was approved on August 24, 2020. CDPR does not require a conditional use permit (CUP) for the Project. Additionally, the Bureau of Reclamation (BOR) conducted a Finding of No Significant Impact (FONSI) declaring that the Project will have no significant impact on the environment, which was completed on January 6, 2021.

Workforce Requirements

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

DISCUSSION:

The Strategic Plan approved by the Board in 2020 set Peninsula Clean Energy's Priority One to "design a power portfolio that is sourced by 100% renewable energy by 2025 that aligns supply and consumer demand on a 24x7 basis". Wind generation will play a key role in meeting Peninsula Clean Energy's renewable energy goals.

This project will help Peninsula Clean Energy meet its customers' large renewable energy demand, while maintaining competitiveness. To date, Peninsula Clean Energy

³ RETI: https://reti.databasin.org/

² USGS PAD-US: https://www.usgs.gov/core-science-systems/science-analytics-and-synthesis/gap/science/protected-areas

has entered into nine long-term renewable contracts, which make up approximately 42.5% of overall load, as shown in the table below:

Long-Term Renewable Contracts Contributing to Peninsula Clean Energy's Load

Project	RE MW	Status	Commercial Operation Date	Term (Yrs)	County	Approx. % of Load Served in 2025
Wright Solar	200	Operating	January-2020	25	Merced	14.4%
Mustang 2 Solar	100	Operating	November-2020	15	King	7.8%
Chaparral Solar	100	Development	December-2023	15	Kern	8.0%
					Sonoma	
Geysers Geothermal	35	Operating	July-2022	10	& Lake	8.2%
Sky River Wind	30	Operating	September-2021	20	Kern	3.1%
Hatchet Small Hydro	7.5	Operating	March-2017	20	Shasta	0.4%
Bidwell Small Hydro	2	Operating	March-2017	17	Shasta	0.3%
Roaring Small Hydro	2	Operating	March-2017	17	Shasta	0.2%
Clover Small Hydro	1	Operating	April-2018	15	Shasta	0.1%
Total Contracted						42.5%
Gonzaga Ridge Wind						
Farm	76.35	Development	December-2024	15	Merced	4.8%
Total With Pending						47.3%

The Gonzaga project is a 76.35 MW renewable generating resource, covering an additional 4.8% of Peninsula Clean Energy's overall demand. This contract will enable Peninsula Clean Energy to come closer to reaching its internal goal to be 100% renewable as well as its regulatory obligations under SB 100 and SB 350, which requires that 65% of Renewables Portfolio Standard (RPS)-compliance related renewable energy supply be sourced from long-term contracts beginning in the 2021-2024 compliance period.

FISCAL IMPACT:

The financial impact of adding the Gonzaga project to Peninsula Clean Energy's portfolio of supply resources is a decrease in expected supply costs since procuring long-term and bundled resources are significantly less expensive than procuring short-term renewable products.

The fiscal impact of the Gonzaga project will not exceed \$204 million over the 15-year term of the Agreement.

STRATEGIC PLAN:

The Gonzaga project supports the following objectives in Peninsula Clean Energy's strategic plan:

 Priority 1: Design a power portfolio that is sourced by 100% renewable energy by 2025 that aligns supply and consumer demand on a 24/7 basis Power Resources Goal 1: Secure sufficient, low-cost, clean sources of electricity that achieve Peninsula Clean Energy's priorities while ensuring reliability and meeting regulatory mandates

ATTACHMENTS:

Gonzaga Wind Power Purchase Agreement (Redacted Version)

RESOLUTION NO.	
----------------	--

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

* * * * * *

RESOLUTION DELEGATING AUTHORITY TO CHIEF EXECUTIVE OFFICER TO EXECUTE POWER PURCHASE AND SALE AGREEMENT FOR RENEWABLE SUPPLY WITH GONZAGA RIDGE WIND FARM, LLC, AND ANY NECESSARY ANCILLARY DOCUMENTS WITH A POWER DELIVERY TERM OF 15 YEARS BEGINNING AT THE COMMERCIAL OPERATION DATE ON OR ABOUT OCTOBER 31, 2024, IN AN AMOUNT NOT TO EXCEED \$204 MILLION.

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

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

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

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

WHEREAS, consistent with its mission of reducing greenhouse gas emissions by expanding access to sustainable and affordable energy solutions, Peninsula Clean Energy seeks to execute a Power Purchase and Sale Agreement with Gonzaga Ridge Wind Farm, LLC (Contractor), to procure 76.35 MW of power generation from the Gonzaga wind project, based on Contractor's desirable offering of products, pricing, and terms; and

WHEREAS, the Gonzaga project will contribute toward the Board's goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy by providing renewable generation for a term of fifteen years starting on or about October 31, 2024; and

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

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute the Agreements and any other ancillary documents required for said purchase of power from the Contractor; and

WHEREAS, the Board's decision to delegate to the Chief Executive Officer the authority to execute the Agreements is contingent on the Scout Clean Energy, LLC Board approving the Agreements' terms as presented herein to the Peninsula Clean Energy Board.

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

Execute the Agreements and any ancillary documents with the Contractor with terms consistent with those presented, in a form approved by the General Counsel; and for a power delivery term of up to fifteen years, in an amount not to exceed \$204 million.

* * * * * *

POWER PURCHASE AND SALE AGREEMENT COVER SHEET

Seller: Gonzaga Ridge Wind Farm, LLC, a Delaware limited liability company

Buyer: Peninsula Clean Energy, a California joint powers authority

Description of Facility: A separately-metered 76.35 MW wind-powered electricity generating

facility located in Merced County, California

Guaranteed Commercial Operation Date: October 31, 2024

Milestones:

Milestone	Completion Date
Site Control	Completed on March 5, 2018
CEQA Environmental Impact Report (EIR) Notice of Determination	Completed on August 24, 2020
Environmental Assessment Finding of No Significant Impact (FONSI)	Completed on January 6, 2021
Phase II Interconnection Study Results	Completed on November 21, 2018
Executed Interconnection Agreement	Completed on October 30, 2019
Financial Close	December 31, 2023
Guaranteed Construction Start	December 31, 2023
Initial Synchronization	September 30, 2024
Guaranteed Commercial Operation Date	October 31, 2024
Deliverability Network Upgrades completed	October 31, 2024

Delivery Term: Fifteen (15) Contract Years

Guaranteed Capacity: 76.35 MW

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1 to 15	

Monthly Expected Energy:

Month	Expected Energy (MWh)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

Contract Price (subject to adjustment pursuant to Section 3.3):

Contract Year	Contract Price (\$/MWh)
1 to 15	

Product:

- x Metered Energy
- x Green Attributes:
 - x Portfolio Content Category 1
 - ☐ Portfolio Content Category 2
- x Capacity Attributes
- x Any Future Environmental Attributes

Deliverability:

- ☐ Energy Only Status
- x Full Capacity Deliverability Status
 - a) If Full Capacity Deliverability Status is selected, provide the Expected FCDS Date: Commercial Operation Date

Scheduling Coordinator: Buyer or Buyer's agent

Development Security:

Performance Security:

Damage Payment:

Notice Addresses:

Seller:

Gonzaga Ridge Wind Farm, LLC 5775 Flatiron Parkway, Suite 120 Boulder, CO 80301

Attention:
Phone No.:
Email:

With a copy to:

Gonzaga Ridge Wind Farm, LLC 5775 Flatiron Parkway, Suite 120 Boulder, CO 80301

Attention: Office of the General Counsel

Phone No.: Email:

Buyer:

Peninsula Clean Energy 2075 Woodside Road Redwood City, CA 94061

Attention: Director of Power Resources

Phone No.: (650) 260-0005

Email: contracts@peninsulacleanenergy.com

With a copy to:

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

Attention: David Silberman, General Counsel

Fax No.: (650) 363-4034 Phone No.: (650) 363-4749

Email: dsilberman@smcgov.org

[Signatures on following page.]

SELLE	R
Gonzaga	a Ridge Wind Farm, LLC
By:	
Name:	
Title:	_

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

Penins	ula Clean Energy Authority	
By:	PCE Evecutive Officer	

BUYER

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Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit

POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement ("<u>Agreement</u>") is entered into as of October [__], 2021 (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 intends to develop, design, construct, own or otherwise have control over, and operate the electric generating facility as described in <u>Exhibit A</u> (the "<u>Facility</u>"); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, all Metered Energy generated by the Facility, all Green Attributes related to the generation of such Metered Energy, all Capacity Attributes, and any Future Environmental 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.
 - "Adjusted Energy Production" has the meaning set forth in Exhibit F.
- "<u>Affiliate</u>" 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.
 - "Availability Incentive Payments" has the meaning set forth in the CAISO Tariff.
- "Available Capacity" means the capacity from the Facility, expressed in whole MWs, that is available at a particular time to generate Product.
- "<u>Bankrupt</u>" 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.

"<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.

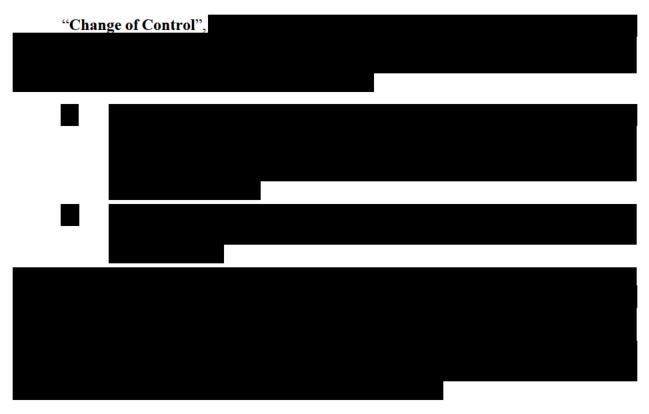
"Buyer" has the meaning set forth on the Cover Sheet.

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

- (a) the CAISO provides notice (excluding Automated Generation Control notices to return to Schedule that are not required to be followed by renewable generators) 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 Scheduled Maintenance, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a).
- "Buyer Curtailment Order" means the instruction from Buyer to Seller to reduce generation from the Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Scheduled Maintenance, Forced Facility Outage, Force Majeure Event and/or Curtailment Order, which instruction may be communicated to Seller in writing by electronic notice or other commercially reasonable means.
- "<u>Buyer 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 (i) Buyer Bid Curtailment or (ii) Buyer Curtailment Order; provided that any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.
- "Buyer Default" means a failure by Buyer to perform its obligations hereunder, including an Event of Default of Buyer.

- "Buyer's WREGIS Account" has the meaning set forth in Section 4.8(a).
- "CAISO" means the California Independent System Operator Corporation or any successor entity performing similar functions.
- "CAISO Approved Meter" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility less Electrical Losses and Station Use, in accordance with the CAISO Tariff.
 - "CAISO Charges Invoice" has the meaning set forth in Section 4.3(d).
- "CAISO Grid" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.
- "CAISO Operating Order" means the "operating order" defined in Section 37.2.1.1 of the CAISO Tariff.
- "CAISO Tariff" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.
- "California Renewables Portfolio Standard" or "RPS" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015) and 100 (2018) codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.
- "Capacity Attribute" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits. Capacity Attributes shall also include all rights to provide and all benefits related to the provision of Ancillary Services (as defined in the CAISO Tariff) and, subject to Section 3.8(c), reactive power.
 - "Capacity Damages" has the meaning set forth in Exhibit B.
- "<u>CEC</u>" 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 (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.



[&]quot;Commercial Operation" has the meaning set forth in Exhibit B.

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

[&]quot;Commercial Operation Date" has the meaning set forth in Exhibit B.

[&]quot;Compliance Actions" has the meaning set forth in Section 3.13.

[&]quot;Compliance Expenditure Cap" has the meaning set forth in Section 3.13.

[&]quot;Conditions Precedent" has the meaning set forth in Section 2.2(a).

[&]quot;Confidential Information" has the meaning set forth in Section 19.1.

[&]quot;Construction Start" has the meaning set forth in Exhibit B.

[&]quot;Construction Start Date" has the meaning set forth in Exhibit B.

[&]quot;Contract Price" has the meaning set forth in the Cover Sheet, as may be adjusted by Section 3.3.

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

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

"Control" (including, with correlative meanings, the terms "Controlled by" and "under common Control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast 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.

"COVID-19" means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

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

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

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

"Curtailment Order" means any of the following:

- (a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail Energy deliveries for any reason other than a Buyer Curtailment Period;
- (b) a curtailment ordered by the Participating Transmission Owner 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 reflected in the VER Forecast for 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; provided that any Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"<u>Daily Delay Damages</u>" means an amount equal to (a) the Development Security amount required hereunder, divided by (b)

"<u>Damage Payment</u>" means a liquidated damages payment in the amount indicated in the Cover Sheet.

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

"Day-Ahead 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 amount determined by a third party reasonably acceptable to Buyer using an industry standard forecasting or back-casting methodology to determine the potential generation of the Facility as a function of Available Capacity, wind speed, 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).
- "<u>Delivery Point</u>" means the PNode designated by the CAISO for the Facility as further described in Exhibit A.
- "<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.
 - "Development Cure Period" has the meaning set forth in Exhibit B.
- "<u>Development Security</u>" means (i) cash or (ii) a Letter of Credit in the amount specified on the Cover Sheet, provided in conformance with Section 8.7(b).
 - "Early Termination Date" has the meaning set forth in Section 11.2(a).
 - "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 "EIRP" 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.
- "Energy" means metered electrical energy, measured in MWh, which is produced by the Facility.
 - "Energy Supply Bid" has the meaning set forth in the CAISO Tariff.
 - "Event of Default" has the meaning set forth in Section 11.1.
 - "Excess MWh" has the meaning set forth in Section 3.3(c).
 - "Expected Energy" has the meaning set forth in Section 4.7.
- "Expected FCDS Date" means the date set forth in the deliverability section of the Cover Sheet which is the date the Facility is expected to achieve Full Capacity Deliverability Status.
 - "Facility" has the meaning set forth in the recitals to this Agreement.
- "<u>FERC</u>" means the Federal Energy Regulatory Commission or any successor government agency.

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

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

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

"Force Majeure Event" has the meaning set forth in Section 10.1.

"<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.

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

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

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

"Future Environmental Attributes" shall mean any and all emissions, air quality or other environmental attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include (i) any energy, capacity, reliability, ancillary services, 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 and WREGIS; *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, ancillary services 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.

"<u>Guaranteed Capacity</u>" means the amount set forth on the Cover Sheet, measured at the Delivery Point, subject to Section 5 of Exhibit B.

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

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

- "Guaranteed Energy Production" has the meaning set forth in Section 4.7.
- "Guaranteed RA Amount" means the Qualifying Capacity of the Facility.
- "Imbalance Energy" means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Metered Energy deviates from the amount of Scheduled Energy.
 - "Indemnified Party" has the meaning set forth in Section 17.1.
 - "Indemnifying Party" has the meaning set forth in Section 17.1.
- "<u>Initial Synchronization</u>" means the initial delivery of Energy from the Facility to the interconnection point specified in the Interconnection Agreement.
- "<u>Installed Capacity</u>" means the actual generating capacity of the Facility, measured at the Delivery Point and adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate substantially in the form attached hereto as Exhibit I-2 and provided by Seller to Buyer in accordance with Section 2.3(a).
 - "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.
- "<u>Interconnection Agreement</u>" 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.
- "Joint Powers Act" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).
- "<u>Joint Powers Agreement</u>" 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, tariff or any interpretation thereof, promulgated or issued by a Governmental Authority.
- "<u>Lender</u>" means, collectively, (A) in the case of Seller, any Person (i) providing senior or subordinated development, construction, interim, back leverage 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, tax equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility, and (B) in the case of Buyer, any Person (i) providing senior or subordinated short-term or long-term debt or equity financing or refinancing for or in connection with the business or operations of Buyer, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form, and any trustee or agent acting on their behalf, and/or (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations.

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

"Licensed Professional Engineer" means an independent, professional engineer (a) reasonably acceptable to Buyer, (b) who has been retained by, or for the benefit of, the Lenders, or (c) who (i) is licensed to practice engineering in the State of California, (ii) has training and experience in the power industry specific to the technology of the Facility, (iii) is licensed in an appropriate engineering discipline for the required certification being made, and (iv) unless otherwise approved by Buyer, is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility.

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

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

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

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

"Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields,

yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

"Lost Output" has the meaning set forth in Exhibit F.

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

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

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

"MW" means megawatts measured in alternating current.

"MWh" means megawatt-hour measured in AC.

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

"Net Qualifying Capacity" or "NQC" has the meaning set forth in the CAISO Tariff.

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

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

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

"<u>Notice</u>" 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).

"Offer" has the meaning set forth in Section 2.2.

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

"<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 (PG&E).

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

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

"<u>Performance Security</u>" means (i) cash, or (ii) a Letter of Credit, in the amount specified on the Cover Sheet, provided in conformance with Section 8.8.

"Performance Security End Date" has the meaning set forth in Section 8.8.

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

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

"<u>Portfolio Content Category 1</u>" or "<u>PCC1</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)(1), as may be amended from time to time or as further defined or supplemented by Law.

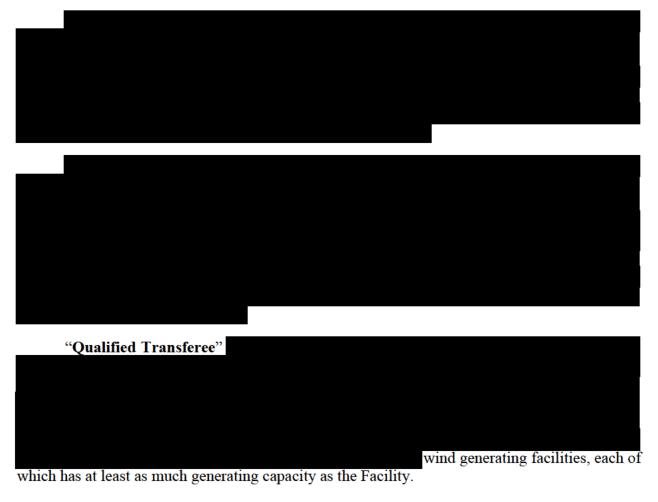
"Portfolio Content Category 2" or "PCC2" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time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

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

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

"Prudent Operating Practice" means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the wind 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.

"<u>PTC</u>" means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.



"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).

"<u>RA Guarantee Date</u>" means the date that is _____ after the Commercial Operation Date.

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

"RA Shortfall" has the meaning set forth in Section 3.9(b).

"RA Shortfall Month" means the applicable calendar month following the RA Guarantee Date during which Seller fails to provide Resource Adequacy Benefits in an amount equal to or greater than the Guaranteed RA Amount as required hereunder for purposes of calculating an RA Deficiency Amount under Section 3.9(b).

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

"Remedial Action Plan" has the meaning in Section 2.5.

"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, located within the same or another reasonably comparable Local Capacity Area as the Facility; provided that Replacement RA shall not be provided from any generating facility or unit that utilizes coal or coal materials as a source of fuel.

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

"<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.

"<u>Scheduled Energy</u>" means the Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule, and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff and protocols.

"Scheduled Maintenance" has the meaning set forth in Section 6.1.

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

"Security Interest" has the meaning set forth in Section 8.4.

- "Self-Schedule" has the meaning set forth in the CAISO Tariff.
- "Seller" has the meaning set forth on the Cover Sheet.
- "Seller's WREGIS Account" has the meaning set forth in Section 4.8(a).
- "Settlement Amount" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0).
 - "Settlement Interval" has the meaning set forth in the CAISO Tariff.
- "<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.
- "Shared Facilities" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the Delivery Point, including the Interconnection Agreement itself, that are used in common with Other Facilities, as applicable.
- "Showing Deadline" means the initial deadline that a Scheduling Coordinator must meet to submit its Resource Adequacy Plan, as established by CAISO or any other Governmental Authority. For illustrative purposes only, the CAISO monthly Showing Deadline is approximately 45 days prior to the RA delivery month.
- "Site" means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date Certificate to Buyer, in substantially the form of the Form of Construction Start Date Certificate in Exhibit J.
- "<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 by 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.

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

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

"<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.

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

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

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

"<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.

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

"WREGIS Operating Rules" means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

- 1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:
- (a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;
- (c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;
- (e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;
- (f) a reference to a Person includes that Person's successors and permitted assigns;
- (g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- (h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

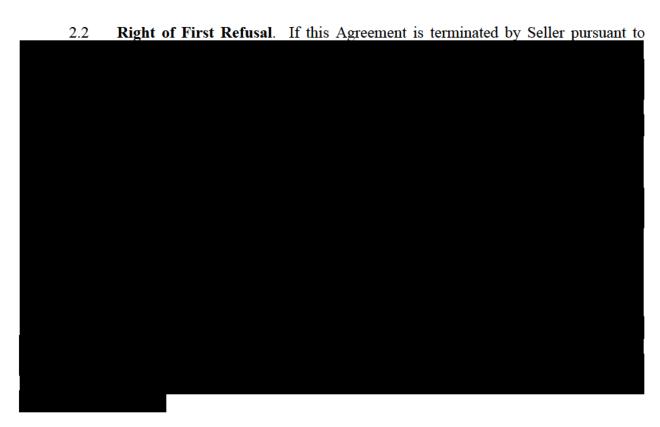
- (i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;
- (j) references to any amount of money shall mean a reference to the amount in United States Dollars, and references to a LMP shall mean the LMP at the Delivery Point unless expressly provided otherwise;
- (k) the expression "and/or" when used as a conjunction shall connote "any or all of";
- (l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and
- (m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

- (a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("Contract Term").
- (b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 shall remain in full force and effect for 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.





- 2.3 <u>Conditions Precedent to Delivery Term</u>. The Delivery Term shall not commence until Seller completes each of the following conditions:
- (a) Seller shall have delivered to Buyer certificates from a Licensed Professional Engineer substantially in the form of <u>Exhibits I-1</u> and <u>I-2</u>;
- (b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;
- (c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement, including all modifications and amendments thereto, delivered to Buyer;
- (d) The Facility has achieved Full Capacity Deliverability Status and all conditions and requirements shall have been satisfied such that the Facility qualifies for and will obtain from the CAISO, within ten (10) Business Days after the Commercial Operation Date except as may be delayed as a result of the CAISO's administrative process, a certified Net Qualifying Capacity, and Seller shall have delivered evidence of such satisfaction to Buyer;
- (e) Seller shall have delivered to Buyer a copy of all environmental impact reports, studies or assessments prepared by or obtained by Seller or its Affiliates (subject to reasonable confidentiality restrictions), the conditional use permit or other principal land use approval for the Facility, and a certificate signed by an authorized representative of Seller stating

that Seller is in compliance with the requirements of the conditional use permit or other principal land use approval;

- (f) Seller has received CEC Precertification;
- (g) 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;
- (h) Seller shall have caused the Generating Facility to be included in the Full Network Model and has the ability to offer Bids into CAISO day-ahead and real-time markets in respect of each of the Generating Facility and the Storage Facility.
- (i) Seller shall have completed all necessary steps to sell Ancillary Services from the Facility, including completing the certification requirements in Section 8 and Appendix K of the CAISO Tariff;
- (j) Seller has delivered to Buyer all reports, studies and analyses related to the Facility prepared by or for a third party that contain findings that are material to the development, ownership or operation of the Facility, including (i) any wind resource report prepared by a third party consultant or (ii) any report by an independent engineer in connection with the financing of the construction or permanent operation of the Facility;
 - (k) Seller has delivered the Performance Security to Buyer;
- (l) Seller shall have satisfied the insurance requirements as specified in Article 18, and shall have delivered evidence of such satisfaction to Buyer;
- (m) Seller has paid Buyer for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any; and
 - (n) Buyer has been authorized to be the Scheduling Coordinator for the Facility.
- 2.4 <u>Progress Reports</u>. The Parties agree time is of the essence in regards to this Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in <u>Exhibit G</u>. Seller shall also provide Buyer with any reasonable requested documentation directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

Remedial Action Plan. If Seller misses two (2) or more Milestones, or misses any one (1) by more than ninety (90) days, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date (or the ninetieth (90th) day after the missed Milestone completion date, as applicable), a remedial action plan ("Remedial Action Plan"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), and Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. If the missed Milestone(s) is not the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date, and so long as Seller complies with its obligations under this Section 2.5, then Seller shall not be considered in default of its obligations under this Agreement as a result of missing such Milestone(s).

ARTICLE 3 PURCHASE AND SALE

3.1 <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. 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 (or portion thereof) for which the associated Energy 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 deliver 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.

For the avoidance of doubt, and notwithstanding the foregoing or any other provisions of this Agreement, the Parties acknowledge and agree that (a) Energy generated or discharged from an Other Facility may mix with Energy generated from the Facility at a point or points downstream from the CAISO Approved Meter over Shared Facilities and prior to the Delivery Point, (b) the Facility will have its own CAISO Approved Meter and Resource ID, separate from those of any Other Facilities, and will be accounted for separately for CAISO settlement purposes from any Other Facility, and (c) this Agreement, including its prohibitions on Seller's delivering to Buyer at the Delivery Point any Energy from a source other than the Facility, or excusing Buyer from its obligation to pay for any Energy that is not delivered to the Delivery Point, and other similar prohibitions and restrictions, shall not be deemed violated or triggered as a result of Seller's ownership or operation of Other Facilities or the mixing of Energy as described in preceding clause (a).

- 3.2 <u>Sale of Green Attributes</u>. Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all of the Green Attributes produced during the Delivery Term, and any Green Attributes associated with Test Energy.
- 3.3 <u>Compensation</u>. Buyer shall compensate Seller for the Product in accordance with this Section 3.3.
- (a) Subject to Sections 3.3(d) and 3.3(e), for each MWh of Metered Energy in each Settlement Period, Buyer shall pay Seller the Contract Price.
- (b) Subject to Sections 3.3(d) 3.3(e), for each Settlement Period, Buyer shall pay Seller the Contract Price for each MWh of Deemed Delivered Energy.
- (d) During the period between the Commercial Operation Date and the final day of the calendar month in which the RA Guarantee Date occurs, to the extent Seller is not providing Resource Adequacy Benefits during such period, the Contract Price shall be reduced by
- (e) If, at any point in any Contract Year, the amount of Metered Energy plus the amount of Deemed Delivered Energy exceeds of the Expected Energy for such Contract Year, for each additional MWh of Product, as measured by the amount of Metered Energy plus Deemed Delivered Energy, if any, delivered to Buyer in such Contract Year, the price to be paid by Buyer shall
- (f) If during any Settlement Interval, Seller delivers Product in amounts, as measured by the amount of Metered Energy, in excess of the product of 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.
- (g) If, at any time after the Construction Start Date, there is an increase in the value of any of the Renewable Energy Incentives and Seller, its Affiliates or Lenders monetize such value, then the Parties shall amend this Agreement to provide for a reduction in the Contract Price, effective as of the first date on which such value reasonably could have been monetized in an amount equal to of such value (net of reasonable costs incurred to monetize such value).

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 maintain detailed records of all CAISO revenues and charges associated with Imbalance Energy. If Seller is not in compliance with EIRP or any applicable provisions of this Agreement, including Section 4.4(d), or if Imbalance Energy results from any outage or reduction in the availability of the Facility that is not communicated to Buyer at least one hour prior to the deadline to submit Schedules to CAISO, then Seller will be responsible for and shall pay directly or promptly reimburse Buyer (and Buyer may offset amounts owed to Seller) for the aggregate Imbalance Energy charges assessed, net of the aggregate Imbalance Energy revenues earned, during such period of noncompliance and reasonably attributable to such noncompliance within the applicable Contract Year. At Buyer's request, Seller will cooperate with Buyer to develop a written administrative protocol to effectuate the Parties' agreement with respect to Imbalance Energy and scheduling.
- 3.5 <u>Ownership of Renewable Energy Incentives</u>. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.6 Future Environmental Attributes.

- (a) The Parties acknowledge and agree that as of the Effective Date, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Buyer shall have the right to obtain such Future Environmental Attributes without any adjustment to the Contract Price paid by Buyer under this Agreement, subject to Sections 3.6(b). 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) allocation to Buyer of any additional expenses, costs or liabilities incurred by Seller associated with providing such Future Environmental Attributes; provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.
- 3.7 <u>Test Energy</u>. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and associated Product on an as-available basis. As compensation for any such Test Energy and associated Product, Buyer shall pay Seller

for each MWh of Test Energy and associated Product an amount equal to the Contract Price.

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- 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) Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes throughout the Delivery Term and in connection with Test Energy.
- (b) 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 associated with the Facility to Buyer.
- (c) Seller shall take all commercially reasonable actions to comply with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to transfer to Buyer all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.
- (d) If, as a result of Scheduled Maintenance or otherwise, CAISO requires RA Substitute Capacity in connection with Seller's provision of Resource Adequacy Benefits to Buyer from the Facility, Seller shall provide such RA Substitute Capacity in accordance with applicable CAISO requirements. Seller acknowledges and agrees that any failure by Seller to provide such RA Substitute Capacity may result in CAISO rejecting or cancelling Scheduled Maintenance or other outage of the Facility. Buyer shall notify Seller within three (3) Business Days after becoming aware of an obligation by Seller to provide RA Substitute Capacity. Upon request by Seller, Buyer shall use commercially reasonable efforts to secure, on Seller's behalf, RA Substitute Capacity; provided that Seller shall reimburse Buyer for all out-of-pocket costs, including broker and outside counsel costs, associated with such RA Substitute Capacity.

3.9 **Resource Adequacy Failure**.

- (a) <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 in an amount equal to or greater than the Guaranteed RA Amount as required hereunder, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages and the exclusive remedy due to Buyer for any 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 (such difference, the "<u>RA Shortfall</u>"), expressed in kW, of (i) the Guaranteed RA Amount, minus

the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer's monthly or annual Resource Adequacy Plan to the CAISO and CPUC and counted towards Buyer's resource adequacy compliance obligations, multiplied by (ii) the larger of (a) or (b) the CPM Soft Offer Cap; provided, however, that Seller shall not be required to pay any RA Deficiency Amount to the extent the Net Qualifying Capacity of the Facility is reduced solely as a result or arising out of any Buyer Curtailment Periods; provided, further, that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA up to the RA Shortfall, provided that any Replacement RA capacity is delivered to Buyer at least ten (10) Business Days before the CPUC and CAISO Showing Deadline for the operating month for the purpose of annual and monthly Resource Adequacy Plan reporting.

CEC Certification and Verification. Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Precertification and CEC Final Certification and Verification for the Facility. Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for CEC Final Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and, maintain throughout the remainder of the Delivery Term the CEC Final Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Precertification or CEC Final Certification and Verification for the Facility. For the first one hundred eighty (180) days of the Delivery Term, provided that Seller has obtained and maintained CEC Precertification, Buyer shall pay Seller the Contract Price for Product according to Section 3.3 regardless of whether Seller has obtained CEC Final Certification and Verification. If Seller has not obtained CEC Final Certification and Verification within one hundred eighty (180) days after the Commercial Operation Date, Buyer will compensate Seller for the Product at the lower of (i) the Contract Price, as adjusted according to Section 3.3, or (ii) the Day-Ahead Market LMP, for the remainder of the Delivery Term, or until Seller obtains CEC Final Certification and Verification. If Seller obtains CEC Final Certification and Verification after one hundred eighty (180) days after the Commercial Operation Date, Buyer will thereafter begin paying Seller the Contract Price for Product according to Section 3.3, and, if such CEC Final Certification and Verification relates back to all Energy delivered by Seller during the Delivery Term, will reimburse Seller for the difference between (x) any reduced amounts paid to Seller for Product under this Section 3.10 due to Seller's failure to obtain CEC Final Certification and Verification within one hundred eighty (180) days after the Commercial Operation Date, and (y) the amount that would have been paid to Seller had Seller timely obtained CEC Final Certification and Verification within one hundred eighty (180) days after the Commercial Operation Date. If Seller has not obtained CEC Final Certification and Verification within one (1) year of the Commercial Operation Date, then an Event of Default shall occur, Buyer shall have all remedies available under this Agreement, including under Section 11.2, and, in the event that Buyer terminates this Agreement under Section 11.2, Seller shall reimburse Buyer, in addition to any other amounts owed, in an amount equal to the difference between (a) the amount paid by Buyer to Seller for Product during the first one hundred eighty (180) days of the Delivery Term, and (b) the amount that would have been paid if the price for energy delivered during the first one hundred eighty (180) days of the Delivery Term were the Day-Ahead Market LMP.

- 3.11 <u>Eligibility</u>. 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>. Seller shall also take all other actions necessary to ensure that the Metered Energy produced by 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 of the Guaranteed Capacity cumulatively during the Delivery

Term (the "Compliance Expenditure Cap"):

- (a) CEC Final Certification and Verification;
- (b) Green Attributes;
- (c) Future Environmental Attributes; and,
- (d) Capacity Attributes.

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "Compliance Actions."

If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "<u>Accepted Compliance Costs</u>"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.13 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller

shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Contract Term.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and reasonable documentation of such costs from Seller. If Buyer waives Seller's obligation to take such Compliance Actions or (ii) Buyer is deemed to have waived Seller's obligation to take such Compliance Actions in accordance with this Section 3.13, then (X) Seller will be deemed not to be in breach or default of this Agreement due to its failure to take such Compliance Actions, (Y) Buyer's payments to Seller under this Agreement for the remainder of the Term shall not decrease as a result of such change in Law and will be maintained as if all such Compliance Actions were taken, and (Z) Seller shall not owe any damages that would have otherwise been due hereunder as a result of not taking such Compliance Actions.

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 at the Delivery Point all Metered Energy on an as-generated, instantaneous basis. Each Party shall perform all generation, scheduling, and transmission services in connection with its performance hereunder 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 as part of the Product being delivered, with the associated Renewable Energy Credits delivered to Buyer via WREGIS pursuant to Section 4.8. Seller represents and warrants that Seller holds the rights to all Green Attributes, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product. Seller shall, at Buyer's request and at Seller's sole expense, take commercially reasonable actions, including executing necessary documents or instruments, so that the Green Attributes are certifiable by Buyer with the Center for Resource Solutions Green-e certification program, or successor program.

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.

- Buyer as Scheduling Coordinator for the Facility. Upon Initial (a) Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the applicable Products at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid and throughout the Delivery Term, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid and throughout the Delivery Term. On and after Initial Synchronization of the Facility to the CAISO Grid and throughout the Delivery Term, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.
- (b) <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.
- CAISO Costs and Revenues. Except as otherwise set forth below and in Sections 3.4(b) and 3.7, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties or fees resulting from any failure by Seller to abide by the CAISO Tariff or this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to Seller's breach of this Agreement, negligence, or violation of CAISO rules, the cost of the sanctions or penalties shall be Seller's responsibility, otherwise the cost of such sanctions or penalties shall be Buyer's responsibility.

- CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement, including Section 3.4(b). CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges, and such adjustments will be included in subsequent CAISO Charges Invoices, as applicable. 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. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.
- (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 **Forecasting**. Seller shall provide the forecasts described below. Seller's Available

Capacity forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity and expected Metered Energy of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

- (a) <u>Annual Forecast of Expected Metered Energy</u>. 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 each subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Metered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.
- (b) Monthly Forecast of Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.
- (c) <u>Daily Forecast of Available Capacity</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 (or if requested by Buyer, the expected Metered Energy) for each hour of the immediately succeeding day ("<u>Day-Ahead Forecast</u>"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediately succeeding day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Facility's Available Capacity (or if requested by Buyer, the expected Metered Energy).
- (d) Real-Time Available Capacity. During the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of one (1) MW or more, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These notices and changes to Available Capacity shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.4(d), then Seller shall send such communications by telephone and e-mail 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 to the Delivery Point due to a Force Majeure Event.
- (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 Buyer Curtailment Order delivered to Seller, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with all Buyer Curtailment Periods at the applicable Contract Price.
- (c) <u>Failure to Comply</u>. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Metered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is an amount equal to the absolute value of the Negative LMP, if any, for the Buyer Curtailment Period or Curtailment Period, times the amount of such MWh of Metered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, and (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment Order.
- 4.6 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1, Section 4.3, or Exhibit F:
- (a) <u>Facility Maintenance</u>. Subject to Section 6.1, Seller shall be permitted to reduce deliveries of Product during any period of Scheduled Maintenance.
- (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 pursuant to Section 4.4(d).
- (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.

Except as otherwise provided herein, Seller shall operate the Facility to maximize

the generation and delivery of Product.

4.7 <u>Expected Energy and Guaranteed Energy Production</u>. 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 ("<u>Expected Energy</u>"). Seller shall be required to deliver to Buyer an amount of Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below) in any period of two (2) consecutive Contract Years during the Delivery Term ("<u>Performance Measurement Period</u>"). "<u>Guaranteed Energy Production</u>" means an amount of Product, as measured in MWh, equal to

constituting such

Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent that Seller was unable to deliver energy as a result of any Force Majeure Events, Buyer Default, Curtailment Periods and Buyer Curtailment Periods; to effectuate the foregoing excuses, Seller shall be deemed to have generated (1) the Deemed Delivered Energy in respect of Buyer Curtailment Periods, and (2) an amount of Energy determined in accordance with Exhibit F in respect of Lost Output. In addition, for purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer, in the first Contract Year of each Performance Measurement Period following a Performance Measurement Period as to which Seller has paid damages calculated in accordance with Exhibit F, the Product in the amount equal to the greater of the amount of Metered Energy actually delivered in such Contract Year, less Excess MWh, or of the Expected Energy for such Contract Year. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit F.

- 4.8 <u>WREGIS</u>. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Metered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification, issuance, and transfer of such WREGIS Certificates to Buyer, and Buyer shall be given sole title to all such WREGIS Certificates. In addition:
- (a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using Forward Certificate Transfers from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the accounts of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.
- (b) Seller shall cause itself or its agent to be designated as the "Qualified Reporting Entity" (as that term is defined by WREGIS) for the Facility. Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure

established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for creation of a WREGIS Certificate.

- (c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Metered Energy for such calendar month as evidenced by the Facility's metered data.
- (d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.
- (e) A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates issued to Buyer for a calendar month as compared to the Metered Energy for the same calendar month ("Deficient Month"). If any WREGIS Certificate Deficit occurs, then the amount of Metered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that Buyer shall pay Seller for any Metered Energy that is Delivered by Buyer without corresponding WREGIS Certificates at a price equal to the lesser of (i) the Contract Price, or (ii) the Day-Ahead Market LMP. Without limiting Seller's obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission. Seller shall use commercially reasonable efforts to rectify any WREGIS Certificate Deficit as expeditiously as possible.
- (f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Metered Energy in the same calendar month.
- (g) Seller warrants that all necessary steps to allow the Renewable Energy Credits to be issued to Buyer and tracked in WREGIS will be taken prior to the first delivery under the contract.
- 4.9 <u>Seller Financial Statements</u>. Seller shall provide to Buyer, within sixty (60) days of the end of Seller's first, second, and third fiscal quarters, and within one hundred twenty (120) days of the end of Seller's fiscal year, as applicable, unaudited quarterly and annual audited financial statements of Seller (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

4.10 Access to Data and Installation and Maintenance of Weather Station.

- (a) Commencing on the Commercial Operation Date, and continuing throughout the Delivery Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the data set forth below on as close to a real-time basis as reasonable; provided that Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested by Buyer, throughout the Delivery Term, which changes Buyer determines are necessary to forecast output from the Facility, and/or comply with Law:
- (i) read-only access to meteorological measurements, transformer availability, any other Facility availability information, and, if applicable, all parameters necessary for use in the equation under item (vii) of this list;
- (ii) read-only access to energy output information collected by the supervisory control and data acquisition (SCADA) system for the Facility; provided that if Buyer is unable to access the Facility's SCADA system, then upon written request from Buyer, Seller shall provide energy output information and meteorological measurements to Buyer in 1 minute intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back up for each flat file submittal;
- (iii) read-only access to the Facility's CAISO revenue meter and all Facility meter data at the Site;
- (iv) full, real time access to the Facility's Scheduling and Logging for the CAISO (OMS) client application, or its successor system;
 - (v) net plant electrical output at the CAISO revenue meter;
- (vi) instantaneous data measurements at sixty (60) second or increased frequency for the following parameters, which measurements shall be provided by Seller to Buyer in a consolidated data report at least once every five minutes via flat file through a secure file transport protocol (FTP) system with an e-mail backup: (i) wind speed (measured at thirty (30) meters), (ii) peak wind speed (within one minute, measured at thirty (30) meters), (iii) wind direction (measured at thirty (30) meters), (iv) wind speed standard deviation, (v) wind direction standard deviation, (vi) ambient air temperature (measured at thirty (30) meters), and (vii) barometric pressure (measured at thirty (30) meters); and
- (vii) an equation, updated on an ongoing basis to reflect the potential generation of the Facility as a function of wind speed (and, if applicable, other weather factors). Such equation shall take into account the expected availability of the Facility. Seller shall reasonably cooperate with any request from Buyer to adjust the equation due to results that are inconsistent with the observed Facility output.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Facility's monthly actual available capacity in a form reasonably acceptable to Buyer. Buyer's access to the Facility's SCADA system shall be subject to Buyer's compliance with Seller's reasonable cyber-security policies and procedures and applicable Law, including NERC rules and regulations.

(b) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 4.10(a), which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(c) <u>Installation, Maintenance and Repair.</u>

- (i) Seller, at its own expense, shall install and maintain at least one (1) stand-alone meteorological station at the Site to monitor and report the meteorological data required in Section 4.10(a) of this Agreement. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 4.10(a) of this Agreement.
- (ii) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Buyer's designee to enable Buyer to meet current CAISO scheduling requirements. Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.
- (iii) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice; provided that if Seller is unable to repair or replace such equipment within five (5) days, then Seller shall make such repair or replacement as soon as reasonably practical.
- (iv) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of verbal or written communication, including cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail, or other method mutually agreed upon by the Parties, until the telecommunications link is re-established.
- (d) Seller agrees and acknowledges that Buyer may seek and obtain from third parties any information relevant to its duties as Scheduling Coordinator for Seller, including from the Participating Transmission Owner. Seller shall execute within a commercially reasonable timeframe upon request such instruments as are reasonable and necessary to enable Buyer to obtain from the Participating Transmission Owner information concerning Seller and the Facility that may be necessary or useful to Buyer in furtherance of Buyer's duties as Scheduling Coordinator for the Facility.
- (e) No later than ninety (90) days before the Commercial Operation Date, Seller shall provide one (1) year, if available, but no less than six (6) months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (i) the

parameters identified in Section 4.10(a)(vi) above (all data, except peak values, should be 1-second samples averaged into 10-minute periods); (ii) elevation, latitude and longitude of the weather station; and (iii) any other data reasonably requested by Buyer.

4.11 <u>Workforce Agreement</u>. The Parties acknowledge that in connection with Buyer's energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that to the extent union labor is available to supply the type and quantity of skilled labor necessary to perform work in connection with construction of the Facility, such work will be conducted using a project labor agreement or similar agreement providing for terms and conditions of employment with applicable labor organizations, and Seller shall remain compliant with such agreement in accordance with the terms thereof.

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 of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to, and purchase by, Buyer of Product that are imposed on the Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (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 Party 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

- Maintenance of the Facility. Seller shall comply with Law and Prudent Operating 6.1 Practice relating to the operation and maintenance of the Facility and the generation and sale of Product. Seller shall have the right to perform no more than fifty (50) hours of scheduled maintenance on the Facility that involves a reduction in the Available Capacity of the Facility ("Scheduled Maintenance") between October 1 and March 1 of each Contract Year, unless such Scheduled Maintenance is (i) required to avoid damage to the Facility or injury to any third party or any third party's property, (ii) necessary or recommended to maintain equipment warranties, (iii) necessary or recommended for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing. Seller shall provide Buyer with written schedules for Scheduled Maintenance, including the amount of the anticipated reduction in Available Capacity, no later than ninety (90) days prior to the first day of the applicable Contract Year. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to adjusting the timing of Scheduled Maintenance. Seller may modify its schedule of Scheduled Maintenance upon reasonable advance notice to Buyer, subject to reasonable requests of Buyer and consistent with Section 4.4.
- 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 D</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.

6.3 Shared Facilities.

- (a) Seller shall obtain and maintain throughout the Delivery Term any and all interconnection and transmission service rights and permits required to effect delivery of all Energy to the Delivery Point and to fulfill its obligations hereunder. During the startup period and through the Delivery Term, the Interconnection Agreement shall provide for sufficient interconnection capacity and rights to interconnect the Facility with the CAISO Grid and to ensure that at all times there is available or allocable solely to the Facility interconnection capacity that is no less than the Guaranteed Capacity. In connection with the Interconnection Agreement and the Shared Facilities, the following shall apply:
 - (i) Any instruction from the CAISO or the Participating Transmission Owner to curtail energy deliveries in a manner that does not specify the curtailment levels applicable to the Facility or any Other Facility(ies) shall be allocated between the Facility and any Other Facility(ies) that have achieved commercial operation on a pro rata basis based upon their respective energy delivery forecasts for the applicable period, except (A) when such pro rata allocation would be in violation of the applicable curtailment instruction, or (B) to the extent that the need for the curtailment can be attributed to the Facility or any Other Facility; provided, that the terms and conditions of this Section 6.3(a)(i) shall not apply to any Other Facilities that do not share the same interconnection point, interconnection

agreement, gen-tie line and step-up transformer as the Facility.

- (ii) Subject to the last sentence of this Section 6.3(a)(ii), except with respect to an assignment or collateral assignment of the Interconnection Agreement or Shared Facilities to a Person to which this Agreement is assigned pursuant to Article 14 or Article 15, Seller shall not assign or transfer Seller's rights or obligations under the Interconnection Agreement or any Shared Facilities to any Person without the prior written consent of Buyer, which consent shall not be unreasonably withheld; provided, that consent to an assignment or transfer of this Agreement to a Person shall also be deemed a consent to the assignment or other transfer by Seller of the Interconnection Agreement and its interest in the Shared Facilities to such Person. Notwithstanding any other provision of this Agreement to the
- contrary,
- (b) As between Buyer and Seller under this Agreement, Seller shall be responsible for all costs and charges directly caused by, associated with, or allocated to Seller under the Interconnection Agreement and the CAISO Tariff, in connection with the interconnection of the Facility to the Participating Transmission Owner's electric system and transmission of electric energy from the Facility to the Participating Transmission Owner's electric system.
- (c) Seller, as "Interconnection Customer" under the Interconnection Agreement, shall comply with the CAISO Tariff, including securing and maintaining in full force and effect all required CAISO agreements, certifications and approvals, and ensuring that the Aggregate Capability Constraint option specified by Buyer is in effect.

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 Meter Verification. If Seller has reason to believe there may be a meter malfunction, Seller may test the meter. Annually, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

- 8.1 <u>Invoicing</u>. Seller shall deliver an invoice to Buyer for Product no later 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, the amount of Product in MWh produced by the Facility as read by the CAISO Approved Meter, the amount of Replacement RA delivered to Buyer, the calculation of Deemed Delivered Energy and Adjusted Energy Production, and the Contract Price applicable to such Product; and (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount. Invoices shall be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.
- 8.2 Payment. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within 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. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other pursuant to this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits B and F, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 <u>Seller's Pre-COD Security</u>.



(b) To secure Seller's obligations under this Agreement, including the obligations of Seller to pay liquidated damages to Buyer as provided in this Agreement,

Seller shall deliver Development Security to Buyer in the amount of within five (5) Business Days

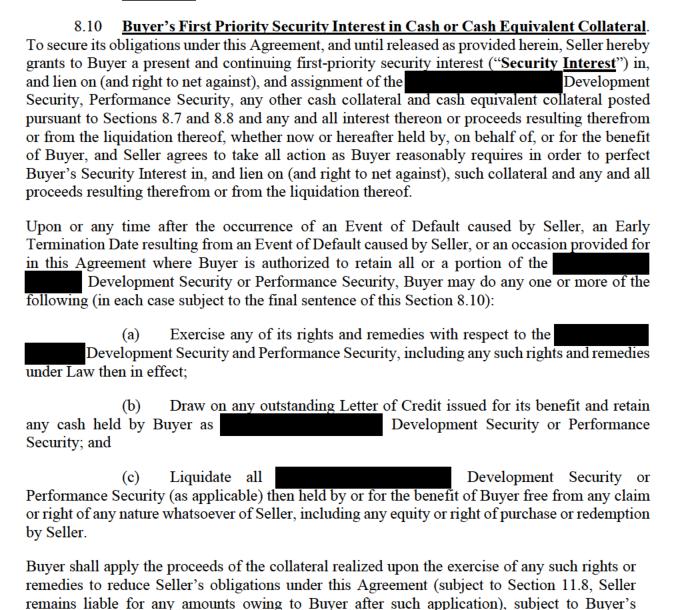
Buyer will have the right to draw upon the Development Security if Seller fails to pay liquidated damages owed to Buyer pursuant to Exhibit B to this Agreement or if Seller fails to pay a Damage Payment or Termination Payment owed to Buyer pursuant to Section 11.2. Seller shall maintain the Development Security in full force and effect as required pursuant to this Section 8.7(b), and Seller shall replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment;

Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 Seller's Performance Security. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date, in the amount of . Seller shall maintain the Performance Security in full force and effect and Seller shall replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment. Seller shall maintain the Performance Security in full force and effect until the date on which the following have occurred ("Performance Security End Date"): (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of the Performance Security End Date. Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter

of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Performance Security End Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

8.9 [Reserved].



8.11 <u>Buyer Financial Statements</u>. Buyer shall provide to Seller, within sixty (60) days after the end of each fiscal quarter, and within one hundred eighty (180) days of the end of Buyer's fiscal year, as applicable, unaudited quarterly and annual audited financials of Buyer (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally

obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

accepted accounting principles in the United States, consistently applied; provided, that Buyer shall not be obligated to provide Seller with financials if Buyer's financials are publicly available on its website.

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

ARTICLE 10 FORCE MAJEURE

10.1 **Definition**.

- (a) "<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; epidemic or

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 include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy Energy at a lower price, or Seller's ability to sell Energy at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) variations in weather, including wind, rain and insolation, within a one in fifty (1 in 50) year occurrence; or (ix) Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.
- No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall 10.2 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 hereunder 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 rendered unable to fulfill any obligation hereunder by reason of a Force Majeure Event. 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 such Party has claimed relief for such noncompliance under this Article 10, and such period of noncompliance has continued for a consecutive twelve (12) month period, then may terminate this Agreement upon written Notice to the other Party experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other, and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

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

- (a) with respect to a Party (the "<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 (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);
- (iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for Seller's failure to comply with the Guaranteed Energy Production requirements in Section 4.7, the exclusive remedy for which is provided in Section 4.7 and Exhibit F) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such failure within such initial thirty (30)-day period despite exercising commercially reasonable efforts);
 - (iv) such Party becomes Bankrupt;
- (v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with <u>Section 14.2</u> or <u>14.3</u>, 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.

if at any time, Seller delivers or attempts to deliver to the Delivery (i) Point for sale under this Agreement Energy that was not generated by the Facility; (ii) the failure by Seller to achieve Construction Start within after the Guaranteed Construction Start Date or the failure by Seller to achieve Commercial Operation within after the Guaranteed Commercial Operation Date; Subject to Section 3.13, the failure by Seller to timely obtain CEC (iii) Final Certification and Verification in accordance with Section 3.10; (iv) if, beginning with the second Contract Year, the Adjusted Energy Production amount is not at least of the Expected Energy amount in any Contract Year, unless such failure was caused by a failure to the Facility's main step-up transformer: if, in any two (2) consecutive Contract Years during the Delivery Term, the Adjusted Energy Production amount is not at least of the Expected Energy amount in each Contract Year; failure by Seller to satisfy the collateral requirements pursuant to (vi) Sections 8.7 or 8.8, including the failure to replenish the Development Security or Performance Security in accordance with the requirements of Sections 8.7 and 8.8, as applicable, if such failure is not remedied within five (5) Business Days after Notice thereof; if at any time Seller owns, operates or manages any equipment, facility, property or other asset, other than the Facility, Other Facility(ies) or Shared Facilities, or engages in any business or activity other than the development, construction, financing, ownership or operation of the Facility, Other Facility(ies) or Shared Facilities; (viii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(b)

following:

with respect to Seller as the Defaulting Party, the occurrence of any of the

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the issuer of such Letter of Credit becomes Bankrupt;

maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

the issuer of the outstanding Letter of Credit shall fail to

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such

(B)

failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

- (D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
- (E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
- (F) such Letter of Credit fails or ceases to be in full force and effect at any time; or
- (G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.
- (ix) the occurrence of six (6) consecutive months in which a WREGIS Certificate Deficit was caused, or was the result of any action or inaction, by Seller; provided, that if Seller is taking reasonable steps to prevent subsequent WREGIS Certificate Deficits and is reasonably likely to succeed in preventing the occurrence in the seventh (7th) consecutive month, then an Event of Default shall not be deemed to have occurred until the seventh (7th) consecutive month.
- 11.2 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:
- (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("<u>Early Termination Date</u>") that terminates this Agreement (the "<u>Terminated Transaction</u>") and ends the Delivery Term effective as of the Early Termination Date;
- (b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller under Section 11.1(b)(ii)) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);
 - (c) to withhold any payments due to the Defaulting Party under this Agreement;
 - (d) to suspend performance; and/or
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

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

- **Termination Payment**. The termination payment ("Termination Payment") for 11.3 a Terminated Transaction shall be the aggregate of the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Costs and Losses, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero (0). 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, but in no event later than sixty (60) days after the Early Termination Date (or such longer period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable to calculate the Termination Payment within such initial sixty (60)-day period despite exercising commercially reasonable efforts), 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 or other express remedy or measure of damages are explicitly provided herein 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 (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 17 INDEMNITY CLAIM WITH RESPECT TO THIRD PARTY CLAIMS, OR (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.
- 12.2 Waiver and Exclusion of Other Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING THE DAMAGE PAYMENT UNDER SECTION 11.2, THE TERMINATION PAYMENT UNDER SECTION 11.3 AND THE PAYMENTS UNDER SECTIONS 3.9, 4.7, AND 4.8, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT F, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

- 13.1 <u>Seller's Representations and Warranties</u>. As of the Effective Date, Seller represents and warrants as follows:
- (a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.
- (b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.
- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been

obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

- (d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.
 - (e) The Facility will be located in the State of California.
- 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 **General Covenants**.

- (a) Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:
- (i) 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:
- (ii) 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
- (iii) 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.
- (b) Buyer covenants that commencing on the Effective Date and continuing throughout the Contract Term, Buyer shall not assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

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 prohibited 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

Any Change

of Control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Article 14 and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

14.3 Permitted Assignment; Change of Control of Buyer. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, provided, that in each of the foregoing situations, the assignee (a) has a Credit Rating of Baa2 or higher by Moody's or BBB or higher by S&P, and (b) is a community choice aggregator or publicly-owned electric utility with retail customers located in the state of California; provided, further, that in each such case, no fewer than fifteen (15) Business Days before such assignment Buyer (x) notifies Seller of such assignment and (y) provides to Seller a written agreement 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 customary certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that the non-granting Party recognizes the Lender's security interest and such other provisions as may be reasonably requested by the granting Party or any such Lender; *provided*, however, that all costs and expenses (including reasonable

attorney's fees) incurred by the non-granting Party in connection therewith shall be borne by the granting Party, and that the non-granting Party shall have no obligation to modify this Agreement.

- (c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; *provided* that the non-granting Party shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.
- 15.3 Cure Rights of Lender; Other Consent Provisions. 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.
- Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in

equity, subject to the limitations set forth in this Agreement.

16.3 <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 third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the violation of Law or the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.
- (b) Nothing in this Section 17.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement.

Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

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

the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 18 INSURANCE

18.1 **Insurance**.

- (a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars (\$5,000,000) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.
- (b) <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) <u>Construction All-Risk Insurance</u>. Seller shall maintain or cause to be maintained during the construction or re-powering of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.
- (f) <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

- Information," whether oral or written, and whether delivered by Seller to Buyer or by Buyer to Seller: (a) proposals and negotiations of the Parties in the negotiation of this Agreement; (b) the terms and conditions of this Agreement, and (c) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" or words of similar import before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.
- 19.2 <u>Duty to Maintain Confidentiality</u>. The Party receiving Confidential Information shall treat it as confidential, and shall adopt reasonable information security measures to maintain its confidentiality, employing the higher of (a) the standard of care that the receiving Party uses to preserve its own Confidential Information, or (b) a standard of care reasonably tailored to prevent unauthorized use or disclosure of such Confidential Information. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (i) to be made by any requirements of Law, (ii) pursuant to an

order of a court or (iii) in order to enforce this Agreement. The Party that originally discloses Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion. Notwithstanding the foregoing, Seller acknowledges that Buyer is required to make portions of this Agreement available to the public in connection with the process of seeking approval from its board of directors for execution of this Agreement. Buyer may, in its discretion, redact certain terms of this Agreement as part of any such public disclosure, and will use reasonable efforts to consult with Seller prior to any such public disclosure. Seller further acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seg.). Upon request or demand from any third party not a party to this Agreement for production, inspection and/or copying of this Agreement (in whole or part) or other Confidential Information provided by Seller to Buyer, Buyer shall, to the extent permissible, notify Seller in writing in advance of any disclosure that the request or demand has been made; provided that, upon the advice of its counsel that disclosure is required, Buyer may disclose this Agreement or Confidential Information of Seller, whether or not advance written notice has been provided; provided, further that Buyer shall use reasonable efforts to limit the Confidential Information disclosed to only that information that is required by Law. 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 or actual Lender or investor or any of its agents, contractors, vendors, Affiliates, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by either the confidentiality provisions of this Article 19 to the same extent as if it were a Party or confidentiality restrictions which are no less restrictive than those set forth in this Article 19.
- 19.5 <u>Disclosure to Credit Rating Agency</u>. Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by either Party to any nationally recognized credit rating agency (e.g., Moody's Investors Service, Standard & Poor's, or Fitch Ratings) in connection with the issuance of a credit rating for that Party or its affiliates, provided that any such credit rating agency agrees in writing to maintain the confidentiality of such Confidential Information.
- 19.6 <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 <u>Binding Effect</u>. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 20.10 No Recourse to Members of Buyer. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.
- 20.11 Change in Electric Market Design. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. If a change to any Law occurs after the Effective Date, including any rule or requirement of WREGIS, that impacts the number or quality of Resource Adequacy Benefits or Green Attributes (including Renewable Energy Credits) available to Buyer from the Facility, then Buyer may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date, it being understood that (i) Buyer is to receive the maximum amount of Resource Adequacy Benefits and Green Attributes available from the Facility and (ii) Seller's ongoing compliance costs associated with the provision of Resource Adequacy Benefits and Green Attributes available from the Facility, among other things, are subject to the Compliance Expenditure Cap. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 16. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself

be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event, and (ii) all unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

EXHIBIT A

DESCRIPTION OF THE FACILITY

Facility Name: Gonzaga Ridge Wind Farm, LLC

Site Name: Gonzaga Ridge Wind Farm, LLC

Site Description: The Facility is in Pacheco State Park on an approximately 1,766-

acre non-public portion of the Park site. The Park consists of 6,900 acres of former ranchland along State Route (SR) 152 known as Pacheco Pass, at the edge of the Diablo Range. The Park is located on SR-152, that connects two major north-south arteries—Interstate 5 (I-5), which is 16 miles to the east, and U.S. Highway 101 (US 101), which is approximately 30 miles to the west. The Park is generally equidistant between the cities of Gilroy and Los Banos and is an approximate two-hour drive from San Francisco. The Park lies adjacent to the San Luis Reservoir State Recreation Area (SRA), which is under BOR ownership and managed by the California

Department of Parks and Recreation (CDPR).

Site Address: Dollar Wind Address – 1400 Dinosaur Point Rd. Hollister, CA

95023

Project Location Street Address – Pacheco Pass Hwy (152) and Dinosaur Point Road, 8 miles west of Los Banos, Merced County,

CA 93635

GPS Coordinates: Latitude: 37.047, Longitude: -121.19

Site Map:



APNs: 078- 030-10, 11 & 12; 078-040-15, 16, 17 & 21; 078-050-11; 078-

060-16 & 17

County: Merced County

Guaranteed Capacity: 76.35 MW AC (net, at the Delivery Point)

Generation Technology: Thirteen (13) Nordex N149-5.9MW at 88.5m HH

Delivery Point: the PNode designated by the CAISO for the Facility at the Los

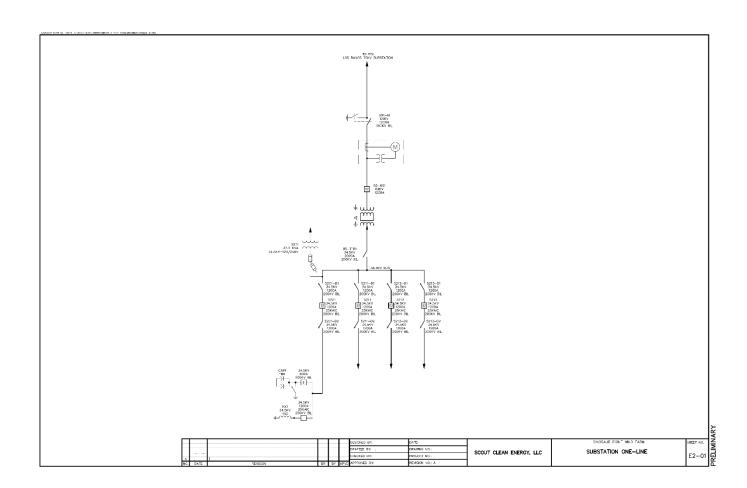
Banos Substation (70kV)

Point of Interconnection: Los Banos Substation (70kV)

Description of Interconnection Facilities and Metering: The Facility will use the Interconnection Facilities and metering configuration depicted in the one-line diagram below.

CAISO Queue Number: Q1378

One-Line Diagram:



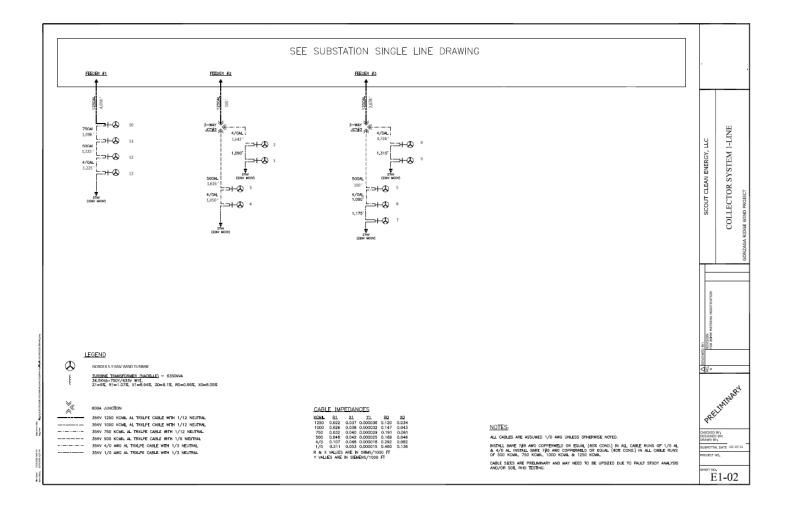


EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. Seller shall cause construction to begin on the Facility by December 31, 2023 (as such date may be extended by the Development Cure Period, the "<u>Guaranteed Construction Start Date</u>"). Seller shall demonstrate the beginning of construction through execution of Seller's engineering, procurement and construction contract (or similar contract), Seller's issuance of a notice to proceed under such contract, mobilization to the Site by Seller and/or its designees, and the physical movement of soil at the Site ("<u>Construction Start</u>"). On the date of Construction Start (the "<u>Construction Start Date</u>"), Seller shall deliver to Buyer a certificate substantially in the form attached as <u>Exhibit J</u> hereto.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until the date on which Seller reaches Construction Start of the Facility;

On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 3(b) of this Exhibit B. The Parties agree that Buyer's receipt of Daily Delay Damages shall be Buyer's sole and exclusive remedy for the first of the delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1, and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

- 2. <u>Commercial Operation of the Facility</u>. "<u>Commercial Operation</u>" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.3 of the Agreement and (ii) Seller has provided Notice to Buyer that Commercial Operation has been achieved. The "<u>Commercial Operation Date</u>" shall be the later of (x) February 28, 2024 or (y) the date on which Commercial Operation has occurred.
 - a. Seller shall cause Commercial Operation for the Facility to occur by October 31, 2024 (as such date may be extended by the Development Cure Period, the "Guaranteed Commercial Operation Date"). Seller shall notify Buyer that it

- intends to achieve Commercial Operation at least anticipated Commercial Operation Date.
- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, as may be extended pursuant to a Development Cure Period, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after the Commercial Operation Date.
- c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Buyer shall retain Daily Delay Damages, as applicable, and Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date;

Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.

- d. The Parties agree that Buyer's retention of Daily Delay Damages and receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for the first sixty (60) days of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1, and (y) not limit Buyer's right to declare an Event of Default under Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.
- 3. Termination for Failure to Timely Achieve Construction Start or Commercial Operation. If the Facility has not achieved Construction Start Date, or if the Facility has not achieved Commercial Operation within after the Guaranteed Commercial Operation Date, as each may be extended as provided herein, Buyer may elect to terminate this Agreement pursuant to Sections 11.1(b)(ii) and 11.2(a), which termination shall become effective as provided in Section 11.2(a).
- 4. <u>Extension of the Guaranteed Dates</u>. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis (the "<u>Development Cure Period</u>") for the duration of any delay arising out of any of the following circumstances:
 - a. a Force Majeure Event occurs; or
 - b. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operation Date (it being

acknowledged that an extension under this paragraph (b) shall not limit other rights and remedies Seller may have for any Buyer Default).

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions

granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(b) above) shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event; and under no circumstance shall an extension shall be given if the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines. Upon request from Buyer, Seller shall provide documentation reasonably demonstrating that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions. 5. Failure to Reach Guaranteed Capacity. If, at Commercial Operation, the Installed Capacity is at least an amount equal to the Guaranteed Capacity but less than the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity such that the Installed Capacity is increased, but not to exceed the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-2 hereto specifying the new Installed Capacity. In the event that the Installed Capacity is still less than the Guaranteed Capacity as of such date, Seller shall pay "Capacity Damages" to Buyer, in an amount equal to for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of this Agreement shall be reduced to an amount equal to the product of (a) the amount in effect prior to such adjustment, multiplied by (b) the ratio of the Installed Capacity as of such date to the original Guaranteed Capacity.

6. <u>Buyer's Right to Draw on Development Security</u>. If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof, and Seller shall replenish the Development Security within five (5) Business Days after such draw;

EXHIBIT C [RESERVED]

EXHIBIT D

EMERGENCY CONTACT INFORMATION

BUYER:

Peninsula Clean Energy 2075 Woodside Road Redwood City, CA 94061

Attn: Director of Power Resources

Phone No.: 650-260-0005

Email: contracts@peninsulacleanenergy.com

SELLER:

Gonzaga Ridge Wind Farm, LLC 5775 Flatiron Parkway, Suite 120 Boulder, CO 80301

Attn: Remote Operations Center

Phone No.: Email:

EXHIBIT E

[RESERVED]

EXHIBIT F

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

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

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

where:

 \underline{A} = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

 $\underline{\mathbf{B}}$ = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

 \underline{C} = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b)

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

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

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period.

Additional Definitions:

"<u>Adjusted Energy Production</u>" shall mean the sum of the following: Metered Energy + Deemed Delivered Energy + Lost Output – Excess MWh.

"Lost Output" means the sum of Metered Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order. The amount of Lost Output shall be equal to (a) the VER Forecast expressed in MWh during the period of the Force Majeure Event, Buyer Default, or Curtailment Order, 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, and approved by Buyer in its reasonable discretion, to reflect the potential generation of the Facility as a function of Available Capacity, and wind speed, and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Force Majeure Event, Buyer Default, or Curtailment Order occurred, in all cases less the amount of Metered Energy delivered to the Delivery Point during such period.

EXHIBIT G

PROGRESS REPORTING FORM

Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a written Progress Report in the form specified below.

Each Progress Report must include the following items:

- 1. Executive Summary.
- 2. Facility description.
- 3. Site plan of the Facility.
- 4. Description of any planned changes to the Facility or the site.
- 5. Gantt chart schedule showing progress on achieving each of the Milestones.
- 6. Summary of activities during the previous calendar month, including any OSHA labor hour reports.
- 7. Forecast of activities scheduled for the current calendar quarter.
- 8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
- 9. List of issues that could potentially affect Seller's Milestones.
- 10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
- 11. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
- 12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
- 13. Any other documentation reasonably requested by Buyer.

EXHIBIT I-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of Commercial Opprofessional engineer] ("Engineer") to Peninsula Clear terms of that certain Power Purchase and Sale Agreement between [Seller] and Buyer. All capitalized terms us defined herein shall have the respective meanings assign	Energy ("Buyer") in accordance with the ent dated ("Agreement") by and ed in this Certification but not otherwise
Engineer hereby certifies and represents to Buye	er the following:
(1) Seller has installed equipment with a nameplate to the Guaranteed Capacity	capacity of no less than an amount equal
(2) The Facility's testing included a performance to no less than an amount equal to the Guaranteed Capaca, in either ambient conditions on the date of the Facility testing, arwas [peak output in MW].	ity case at the Delivery Point, as adjusted for
(3) Authorization to parallel the Facility was obt Owner, [Name of Participating Transmission Owner as	
(4) The Participating Transmission Owner or documentation supporting full unrestricted release for Participating Transmission Owner as appropriate] on	or Commercial Operation by Name of
(5) The CAISO has provided notification supports inclusion in the Full Network Model and authorizate accordance with the CAISO tariff on[DATE]_	on to provide Ancillary Services, all in
EXECUTED by [LICENSED PROFESSIONAL ENGI	NEER]
this, 20	
	CENSED PROFESSIONAL ENGINEER]
Ву	:
Its:	
Da	te:

EXHIBIT I-2

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("Certification") of Installed Car	pacity is delivered by [licensed professional
engineer] ("Engineer") to PENINSULA CLEAN I	ENERGY ("Buyer") in accordance with the
terms of that certain Power Purchase and Sale Agree	eement dated ("Agreement") by
and between [SELLER ENTITY] and Buyer. All ca	
not otherwise defined herein shall have the respecti	ive meanings assigned to such terms in the
Agreement.	
The initial Facility performance test under Seller's I	· · · · · · · · · · · · · · · · · · ·
Facility electrical output ofMW AC at the Deli on the date of the performance test (" <u>Installed Car</u>	
EXECUTED by [LICENSED PROFESSIONAL E	NGINEER]
this, 20	
	[LICENSED PROFESSIONAL ENGINEER]
	By:
	Its:
	Date:

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

	[Y] ("Seller") to PENINSULA CLEAN ENERGY ("Buyer") in accordance with the terms
	certain Power Purchase and Sale Agreement dated (" <u>Agreement</u> ") by and
	en Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined
	shall have the respective meanings assigned to such terms in the Agreement.
	enum num v vito reop v vit me incomingo mostgaren vo e unon vertico in vito r 18. v viti vito.
Seller	hereby certifies and represents to Buyer the following:
1.	the [describe EPC Contract or other major construction contract] related to the Facility
	was executed on;
2.	the [describe Limited Notice to Proceed with construction] related to the Facility was
	issued on (attached);
3.	the Construction Start Date has occurred;
4.	the precise Site on which the Facility is located is, which must be within the boundaries
	of the previously identified Site:
	(such description shall amend the description of the Site in Exhibit A).
5.	Seller or its designees have mobilized to the Site and begun physical movement of soil at
	the Site.
	TNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as
of the	day of
SELL	ER ENTITY]
D.,,	
Dу _{Гео} .	
IIS	
Date:_	

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

	Date: Bank Ref.: Amount: US\$[XXXXXXX] Expiry Date:
Beneficiary:	
Peninsula Clean Energy	
[Address]	
Ladies and Gentlemen:	
On behalf of [XXXXXXX] ("Applicant"), we, [insertissue our Irrevocable Standby Letter of Credit No. of Peninsula Clean Energy, Address	[XXXXXXX] (the "Letter of Credit") in favor for an amount not to exceed the aggregate sum [XXXXXX] and 00/100), pursuant to that certain reement") between Applicant and Beneficiary, ediately and shall have an initial expiry date of

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, mentioning thereon our Letter of Credit No. [XXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer in person, by courier or by fax at **[insert bank address]**. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds.

The document(s) required may also be presented by fax at facsimile no. (xxx) xxx-xxx on or before the expiry date (as may be extended below) on this Letter of Credit in accordance with the terms and conditions of this Letter of Credit. No mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents without the need of originally signed

documents.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to permit this Letter of Credit to be so extended, in which case it will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXXX-XXXX] and have this Letter of Credit available.

[Bank Name]	
[Insert officer name]	
[Insert officer title]	

DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:
The undersigned, a duly authorized representative of Peninsula Clean Energy, Address as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of [XXXXXXXX] (the "Applicant"), hereby certifies to the Bank as follows:
1. Applicant and Beneficiary are party to that certain Agreement dated as of [XXXXXXX] (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$
or
Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$, which equals the full available amount under the Letter of Credit, because the Bank has provided notice of its intent to not extend the expiry date of the Letter of Credit and Applicant failed to provide acceptable replacement security to Beneficiary at least thirty (30) days prior to the expiry date of the Letter of Credit.
3. The undersigned is a duly authorized representative of Peninsula Clean Energy and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.
You are hereby directed to make payment of the requested amount to Peninsula Clean Energy by wire transfer in immediately available funds to the following account:
Specify account information]
Peninsula Clean Energy
Name and Title of Authorized Representative Date



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: October 15, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, CEO

Shayna Barnes, Operations Specialist

Kirsten Andrews-Schwind, Senior Manager of Community Relations

SUBJECT: Approve Contract with GCAP Services, Inc. For Diversity, Equity,

Accessibility, and Inclusion Consulting Services in an amount not to exceed

\$175,650

RECOMMENDATION:

Approve a contract with GCAP Services, Inc. for Diversity, Equity, Accessibility, and Inclusion (DEAI) Consulting Services in an amount not to exceed \$175,650.

BACKGROUND:

In July 2020, the Citizens Advisory Committee (CAC) formed an Equity Working Group with the primary task of "ensur[ing] equity is a priority across all working groups and built into PCE strategic priorities." The CAC's equity working group created a draft equity statement and brought the draft statement to Peninsula Clean Energy's Board of Directors at their January 28, 2021 meeting. The draft equity statement is provided below:

In light of the community's focus on anti-racism and the Black Lives Matter Movement following the death of George Floyd in May of 2020 and other continuing instances of systemic racism and institutional violence against black people, the Peninsula Clean Energy CAC Equity Working Group has worked over the past few months on a statement that would embody the commitment of the organization to ensure equity and inclusion in their work. The working group recognizes that there are many forms of discrimination that impact people from different backgrounds but the growing awareness of significant violence and discrimination against people of color (BIPOC) is our current focus, and we are committed to developing a framework that will eventually address discrimination in all its forms.

Peninsula Clean Energy Citizens Advisory Committee Draft Statement on Equity and Inclusion

- Peninsula Clean Energy commits to making anti-racism top of mind during decision making.
- o Will follow best practices in hiring, vendor selection and project selection
- Will use a racial equity lens when developing the community impact report

- Develop a means of tracking revenue and formulating a mechanism (qualitative and quantitative) that ensures accountability.
- Current board goals 20% of programs funding going to low-income communities (working on definition)
- Pursue equity in energy generation and programs
- Low-income households, as well as Black, Hispanic, and Native American households, pay a much larger share of their income on energy bills, straining budgets and putting them at heightened risk of utility shutoffs during the COVID-19 pandemic and recession (https://www.aceee.org/press-release/2020/09/report-low-income-households-communities-color-face-high-energy-burden)

At the Board of Directors Meeting on January 28, 2021, the Board accepted the above draft equity statement and formed a Diversity, Equity, Accessibility, and Inclusion Subcommittee to build on the statement and create a DEAI organizational statement/policy and action plan for Peninsula Clean Energy. Board members on this subcommittee include Directors Donna Colson, Michael Smith, Sam Hindi, Carlos Romero, and Roderick Daus-Magbual.

Senate Bill 255 and Utility Supplier Diversity

In addition to the CAC Draft Statement on Equity and Inclusion serving as a catalyst for undertaking the DEAI work, Peninsula Clean Energy has new regulatory compliance reporting obligations regarding DEAI under Senate Bill (SB) 255 (Bradford). SB 255 is a bill signed by Governor Newsom in October 2019 that amended the Public Utilities Code Sections 366.2 and 8283 and brought Community Choice Aggregators into the California Public Utilities Commission's (CPUC's) Utility Supplier Diversity Program. The Utility Supplier Diversity Program's framework and guidelines are laid out in the CPUC's General Order (GO) 156. To comply with SB 255 and GO 156, CCAs like Peninsula Clean Energy must annually submit a detailed and verifiable plan for increasing procurement from small, local, and diverse business enterprises, and a report that details our activities supporting diverse business enterprises and amount of procurement spend going towards these businesses in the prior year. This program focuses on the positive downstream economic effects of including diverse suppliers in utilities' supply chains. Compliance with SB 255 and GO 156 is another consideration that staff and the Board subcommittee contemplated when drafting the Request for Proposals and selecting the consultant team to carry out the DEAI work.

DISCUSSION:

To create the DEAI organizational statement/policy and action plan, Peninsula Clean Energy staff drafted a Request for Proposals (RFP) for DEAI consulting services under direction from the DEAI subcommittee to be released as a competitive solicitation. The Request for Proposals was released in early May 2021 with responses due in mid-June 2021. Staff received eight responses to this RFP and interviewed three top consultants with the Board subcommittee in early July. The Board subcommittee's final recommendation is that the consulting team from GCAP Services, Inc. is best fit for Peninsula Clean Energy's range of needs, including regulatory compliance with SB 255 and GO 156, and be selected to carry out the DEAI project.

FISCAL IMPACT:

This contract is for an amount of \$175,650 to be disbursed in FY22.

STRATEGIC PLAN:

The DEAI Initiative supports the Organizational Excellence pillar of the strategic plan to ensure organizational excellence by adhering to sustainable business practices and fostering a workplace culture of innovation, diversity, transparency, and integrity. This initiative seeks to support the following objectives and key tactics under this pillar:

Objective A: Culture and People: Foster a workplace culture that attracts and develops exceptional talent and values all people

• Key Tactic 3: Ensure that our recruitment processes are designed to attract high caliber and diverse applicants

Objective D: External Vendor Partners: Implement Vendor Policies that embrace diversity and inclusion and that optimize engagement results

- Key Tactic 1: Develop methods to ensure adherence to the organization's Inclusive and Sustainable Workforce Policy
- Key Tactic 2: Develop methods to ensure adherence to the organization's Ethical Vendor Standards Policy

This initiative also supports the Community Energy Programs pillar of the strategic plan to implement robust energy programs that reduce greenhouse gas emissions, align energy supply and demand, and provide benefits to community stakeholder groups. The DEAI initiative seeks to support the following objectives and key tactics under this pillar:

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities
- Key Tactic 3: Support workforce development programs in the County

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

* * * * * *

RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER
TO EXECUTE AN AGREEMENT WITH GCAP SERVICES, INC. IN AMOUNT NOT TO
EXCEED \$175,650 FOR DIVERSITY, EQUITY, ACCESSIBILITY, AND INCLUSION
CONSULTING SERVICES

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

WHEREAS, Peninsula Clean Energy was formed on February 29, 2016 and WHEREAS, the Board approved the creation of a Citizens Advisory Committee ("Committee" or "CAC") on. February 23, 2017, to be appointed by the PCE Board,

WHEREAS, the Citizens Advisory Committee formed an Equity Working Group in July 2020 with the primary task of "ensur[ing] equity is a priority across all working groups and built into PCE strategic priorities,

WHEREAS, the CAC's Equity Working Group created a draft equity statement and brought it to the Board of Directors at their January 28, 2021 meeting for consideration and adoption; and

WHEREAS, at that meeting the Board of Directors accepted the draft equity statement and formed a Diversity, Equity, Accessibility, and Inclusion ("DEAI")

Subcommittee to create a DEAI organizational statement or policy and action plan for Peninsula Clean Energy,

WHEREAS, Peninsula Clean Energy also has regulatory compliance reporting obligations regarding DEAI under Senate Bill 255 and the California Public Utilities Commission's General Order 156,

WHEREAS, to create the DEAI organizational statement or policy and action plan Peninsula Clean Energy staff drafted a Request for Proposals (RFP) for DEAI consulting services under direction from the DEAI subcommittee,

WHEREAS, the RFP was released as a competitive solicitation and eight responses were received,

WHEREAS, PCE Staff and the DEAI Subcommittee conducted interviews with the top 3 consultant teams in early July,

WHEREAS, GCAP Services, Inc. was deemed best fit by staff and the DEAI Subcommittee to meet Peninsula Clean Energy's range of needs including compliance with the regulatory reporting requirement GO 156 and meeting the strategic goals of ensur[ing] organizational excellence by adhering to sustainable business practices and fostering a workplace culture of innovation, diversity, transparency, and integrity, ensuring that our recruitment processes are designed to attract high caliber and diverse applicants, implement vendor policies that embrace diversity and inclusion and that

optimize engagement results, invest in programs that benefit underserved communities, and support workforce development programs: and

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to finalize and execute the agreement with GCAP Services, Inc. for Diversity, Equity, Accessibility, and Inclusion Consulting Services in an amount not to exceed \$175,650.

* * * * * *

AGREEMENT BETWEEN THE PENINSULA CLEAN ENERGY AUTHORITY AND GCAP Services, Inc.

This Agreement is entered into this 1st day of November, 2021, by and between the Peninsula Clean Energy Authority, a joint powers authority of the state of California, hereinafter called "PCEA," and GCAP Services, Inc., hereinafter called "Contractor."

* * *

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

Whereas, it is necessary and desirable that Contractor be retained for the purpose of completing the Diversity, Equity, Accessibility and Inclusion Consulting Services as described in the Request for Proposals dated May 5, 2021.

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

1. Exhibits and Attachments

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

Exhibit A—Services
Exhibit B—Payments and Rates

2. Services to be performed by Contractor

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

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, PCEA shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. PCEA reserves the right to withhold payment if PCEA determines that the quantity or quality of the work performed is unacceptable. In no event shall PCEA's total fiscal obligation under this Agreement shall exceed one hundred seventy-five thousand six hundred and fifty (\$175,650). In the event that the PCEA makes any advance

payments, Contractor agrees to refund any amounts in excess of the amount owed by the PCEA at the time of contract termination or expiration.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from November 1, 2021 through October 31, 2022.

5. <u>Termination; Availability of Funds</u>

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

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

6. <u>Intellectual Property and Ownership of Work Product</u>

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

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

Contractor may (1) retain its rights to and ownership of pre-existing or open-source materials and/or (2) retain one copy of Work Products for archival use, but in either

instance must notify PCEA and identify any such materials in writing prior to the commencement of work under this Agreement.

7. Relationship of Parties

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

8. Hold Harmless

a. General Hold Harmless

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

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of PCEA and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which PCEA has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

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

9. <u>Assignability and Subcontracting</u>

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

10. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

11. W-9 Form and Submission of Invoices

Invoices shall only be submitted by electronic form by sending an email to both sbarnes@peninsulacleanenergy.com and to PCEA's Finance email address (finance@peninsulacleanenergy.com). Contractor shall submit a completed W-9 form electronically to the same email addresses. Contractor understands that no invoice will be paid by PCEA unless and until a W-9 Form is received by PCEA.

12. <u>Insurance</u>

a. General Requirements

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

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the

California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. <u>Liability Insurance</u>

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

Yes	Comprehensive General Liability (Applies to all agreements)	\$1,000,000
Yes	Professional Liability Insurance	\$1,000,000

PCEA and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to PCEA and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the PCEA or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

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

13. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated

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

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

14. Non-Discrimination and Other Requirements

a. General Non-discrimination

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

b. **Equal Employment Opportunity**

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

c. Section 504 of the Rehabilitation Act of 1973

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

d. Employee Benefits

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

e. <u>Discrimination Against Individuals with Disabilities</u>

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

f. <u>History of Discrimination</u>

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

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

Reporting; Violation of Non-discrimination Provisions

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

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

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a PCEA contract for a period of up to 3 years;

- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the Chief Executive Officer.

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

15. Confidential Information

- (a) Contractor shall maintain in confidence and not disclose to any third party or use in any manner not required or authorized under this Agreement any and all Confidential Information held by PCEA.
- (b) The term "Confidential Information" includes all information, documents, and materials owned by PCEA, including technical, financial, business, or PCEA customer information, which is not available to the general public, as well as information derived from such information. Information received by Contractor shall not be considered Confidential Information if: (i) it is or becomes available to the public through no wrongful act of Contractor; (ii) it is already in the possession of Contractor and not subject to any confidentiality agreement between the Parties; (iii) it is received from a third party without restriction for the benefit of PCEA and without breach of this Agreement; (iv) it is independently developed by Contractor; (v) it is disclosed pursuant to a requirement of law, including, but not limited to, the California Public Records Act (Cal. Gov't Code Section 6250, et seq.); or (vi) is disclosed to or by a duly empowered government agency, or a court of competent jurisdiction after due notice and an adequate opportunity to intervene is given to PCEA, unless such notice is prohibited.
- (c) As practicable, PCEA shall mark Confidential Information with the words "Confidential" or "Confidential Material" or with words of similar import, or, if that is not possible, PCEA shall notify the Contractor (for example, by cover e-mail transmitting an electronic document) that the material is Confidential Information. PCEA's failure or delay, for whatever reason, to mark or notify Contractor at the time the material is produced shall not take the material out of the coverage of this Agreement.
- (d) Contractor will direct its employees, contractors, consultants, and representatives who have access to any Confidential Information to comply with the terms of this Section.
- (e) Upon termination or expiration of this Agreement, Contractor shall, at PCEA's exclusive direction, either return or destroy all such Confidential Information and shall so

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

16. Data Security

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

17. Retention of Records; Right to Monitor and Audit

- (a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after PCEA makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by PCEA, a Federal grantor agency, and the State of California.
- (b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by PCEA.
- (c) Contractor agrees upon reasonable notice to provide to PCEA, to any Federal or State department having monitoring or review authority, to PCEA's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

18. Merger Clause; Amendments

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

19. Controlling Law; Venue

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

20. Notices

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

In the case of PCEA, to:

Name/Title: Jan Pepper, Chief Executive Officer

Address: 2075 Woodside Road, Redwood City, CA 94061

Telephone: 650-260-0100

Email: jpepper@peninsulacleanenergy.com

In the case of Contractor, to:

Name/Title: Edward Salcedo, Jr., President

Address: 3525 Hyland Avenue, Suite 140, Costa Mesa, CA 92626

Telephone: 714-800-1795

Email: esalcedo@gcapservices.com

21. <u>Electronic Signature</u>

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

22. No Recourse Against PCEA's Member Agencies

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

* * *

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

PENINSULA CLEAN ENERGY AUTHORITY

E	Ву:
(Chief Executive Officer, Peninsula Clean Energy Authority
Γ	Date:
GCAP \$	Services, Inc.
	I Salcedo, Jr., President
Date: _	

Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the services as described in the attached Revised GCAP DEAI Proposal with Revised Pricing except that:

- 1. The timing shown in the Proposed Schedule with a starting month of August 2021 should be changed to November 2021.
- 2. Interviewing key stakeholders shall be added under part B of the Work Plan: Conduct DEAI Organizational Needs Assessment.

Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, PCEA shall pay Contractor based on the fee schedule included in the attached Revised GCAP DEAI Proposal with Revised Pricing.



Revised on August 11, 2021

Technical and Cost Proposal June 4, 2021



RFP: Diversity, Equity, Accessibility, and Inclusion Consulting Services

Submitted by: GCAP Services, Inc.



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Bar on left margin of text for Section E of Approach, 1. GCAP Work Plan denotes added text to proposal.



Cover Letter

Peninsula Clean Energy 2075 Woodside Rd Redwood City, CA 94061

RE: Request for Proposals for Diversity, Equity, Accessibility, and Inclusion Consulting Services

To Whom it May Concern:

Thank you for the opportunity to provide the Peninsula Clean Energy Authority (PCE) with a customized proposal for Diversity, Equity, Accessibility, and Inclusion (DEAI) Consulting Services. GCAP Services, Inc. (GCAP) is pleased to submit this proposal to perform DEAI Consulting Services to PCE. As a Supplier Clearinghouse Minority Business Enterprise (MBE) certified professional consulting firm, we have over twenty-two (22) years of experience providing management, assessment, benchmarking, training, and support in a wide variety of Diversity, Equity, Accessibility, and Inclusion work areas. Established in 1997, GCAP is a California-based C-Corporation headquartered at 3525 Hyland Ave, Suite 140, Costa Mesa, CA 92626 and can be contacted at (714) 800-1795. GCAP firmly believes in equitability and inclusivity, with about 75% of our employees being minority and/or women. For this engagement, GCAP has joined with Rosales Business Partners (RBP), a San Francisco based consulting firm focused on diversity, equity and inclusion regarding internal and external workforce policies and programs. Together, our firms have extensive experience in all aspects of the scope of work as well as a strong legal background in DEAI matters.

Our proposal is fully responsive to the requirements outlined in the referenced RFP and represents GCAP's intention to perform the services as outlined. GCAP is willing to enter into a contract under the terms and conditions prescribed in the Standard Contract Terms document. We appreciate the opportunity to support PCE and have assembled a team with extensive experience providing DEAI services. We commit to providing excellent and responsive support to PCE's needs under this engagement.

Upon contract award, we stand ready to support PCE achieve its goal to "ensure organizational excellence by adhering to sustainable business practices and fostering a workplace culture of innovation, diversity, transparency, and integrity".

GCAP has no planned mergers or acquisitions and no pending lawsuits or litigation. Our firm is financially stable with no current long-term debt, steady cash flow and no foreseeable office closures or other factors that would impede our ability to successfully execute this contract.

Mr. Edward Salcedo, Jr. will serve as GCAP's representative and primary point of contact during the RFP review process. His contact information and can be found in the signature below.

Sincerely,

Edward Salcedo, Jr., President

Solvand Salcido

E: <u>esalcedo@gcapservices.com</u>

P: (714) 800-1795









Approach

1. GCAP Work Plan

We understand PCE is seeking a consultant to provide Diversity, Equity, Accessibility, and Inclusion (DEAI) consulting services for a project duration of four (4) to six (6) months. Having performed similar DEAI consulting projects for numerous public-sector organizations for over twenty-two (22) years, the GCAP and RBP teams have developed a refined and proven methodology along with tools to effectively execute the organizational-wide goals defined by PCE. We believe we can help PCE move towards a place where shared values are clear and DEAI initiatives are fostered organizational-wide.

Our approach for this engagement will be based on our proven practice to assign qualified and experienced staff to manage the dynamic and detail oriented DEAI Program requirements for PCE. GCAP utilizes a diverse project team that provides subject matter expertise in the various program requirements. We assign staff to each task depending on the complexity of the task; therefore, PCE will only pay for the appropriate level of services needed for each task. For complex tasks and those that require regulatory research, we assign senior staff that can provide effective support. Our team will perform all tasks as outlined in the RFP to ensure PCE's DEAI program is thoughtfully developed and executed, and all requirements are met.

A. Review Relevant DEAI Legislation and Regulatory Requirements

GCAP will work with PCE staff to review relevant legislation and regulatory reporting requirements regarding DEAI and identify best practices to improve organizational performance. We will review the regulatory requirements of Senate Bill 255 (Bradford), General Order 156, and Proposition 209 at a minimum. With two attorneys on the team, extensive experience conducting regulatory reviews, and specific experience in each of the three (3) key regulatory areas, our team is well equipped to perform this task. Based on our review, we will identify requirements that are applicable to PCE and recommend areas for improvement as well as metrics for tracking improvement.

Deliverable: Brief report identifying organization-specific areas for improvement and recommendations.

B. Conduct DEAI Organizational Needs Assessment

The GCAP Team will develop and conduct a DEAI needs assessment in the form of a survey for PCE staff, Board Members, Citizens Advisory Committee members, and key community stakeholders. Based on our experience there is tremendous value in conducting surveys of stakeholders at varying levels within the organization as well as external groups in the community. Understanding a broad range of perspectives will ensure we can incorporate the most meaningful feedback possible into our presentation to the Board of Directors (BOD). Due to the sensitive nature of DEAI topics, our team recommends that the survey be conducted anonymously. We will prepare a survey questionnaire for PCE to review and approve prior to sending to stakeholder groups. The survey will at a minimum will identify opportunities for enhancing equity fluent leadership within the organization; identify norms and processes that may contribute to implicit bias in contracting, employment, HR practices, and internal organizational culture; and identify issues of environmental and social justice related to PCE's operations, emphasizing equitable access to clean and lower priced energy in the organization's customer offerings, programs, and benefits. The survey will seek to uncover implicit bias, understand feelings of racism within the organization, and explore the topics of diversity and inclusion within management, feelings of equity between employees, DEAI related to worker advancement and training, respect for individuals' values and differences, and more.



We have extensive experience developing and facilitating surveys and will utilize one of the platforms we have available (Constant Contact or Survey Monkey) or PCE's preferred survey platform. After the survey has been distributed and all results compiled, our team will conduct an in-depth analysis of the raw data. Based on regulatory knowledge gained under task A along with the survey analysis, we will be able to identify issues, opportunities, and gaps within the existing processes and procedures. Our team will build off of the report developed under task A to create a comprehensive assessment and recommendations report summarizing our additional findings and providing recommendations for change and or improvement. We will create a detailed presentation of priority issues for the PCE BOD and/or its DEAI subcommittee to focus on moving forward.

Deliverable: Conduct detailed presentation to the BOD and/or its DEAI subcommittee of results of the survey, priority issues identified, and recommendations for the process moving forward.

C. Create Organizational DEAI Statement or Policy

Our team will work with PCE in developing a DEAI policy while building off of the following aspects of the Draft Statement on Equity and Inclusion:

- Committing to making anti-racism top of mind during decision making
- Developing a means of tracking revenue and formulating a mechanism (qualitative and quantitative) that ensures accountability
- Pursuing equity in energy generation and programs

We will develop a comprehensive DEAI policy that incorporates knowledge gained from tasks A and B above. The policy will include the creation of an overarching organizational statement regarding DEAI, combating racism, and promoting values and a shared identity at PCE. It will serve to inspire and communicate the purpose of the DEAI initiative as a whole. The policy will include key DEAI definitions, a summary of DEAI best practices, and clearly defined next steps in order to achieve long and short-term efforts/goals. We will work with PCE to determine other key areas to be included in the policy.

An action plan will be developed based upon the short- and long-term recommendations developed under tasks A and B. We will create a timeline for the execution of next steps which will be specific, measurable, and attainable with clearly defined deliverables that are laid out in chronological order for the smoothest execution. We will work with the BOD as needed to make adjustments to the DEAI policy and action plan in order to gain BOD approval.

Deliverable: Obtain PCE Board of Directors' approval of organizational DEAI policy and action plan to implement the policy.

D. Update Relevant Organizational Policies

Our team possesses extensive experience in the analysis and review of policies and procedures for critical language and regulatory compliance. We will review PCE's existing policies including but not limited to the four (4) areas identified below to ensure they include vital DEAI language, align with the new DEAI policy, and enforce PCE's goal of fostering a workplace culture of innovation, diversity, transparency, and integrity. GCAP will update policy documents and share with PCE a list of key findings.

- ✓ PCE's Strategic Plan
- ✓ PCE's Employee Handbook
- ✓ PCE's Policy #9 Ethical Vendor Standards
- ✓ PCE's Policy #10 Inclusive and Sustainable Workforce Policy

Deliverable: Obtain PCE BOD's approval of the updated policies listed above.



E. Create Organizational Departmental Goals, Practices, and Metrics

In order to create a robust and customized set of departmental goals and practices, it will be vital to identify metrics for PCE to track and monitor progress, identify risk areas, and measure overall DEAI initiative goal attainment. We will conduct an analysis to establish baseline metrics for grading how PCE is currently performing against DEAI policies and a description of actions to implement policies. We will work with PCE to develop appropriate and tailored metrics as well as a plan, tools, and templates for monitoring progress. This will include identifying how to measure progress, who will measure progress, and how often progress should be measured. Possible metrics to consider may include but are not limited to the following:

- Ratio of women and diverse employees
- Retention of diverse employees
- ✓ Promotion data
- Firing data
- Career advancement of diverse employees
- ✓ Salary equality across genders
- Exit interview data collected
- ✓ Grievances or lawsuits filed
- ✓ Measure % of program funding going to low-income communities.
- ✓ Efforts implemented to promote equity in energy generation and programs

We will develop a reporting structure for tracking agreed upon metrics. Once this tracking mechanism is in place, results will need to be routinely analyzed and interpreted. We believe that results of diversity efforts should be transparent internally in order to foster trust and encourage accountability. Reporting DEAI metrics within the organization is best done at least annually. Once this reporting structure has been implemented, our team will work with the appropriate senior or individual staff members to support the integration of key metrics into departmental goals and individual workplans.

Our team will begin by analyzing existing baseline metrics and then develop specific action plans to implement departmental goals, practices, and metrics. The analysis will begin with reviewing policies, systems, reports, and other documents to determine gaps. The team will capture DEAI data to evaluate performance and report metrics. Tools to help operationalize DEAI policies will include but are not limited to system enhancements, revised or new reports and forms, and internal reviews of key performance indicators.

The templates and other documents to be reviewed include:

- Solicitation Language: Revise or remove language that may create barriers or obstacles for diverse businesses, including unnecessary or high requirements bonding, insurance, experience levels, etc.
- Customer Programs: Analyze existing customer programs, including programs for vulnerable groups such as Low-income bill credit, small business bill credit, Low-income home upgrades, and outreach grants programs. Review near and long-term programs and recommend improvements to DEAI objectives. Customer programs reviewed may be revised subject to PCE approval.
- Improved G.O. 156 Performance reporting: Review outreach and proposal/bid process to include opportunity for diverse businesses to participate. Ensure outreach policies reach desired diverse businesses.
- Hiring Process & HR Processes: Review hiring process, including job ads, placement of ads, education and experience requirements, and use of diverse sources for new hires.



- Training Plan: Review existing training plans and update to include new DEAI requirements and policies. Develop schedule and recommended training subject matter.
- Update existing Knowledge Performance Indicators (KPIs) to incorporate changes to DEAI related policies.

Deliverables: Updated contracting and grant processes, updated processes for designing customer programs and communications, improved organizational performance in regulatory reporting (including GO 156), updated hiring and other HR processes, completed training plan for PCE Board Members, staff, and CAC members, and updated KPIs in staff workplans approved and adopted.

2. Goals and Measurable Objectives

GCAP will establish goals and measurable objectives that PCE can utilize to assess our team's success in performing the SOW. Examples of goals and objectives may include the following:

- ✓ Performing efficient data gathering to be minimally disruptive to the PCE team.
- ✓ Leveraging our knowledge of GO 156, Prop 209, DEAI training services, and experience working with the Joint Utilities to incorporate best practices into work products.
- Revising procedures and policies that provide fair and equitable opportunities to all PCE employees and stakeholders.
- ✓ Developing metrics that allow PCE to measure DEAI performance.
- ✓ Developing a training plan and practices to provide DEAI continuing education to workforce and stakeholders.

3. Management Approach

Project management and overall coordination of work efforts is an important and integral component of all projects and will be vital for ensuring that this project is delivered on time, within budget, and to the satisfaction of PCE. GCAP's overall project philosophy is based on transparency of information and regular communication among team members. Our team members are familiar with the sensitivity of this work and have incorporated safeguards to ensure that internal controls and practices are in place to provide our clients with the assurance that quality is maintained on each and every task. Our proposed Project Manager (PM) will review all work products for quality before being delivered to PCE.

Should we be awarded this project, our PM will develop a Project Work Plan that will be shared with all team members and will describe the tasks, deliverable work products, delivery milestones, and identify who is responsible for each. This plan will serve as the roadmap to guide all of the engagement's activities. By frequently updating and monitoring this plan, we will ensure the project adheres to the time constraints set forth by PCE. Our PM will closely monitor the budget to ensure accurate and efficient use of costs. GCAP utilizes a web-based time keeping system that allows staff to easily track time spent on each project. Each week, a project hours report will be downloaded from the system and will serve as a valuable tool for monitoring project hours and budget to ensure the budget stays on track.

Our team members will participate in routine internal check-in calls to discuss project status, schedule, and address any questions or concerns. We encourage informal and real-time communication among team members in order to quickly address questions and keep the project on schedule. All working project documents will be stored in secured SharePoint folders for team members to collaborate and share.



4. Key Challenges and Resolutions

From our significant experience providing similar services for over twenty-two (22) years, we have gained extensive knowledge of challenges that may arise and how to effectively solve them. From our experience, the best ways to avoid challenges and manage risk is to proactively communicate requirements, set expectations, and continuously monitor performance. Examples of issues we have encountered and successfully resolved in the past include but are not limited to the following:

- Challenge: Obtaining accurate and complete responses from survey participants.
 Solution: Providing participants with project background information to encourage survey completion including project goals and objectives as well as the benefits of a diverse and inclusive organization.
- Challenge: Identifying best practices that are a fit for PCE.
 Solution: Gaining knowledge of PCE objectives, culture, and practices through interviews, surveying, and other discovery methods.
- Challenge: Ensuring PCE employees and stakeholders enforce and monitor DEAl policies after project completion.
 Solution: Establishing key metrics and continual training to keep employees and stakeholders actively involved.

5. Timeline

Please see "Proposed Schedule" section below for details of the proposed project timeline.



Qualifications and Experience

GCAP History and Experience

GCAP Services, Inc. (GCAP) is a California-based professional consulting firm that was founded as a corporation in 1997 and is certified as an SBE, MBE, and DBE. GCAP supports the public sector including highway, rail, transit, airport, utility, and energy projects by delivering practical, cost-effective solutions for business and administrative challenges. GCAP offers experienced consultants and technical experts in administration, supplier diversity, process improvement, compliance, system assessments, end user needs analysis, and employee training. As a leader in diversity, equity, accessibility, and inclusion solutions, GCAP provides innovative and technology-based solutions to many of our clients. Since its founding, GCAP has successfully delivered over one hundred eighty (180) high-quality consulting engagements to federal, state, county, and local government agencies. We boast a strong track record of completing projects on time, within budget and satisfying our client's needs which is evidenced by the number of repeat clients we continue to support.

GCAP has been involved in all aspects of Diversity, Equity, Accessibility, and Inclusion for over twenty-two (22) years and possesses a strong background providing a variety of DEAI consulting support services. As a minority owned business, GCAP's passion lies in supporting diversity and equity among businesses and individuals. We have developed and conducted human resource related training strategies and programs, created diversity newsletters, and developed organization wide DEAI mission statements (see diagram below). GCAP develops and monitors EEO, Title VI, and Project Labor Agreements. Our team has extensive experience assisting firms with getting certified as well as experience processing SBE, WBE, MBE, DBE, DVBE, and LGBTBE certifications for our agency clients. Our team develops and monitors diverse supplier programs to ensure disadvantaged businesses are being paid promptly and we perform prevailing wage monitoring to ensure workers are being paid the appropriate wages for the work performed.





The GCAP team facilitates speed networking events to open the door for partnering opportunities between small and large firms and assists in disparity studies to analyze and understand obstacles faced by small and diverse businesses.

GCAP has extensive experience in guiding our clients through assessments and business process change management. We assess current states, conduct research and benchmarking, perform interviews and surveys, develop recommendations for improvement, and implement change in the form of new processes and procedures and or system implementations and trainings. GCAP's extensive experience in delivering process and organizational assessments has provided us with an archive of methods, processes, templates and tools, which we will draw upon to ensure a smooth, effective and efficient project delivery. Our tools and methods are continually refined and improved to ensure that our latest experience and best practices are incorporated and leveraged on future engagements. We align years of experience, industry knowledge, and best practices to provide our clients with a comprehensive assessment of current conditions and recommendations for implementing effective programs and solutions.

RBP History and Experience

Mara Rosales, managing partner of Rosales Business Partners LLC (RBP) and Rosales Law Partners LLP (RLP), is a nationally recognized subject matter expert on matters relating to diversity, equity and inclusion regarding internal and external workforce policies and programs. Ms. Rosales' expertise, which spans over three decades, is as a civil rights attorney and equity consultant for public agencies. During her 20-year tenure with the City of San Francisco, Ms. Rosales was chief counsel to four city departments - the Human Rights Commission (HRC), Police Department, Recreation & Park Department, and the Airport. In these capacities Ms. Rosales advised a total of 14 department heads and 60 commissioners on organizational and management matters, including agency employment practices and policies as well as workforce retention and diversity practices for the workforces of companies under contract with the agency.

Early in her career Ms. Rosales served for eight years as principal deputy city attorney to the HRC whose responsibility is to enforce San Francisco's nondiscrimination in employment laws. She also was the first attorney to represent the SF Police Commission and developed for the Commission procedural rules guiding the conduct of officer disciplinary trials, which are in effect today. At SF International Airport, where she worked for over a decade as General Counsel and later as Deputy Airport Director for Regulatory & Legislative Affairs, Ms. Rosales was a member of the Senior Staff. In this role, Ms. Rosales was actively involved in the strategic planning and direction of key SFO projects, including negotiating the Airport's precedent-setting project labor agreement, worker retention and labor peace policies with a focus to ensure equitable inclusion of minority, women, and economically disadvantaged individuals.

Ms. Rosales established RBP in 2010 and one of its first public sector clients was the Port of Oakland. In 2012 through 2015, Ms. Rosales worked closely with the Board of Port Commissioners and Port staff to develop a comprehensive Social Responsibility Policy, hire a new senior manager - Director of Social Responsibility- and implement the social responsibility policy for the Port's contracts, leases, and airport concessions.

Ms. Rosales' diverse practice in the equity and inclusion field includes in-depth experience with research and identification of best practices cultivating diversity in workforce development policies. As illustrations, in 2020 the National Academy of Sciences, Airport Cooperative Research Project, published a guidebook for the nation's airports entitled "Guidance for Diversity in Airport Business Contracting and Workforce Programs". The goal of the guidebook is to assist



airports increase diversity in their business contracting and support their efforts for a diverse and inclusive workforce. Ms. Rosales was an active and integral member of the research team and was the lead member on the workforce component of the research.

In her capacity as an attorney, Ms. Rosales is a subject matter expert in equal protection clause and Proposition 209 cases and matters relating to race and gender conscious public policy and programs. Ms. Rosales enjoys an impressive litigation success record in California federal and state courts defending the legality of MBE/WBE/LBE/DBE programs.

Most recently, Ms. Rosales co-authored a publication by the Equal Justice Society entitled "A Guide to Implementing Proposition 16" which addressed how California public agencies could prepare to respond to Proposition 16 in awarding contracts. Proposition 16, on California's November 2020 ballot, sought but failed to overturn Proposition 209.

Similar Projects

Please see below a summary of similar projects completed or worked on within the last two (2) years for similar organizations.

- 1. GCAP Project: San Diego Association of Governments (SANDAG) DBE Consulting Services (2011 2016, 2016 2021). GCAP provides overall strategic and compliance related support services to ensure SANDAG fully complies and adopts best practices related to DBE, small business, DEI, EEO, and Title VI compliance. GCAP performed nation-wide Small Business (SB) program benchmarking and worked with SANDAG to develop a custom SB program for their agency. GCAP has implemented various innovative and best practice procedures and has developed and conducted training programs and user manuals. We support SANDAG's Title VI and EEO programs and assisted in the creation of a pre apprenticeship program designed to train inner city students in the construction trade. In addition, our team helped SANDAG develop their DEI department and social equity statement.
- 2. GCAP Project: California Public Utilities Commission (CPUC) Supplier Clearinghouse (SCH) / B2GNow M/WBE Certification Services (2015 2020, 2020 2023) GCAP was awarded a second W/MBE certification supportive services contract by B2GNow to support the CPUC's SCH certification program. The GCAP team of five employees is responsible for developing all policies and procedures related to processing W/MBE on-line applications on the B2GNow system. GCAP manages approximately 8,000 certifications and is responsible for all new applications, re-certifications, reciprocal applications, denials, and appeals. GCAP staff are responsible for system reports, data exporting, data entry, and data maintenance. GCAP provides overall strategic and compliance related support services to ensure the CPUC's W/MBE program fully complies with GO 156 and other regulations.
- 3. GCAP Project: California Department of Transportation (Caltrans) / BBC Research and Consulting (BBC) Disparity Study (2020 2021). GCAP was selected by BBC Research and Consulting (the prime contractor) to provide a variety of disparity study support tasks. The study involved the examination of local industry and United States Department of Transportation (USDOT) contracts awarded in order to determine the utilization of minority and women-owned businesses in the respective marketplace. GCAP researched and gathered all relevant documentation in order to conduct a thorough quantitative review and analysis. Qualitative data was gathered through interviews of minority and women business owners to ascertain challenges and obstacles related to federally funded contracts. Our team facilitated public outreach and disparity study meetings helped to identify obstacles, challenges, and



- unfair practices regarding contracting processes. At the conclusion of the study, we provided input to develop a comprehensive report of findings and recommendations.
- 4. GCAP Project: The Metropolitan Water District of Southern California (MWD) / Keen Independent Research (Keen) Diversity, Equity, and Inclusion Consulting Services Strategic Plan (2021 Present). MWD recently selected Keen as the prime contractor for their DEI Consulting Services Strategic Plan engagement. GCAP was selected as a subcontractor by Keen and is collaborating with their team to develop a climate assessment related to the culture and work environment of the agency. The project will also include the development of a strategic plan to guide agency wide improvement. GCAP is responsible for qualitative data collection and analysis as well as providing input and support in the creation of the strategic improvement plan.
- 5. RBP Project: Port of San Francisco, Racial Equity Program Services (2020 Present). The RBP team, including Reynolds Consulting and Contigo Communications, are providing the Port assistance with the design of a staff training program focused on racial equity, as well as facilitation of the training program. Additionally, the team is supporting the Port with the creation of a racial equity policy that would inform the implementation of the Port's programs, policies, and practices.
- 6. RBP Project: San Francisco Municipal Transportation Agency (SFMTA) Disadvantaged Business Enterprise Availability, Utilization and Disparity Study; Disparity Study Report; DBE Support Services (2014 2020). SFMTA commissioned a Disadvantaged Business Enterprise Utilization, Availability, and Disparity Study to determine if disparities exist in SFMTA's utilization of Disadvantaged Business Enterprises (DBEs) in federally funded contracts. RBP conducted the study and the results of the study assisted SFMTA in the implementation of its DBE Program in federally funded contracts.
- 7. <u>RBP Project:</u> Transportation Research Board, Airport Cooperative Research Project (2018 2019). RBP developed a guidebook to assist airports in increasing diversity in their business contracting and support efforts for a diverse and inclusive workforce.

Relevant Licenses and Certifications

GCAP is a Supplier Clearinghouse certified MBE for the Utility Supplier Diversity Program of the California Public Utilities Commission. Our Supplier Clearinghouse Verification Order Number is #11120058.



References

The table below includes references and project descriptions for three (3) references from work performed in the last three (3) years on similar projects performed by GCAP and RBP. The projects listed below represent a small selection of the many relevant projects that our teams have completed.

CLIENT/CONTACT INFO

San Diego Association of Governments (SANDAG), CA

David Santos, Small Business Development Program Analyst 401 B Street, Suite 500 San Diego, CA 92101 (619) 595-5348 David.santos@sandag.org

Project Dates:

Contract 1: 2011 – 2016 Contract 2: 2016 – 2021 **Budget/Project Value:** Contract 1: \$2,000,000 Contract 2: \$2,100,000

GCAP Project

California Public Utilities Commission (CPUC) Supplier Clearinghouse (SCH)

Stephanie Green, Executive Division Supervisor 505 Van Ness Avenue San Francisco, CA 94102 (415) 703-5245 Stephanie.green@cpuc.ca.gov

Project Dates:

Contract 1: 2015 - 2020 Contract 2: 2020 - 2023 **Budget/Project Value:** Contract 1: \$3,504,036 Contract 2: \$2,364,912

DBE Consulting Services

PROJECT NAME AND SCOPE

GCAP provides overall strategic and compliance related support services to ensure SANDAG fully complies and adopts best practices related to DBE, small business, DEI, EEO, and Title VI compliance. GCAP performed nation-wide Small Business (SB) program benchmarking and worked with SANDAG to develop a custom SB program for their agency. GCAP has implemented various innovative and best practice procedures and has developed and conducted training programs and user manuals. We support SANDAG's Title VI, and EEO programs and assisted in the creation of a pre apprenticeship program designed to train inner city students in the construction trade. In addition, our team helped SANDAG develop their DEI department and social equity statement.

W/MBE Certification Services

GCAP was awarded a second W/MBE certification supportive services contract by B2GNow to support the CPUC's SCH certification program. The GCAP team of five employees is responsible for developing all policies and procedures related to processing W/MBE on-line applications on the B2GNow system. GCAP manages approximately 8,000 certifications, and is responsible for re-certifications, all new applications, reciprocal applications, denials, and appeals. GCAP staff are responsible for system reports, data exporting, data entry, and data maintenance. GCAP provides overall strategic and compliance related support services to ensure the CPUC's W/MBE program fully complies with GO 156 and other regulations.

GCAP Project

San Francisco Municipal Transportation Agency (SFMTA)

Virginia Harmon, DBE Liaison Officer

1 South Van Ness Ave., 6th floor San Francisco, CA 94103

Disadvantaged Business Enterprise Availability, Utilization and Disparity Study; Disparity Study Report; DBE Support Services

SFMTA commissioned a Disadvantaged Business Enterprise Utilization, Availability, and Disparity Study to determine if disparities exist in SFMTA's utilization of Disadvantaged Business Enterprises (DBEs) in federally



(415) 701-4404

Virginia.harmon@sfmta.com

Project Dates:

Disparity Study: 2014 - 2017
DBE Support Services: 2018 -

2020

Budget/Project Value: Disparity Study: \$404,920

DBE Support Services: \$120,000

RBP Project

funded contracts. RBP conducted the study and the results of the study assisted SFMTA in the implementation its DBE Program in federally funded contracts.

Certificates of Insurance

On the pages to follow, please find attached our Auto and General Liability Certificates of Insurance which indicate sufficient coverage to meet the insurance requirements outlined in the RFP.



Supplier Diversity Questionnaire (Optional)
On the pages to follow, please find attached our competed Supplier Diversity Questionnaire.



Proposed Schedule

Legend							
= Task Start							
= Task End							
△ = Deliverable	PROJECT SCHEDULE						
♦ = Meeting	2021						
						2022	
Task 1 - Review Relevant DEAI Legislation and Regulatory Requirements	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	
1a. Kick-off meeting	♦						
1b. Review at a minimum: SB 255, GO 156, and Prop 209							
1c. Identify best practices to improve performance on required metrics							
1d. Deliverable: Brief report identifying organization-specific areas for							
improvement and recommendations							
Task 2 - Conduct DEAI Organizational Needs Assessment							
2a. Create and faciliate survey of PCE staff, board members, citizens advisory							
committee, and key community stakeholders							
2b. Assess opportunities for enhancing equity fluent leadership, norms and							
processes contributing to implicit bias, and environmental/social justice issues							
related to PCE's operations (Analyze survey results)							
2c. Assess organizational needs and identify areas for improvement on DEAI							
issues. (Gap analysis, recommendations for improvement)							
2d. Deliverable: Detailed presentation to BOD summarizing survey, issues				\wedge			
identified, and recommendations							
Task 3 - Create Organizational DEAI Statement or Policy							
3a. Develop DEAI policy and action plan and work with BOD to get approval							
3b. BOD approval of plan							
Task 4 - Update Relevant Organizational Policies							
4a. Update policies as needed to align with DEAI Statement							
4b. BOD approval of policy updates							
Task 5 - Create Organizational Departmental Goals, Practices, and Metric	s to Operation	nalize DEAI Po	licies				
5a. Establish baseline DEAI metrics, develop action plan to implement changes,				4			
and develop tool/template to evaluate/monitor progress on metrics					A A		
5b. Support senior staff in integrating metrics into departmental goals							
5c. Support individual staff in integrating metrics into individual workplans							
5d. Update contracting and grant processses including language for RFPs and					_		
contract templates. Get staff approval.							
5e. Update processes for designing customer programs and communications. Get							
staff approval.					_		
5f. Update hiring and HR processes. Get staff approval.					4		
5g. Create training plan for PCE BOD, staff and CAC members							

PCE Revised Pricing

		GCAP Project Manager	\$200.00	GCAP Senior Consultants	\$125.00	GCAP Analyst	\$95.00	RBP Managing Partner	\$250.00	Total
Task #	Description	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	
	Review Relevant DEAI Legislation and Regulatory Requirements									
1a	■®ick-off meeting	2	\$400.00	2	\$250.00	2	\$190.00	2	\$500.00	\$1,340.00
1b	▶	12	\$2,400.00	12	\$1,500.00	12	\$1,140.00	12	\$3,000.00	\$8,040.00
1c	•Review at a minimum: SB 255, GO 156, Prop 209	8	\$1,600.00		\$0.00		\$0.00	14	\$3,500.00	\$5,100.00
1d	• ■ entify best practices to improve performance on metrics	4	\$800.00		\$0.00	4	\$380.00	6	\$1,500.00	\$2,680.00
1e	Deliverable: Brief report identifying organization-specific areas for improvement and recos	10	\$2,000.00	8	\$1,000.00	4	\$380.00	16	\$4,000.00	\$7,380.00
2	Conduct DEAI Organizational Needs Assessment									
2a	• reate and faciliate survey of PCE staff, board members, citizens advisory committee, and key community stakeholders	4	\$800.00	20	\$2,500.00	16	\$1,520.00	2	\$500.00	\$5,320.00
2aa	Interview Key Stakeholders (12 interviews). Includes									
	scheduling, documenting, and analyziing.	6	\$1,200.00	0	\$0.00	24	\$2,280.00	6	\$1,500.00	\$4,980.00
2b	•Assess opportunities for enhancing equity fluent leadership, norms and processes contributing to implicit bias, and environmental/social justice issues related to PCE's operations (Analyze survey results)	12	\$2,400.00	88	\$11,000.00	24	\$2,280.00	16	\$4,000.00	\$19,680.00
	■ Assess organizational needs and identify areas for improvement on DEAI issues. (Gap analysis, identify recommendations)	2	\$400.00	16	\$2,000.00		\$0.00	2	\$500.00	\$2,900.00
2d	•Detailed presentation to BOD summarizing survey, issues identified, and recommendations	8	\$1,600.00	32	\$4,000.00	16	\$1,520.00	8	\$2,000.00	¢0 120 00
3	Create Organizational DEAI Statement or Policy	0	\$1,000.00	32	\$4,000.00	10	\$1,520.00	0	\$2,000.00	\$9,120.00
3a	Develop DEAI policy and action plan get BOD approval	12	\$2,400.00	40	\$5,000.00	12	\$1,140.00	12	\$3,000.00	\$11,540.00
	Update Relevant Organizational Policies	12	72,400.00	40	73,000.00	12	γ1,1 40.00	12	\$3,000.00	Ş11,540.00
4a	Update four (4) policies as needed to align with DEAI									
10	Statement and get BOD approval.	10	\$2,000.00	64	\$8,000.00	8	\$760.00	12	\$3,000.00	\$13,760.00
	Create Organizational Departmental Goals, Practices, and Metrics to Operationalize DEAI Policies	10	+ 2,000.00		φο,οσοίου		Ţ7 00.00		+0,000.00	¥20,7 cc.cc
5a	Establish organization baseline DEAI metrics, develop action plan to implement changes, and develop tool/template to evaluate/monitor progress on metrics	20	\$4,000.00	96	\$12,000.00	32	\$3,040.00	14	\$3,500.00	\$22,540.00
5b	• Support senior staff in integrating metrics into departmental goals and workplans	8	\$1,600.00	36	\$4,500.00		\$0.00		\$0.00	\$6,100.00

PCE Revised Pricing

		GCAP Project Manager	\$200.00	GCAP Senior Consultants	\$125.00	GCAP Analyst	\$95.00	RBP Managing Partner	\$250.00	Total
5c	• Support individual staff in integrating metrics into individual		4				4		4	
	workplans and tasks		\$0.00	64	\$8,000.00		\$0.00		\$0.00	\$8,000.00
5d	■ Dpdate contracting and grant processses including language									
	for RFPs and contract templates - get staff approval									
		40	\$8,000.00	20	\$2,500.00	10	\$950.00		\$0.00	\$11,450.00
5e	 ■ Dpdate processes for designing customer programs and 									
	communications - get staff approval	8	\$1,600.00	60	\$7,500.00		\$0.00	2	\$500.00	\$9,600.00
5f	● ② pdate hiring and HR processes - get staff approval	4	\$800.00	48	\$6,000.00		\$0.00	16	\$4,000.00	\$10,800.00
5g	● ② reate training plan for PCE BOD, staff and CAC members	24	\$4,800.00	64	\$8,000.00	16	\$1,520.00	4	\$1,000.00	\$15,320.00
	Total	194	\$38,800.00	670	\$83,750.00	180	\$17,100.00	144	\$36,000.00	\$175,650.00

Assumptions:

Task 5b: Assumes 6 departments

Task 5c: Assumes 8 staff

Task 5d: Assumes 5 templates updated Task 5e: Assumes 5 processes updated

Task 5g: Does not include development of training materials

Task 2aa: Assumes 12 one hour interviews, 4 hours to

coordinate and schedule interviews.

Task 2b: Add 8 hours to analyze interview results.



Confirmation of Acceptance of Contract Terms
GCAP hereby accepts the contract terms and has no proposed contract modifications, amendments, or exceptions.



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: October 14, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: N/A

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Siobhan Doherty, Director of Power Resources

SUBJECT: Update on California Community Power (CCPower) Long Duration

Storage Project (Discussion)

RECOMMENDATION:

Review update on CC Power long duration storage request for offers.

BACKGROUND:

CC Power held a special meeting on Friday October 8, 2021 to discuss issuing a Notice of Intent to consider approving a contract with a long duration storage project that was identified through the request for offers issued in 2020. This Notice is required under the CC Power Joint Powers Agreement so that members may have adequate time to consider the projects before CC Power Board approval. Such approval is anticipated to be sought in December of this year from the CC Power Board.

DISCUSSION:

Staff provided an update to the Executive Committee on the RFO process and the CC Power special meeting at the October Executive Committee meeting. Staff will provide a similar update to the Board on the RFO process and the CC Power special meeting at the October Board meeting.

STRATEGIC PLAN:

This supports the following objectives in the strategic plan:

- B. Clean Power: Design a diverse power portfolio that is 100% carbon free by 2021; and 100% carbon free by 2025 on a 24 x 7 basis
- D. New Power Resources: Continually explore and support innovative sources and solutions for clean energy



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: October 15, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Karen Janowski, Director of Marketing and Community Relations &

Leslie Brown, Director of Account Services

SUBJECT: Update on Marketing, Outreach Activities, and Customer Care

BACKGROUND

The Marketing, Community Relations, and Customer Care Teams are responsible for enhancing Peninsula Clean Energy's brand reputation, educating and engaging customers, driving participation in programs, and ensuring customer satisfaction and retention. Tactics include community outreach, content creation and storytelling through owned (e.g. online, social media), earned (e.g. public relations), and paid media (advertising), school engagement programs, and customer care.

DISCUSSION

The following is an update of activities that are currently underway. See "Strategic Plan" section below for how these activities support Peninsula Clean Energy's strategic plan objectives.

Heat Pump Water Heater (HPWH) Incentive Program

Marketing is supporting the program goal to install 200 heat pump water heaters in the first two years. As of October 8, 2021, we have had more than 16,000 unique visitors to the HPWH incentive page through owned media (email), earned media and paid digital advertising.

Electric Vehicle (EV) Campaign

The expanded Used EV program was launched on August 9, 2021. Since launch, our digital advertising campaign and email bulletin have brought more than 5,100 visitors to the Used EV web page. Over 200 interest forms have been completed. Significant

updates to general EV messaging, web pages and resources are in development ahead of the start of a broader EV marketing campaign.

Power On Peninsula Resilience Program

Power On Peninsula is the innovative Peninsula Clean Energy program that is helping residents maintain power during grid outages. Through our relationship with Sunrun, this program offers grid storage that helps reduce greenhouse gas emissions and move Peninsula Clean Energy toward its goal of 100% renewable energy. A direct mail letter was sent in mid-September to about 94,000 Peninsula Clean Energy customers who are homeowners and a follow-up email was sent the week of October 4 to 70,000 of those for whom we have email addresses.

Schools Engagement Programs

The San Mateo County Community College District (SMCCD) 2021-2022 Energize Colleges Program, supported by a grant from Peninsula Clean Energy, has kicked off with the hiring of a Climate Corps Fellow to coordinate the program.

We are finalizing a contract, authorized by the Peninsula Clean Energy Board of Directors in August, with San Mateo County Office of Education (SMCOE) to sponsor an expanded pilot of the Energy and Sustainability Dashboard for school districts in the County. A Climate Corps Fellow has been hired to coordinate the program.

Peninsula Clean Energy is participating in the <u>Sustainable and Climate Ready Schools</u> <u>Partnership Network</u> to support school district leaders in addressing their community needs to be climate responsive by offering technical and other assistance to green their operations.

Building Electrification Awareness Program

On October 6, 2021, we opened the call for submissions for the second annual All-Electric Awards program. This program showcases leadership and innovation in residential and commercial building projects. Application deadline is November 17. Award winners will be featured on our website (see the 2021 winners here) and in social media and will receive a customized plaque and \$2,000 cash award. Selected award winners may be featured in future virtual or in-person tours.

Community Outreach Grants

A Call for Proposals for Outreach Grants was issued on September 8, 2021 with a proposal submission deadline of October 15, 2021. Decisions about grant funding will be made by December 1, 2021 for a grant period starting in January 2022.

Community Benefits Summaries

Community Benefits Summaries have been sent to each of the 21 current jurisdictions. These summaries, which can also be found on the Peninsula Clean Energy <u>website</u>, provide the annual dollar and greenhouse gas savings for each community based on the 2020 emissions factors.

News & Media

Peninsula Clean Energy issued three news release since our last monthly report to the Board of Directors:

- Peninsula Clean Energy Launches Income-Qualified Home Upgrade Program
- Peninsula Clean Energy, Leeward Renewable Energy Sign 15-year Solar-Plus
 Storage Power Purchase Agreement for the Caparral Solar Facility
- <u>Second Annual Awards Program Spotlights All-Electric Building Innovation in San Mateo County</u>

Full coverage of Peninsula Clean Energy in the news can be found on our News & Media webpage. Also included in this month's board packet is a Media Relations Report summarizing activities and coverage during the third calendar quarter of 2021.

Hiring

There is currently a recruitment underway for an Account Services Specialist/Analyst to replace Michael Totah on the Account Services team.

ENROLLMENT UPDATE

ECO100 Statistics (since August report)

Total ECO100 accounts at end of September:	6,256
ECO100 accounts added in September:	107
ECO100 accounts dropped in September:	33
Total ECO100 accounts at the end of August:	6,182

Enrollment Statistics

Opt-outs during the month of September were 25, twelve less than the previous month of August (37). Total participation rate across all of San Mateo County at the end of September was 97.22%.

In addition to the County of San Mateo, there are a total of 15 ECO100 cities. The ECO100 towns and cities as of September 30th, 2021, include: Atherton, Belmont, Brisbane, Burlingame, Colma, Foster City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Portola Valley, Redwood City, San Carlos, San Mateo, and Woodside.

The opt-up rates below include municipal accounts, which may noticeably increase the rate in smaller jurisdictions.

			Active Acc	ounts as of October	10th		
тот	RES Count	COM Count			Participation Percent	ECO100 Count	ECO100 Percent
ATHERTON INC	2415	231	2646	2727	97.03%	58	2.19%
BELMONTINC	10704	925	11629	11939	97.40%	192	1.65%
BRISBANE INC	1966	496	2462	2524	97.54%	84	3.41%
BURLINGAME INC	13290	1968	15258	15633	97.60%	344	2.25%
COLMAINC	464	289	753	767	98.17%	30	3.98%
DALY CITY INC	31028	2010	33038	34220	96.55%	104	0.31%
EAST PALO ALTO INC	7111	451	7562	7929	95.37%	27	0.36%
FOSTER CITY INC	13696	842	14538	14826	98.06%	330	2.27%
HALF MOON BAY INC	4200	632	4832	4976	97.11%	110	2.28%
HILLSBOROUGH INC	3811	141	3952	4058	97.39%	71	1.80%
MENLO PARK INC	13912	1707	15619	15937	98.00%	516	3.30%
MILLBRAE INC	8399	647	9046	9318	97.08%	105	1.16%
PACIFICA INC	14006	865	14871	15453	96.23%	178	1.20%
PORTOLA VALLEY INC	1468	133	1601	1700	94.18%	1502	93.82%
REDWOOD CITY INC	31439	3344	34783	35631	97.62%	728	2.09%
SAN BRUNO INC	14743	1066	15809	16500	95.81%	95	0.60%
SAN CARLOS INC	12146	2096	14242	14652	97.20%	333	2.34%
SAN MATEO INC	39649	3882	43531	44699	97.39%	675	1.55%
SO SAN FRANCISCO INC	21269	3230	24499	25465	96.21%	120	0.49%
UNINC SAN MATEO CO	20827	3026	23853	24620	96.88%	636	2.67%
WOODSIDE INC	2012	223	2235	2289	97.64%	56	2.51%

Table reflects data as of October 10th, 2021

E-TOU-C Transition

Peninsula Clean Energy residential customers currently on the flat-rate E-1 rate schedule have transitioned to the Time-of-use E-TOU-C rate schedule as of September 2021. The E-TOU-C rate schedule has higher rates from 4-9 PM every day and this transition will impact nearly 200,000 PCE customers. Next month, Peninsula Clean Energy will provide a percentage of customers who ended up transitioning to the E-TOU-C rate. PG&E and Peninsula Clean Energy will be providing bill protection for customers participating in the E-TOU-C transition for the first 12-months of the program.

STRATEGIC PLAN

This section describes how the above Marketing and Community Care activities, and enrollment statistics relate to the overall goal and objectives laid out in the strategic plan. The table indicates which objectives and particular Key Tactics are supported by each of the Items/Projects discussed in this memo. The strategic goal for Marketing and Customer Care is: Develop a strong brand reputation that drives participation in Peninsula Clean Energy's programs and ensures customer satisfaction and retention.

	Objective A:	Objective B:	Objective C:
	Elevate Peninsula	Educate and	Ensure high
	Clean Energy's	engage	customer
Item/Project	brand reputation as	stakeholders in	

HPWH Incentive	a trusted leader in the community and the industry	order to gather input, inspire action and drive program participation KT6 Promote programs and services, including	satisfaction and retention
		community energy programs and premium energy services	
EV Awareness Campaign		KT6 (see above)	
Power on Peninsula Resilience Program		KT6 (see above)	
Schools Engagement Programs		KT2: Continue to support schools- based literacy programs focused on energy	
Building Electrification Awareness Program		KT6 (see above)	
Community Outreach Grants		KT1: Foster relationships with community-based, faith-based, and non-profit organizations	
Community Benefit Summaries	KT3: Tell the story of Peninsula Clean Energy through diverse channels		
News and Media Announcements	KT1: Position leadership as experts on CCAs and the industry KT2: Cultivate relationships with industry media and influencers KT3 (see above)		

ECO100 and		Reports on main
Enrollment		objective C
Statistics		-

^{* &}quot;KT" refers to Key Tactic



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: October 15, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: KJ Janowski, Director, Director of Marketing and Community Relations

Darren Goode, Media Relations Consultant

SUBJECT: Third Quarter (Q3) 2021 Media Relations Summary

BACKGROUND

Media Relations, a specialization within the Marketing discipline, focuses on enhancing Peninsula Clean Energy's reputation and leadership position by garnering earned media attention. This is the second of a series of quarterly reports on media relations activities and coverage.

DISCUSSION

1. Used EV rebate announcement

We issued a <u>press release</u> announcing an expanded used EV rebate program, including quotes from Donna Colson, GRID Alternatives and a Redwood City resident who received a rebate last year. We received strong pickup in local media: <u>KPIX-5</u>; <u>The Almanac</u>; <u>Climate Online</u>; <u>San Mateo Daily Journal</u>; <u>KTVU</u>. Also received coverage on the EV news website <u>NGT News</u>.

2. Home Upgrade Program Announcement

We <u>announced the launch</u> of the Home Upgrade Program to provide income-qualified San Mateo County residents with no-cost appliance electrification, energy efficiency and other critical repairs and upgrades to improve the health and safety of homes. Our press release featured both Dave Pine and El Concilio of San Mateo County Executive Director Ortensia Lopez. We received coverage on Patch.com.

3. The Gevsers Announcement

We announced that beginning next July we will receive 35 megawatts from The Geysers, the world's largest complex of geothermal power plants. Our press release was picked

up by <u>Power Magazine</u> and also coverage included on <u>Patch.com</u> and trade publications <u>Think Geoenergy</u> and <u>Renewables Now</u>.

4. Chaparral PPA Joint Announcement

We issued a joint release with Leeward Renewable Energy to <u>announce our first solar-plus-storage power purchase agreement</u>. The release featured both Jan and a senior Leeward official. We worked closely on the announcement with Leeward, who sent the release out on both a national newswire and to their respective media lists. We also sent to our lists and received coverage from several trade outlets - including <u>Solar Power World</u>, <u>Solar Industry Magazine</u>, <u>American Public Power Association</u> and <u>PV Magazine</u> - as well as <u>California Energy Markets</u>.

5. All-Electric Building Awards Joint Release

We began drafting a joint release with the New Buildings Institute announcing the call for submissions for the second annual All-Electric Leadership Awards and Directory. We are also coordinating with Sustainable San Mateo County to synchronize and cross-reference their respective call for submissions for their sustainability and green building awards.

6. Lyft car-fleet launch

We are reaching out to Lyft to begin planning a potential joint event and press release when cars associated with our electric ride-hailing partnership are launched as early as January 2022.

7. Fugitive Emissions Memo Promotion

We began internal discussion and initial collaboration with the Office of Sustainability regarding their memo outlining fugitive methane emissions in the county.

8. Sherry Listgarten column

We worked closely with Sherry Listgarten on her <u>excellent Sept. 5 column</u> highlighting price gouging by contractors and other obstacles to getting new electric heat pump water heaters, including timely and insightful input from Rafael Reyes.

9. Peter Ambiel interview with Public Power magazine

Peter Ambiel was interviewed in late September by Public Power magazine reporter Betsy Loeff about providing greater access to electric vehicles and their charging infrastructure. The interview request from Betsy was prompted by Peter being featured in CalCCA's recent webinar we created and facilitated on how CCAs are plugging the EV charging infrastructure equity gap.

10. Events planning

We restarted an organized effort to pitch and help facilitate event and other speaking opportunities for staff.

11. More Earned Media

Menlo Park City Council cautious on proposal to ban new gas heaters, The Almanac, Sept. 3

<u>Electrifying Menlo Park homes, businesses won't be quick or easy,</u> East Bay Times, Sept. 2

<u>California will offer e-bike rebates with new electric bicycle incentive project,</u> Spectrum News, Sept. 1

Menlo Park wants to electrify all gas-powered buildings by 2030 in bold climate plan, The Mercury News, Aug. 30

Two new reports lay our possible paths to phase out natural gas in Menlo Park buildings, The Almanac. Aug. 12

<u>Just like EVs, electric bicycles could come with tax credits to lower prices, Mashable, Aug. 12</u>

PG&E to enroll some in timely rate program, Half Moon Bay Review

Chamber, city host electrification workshop, Half Moon Bay Review

Sunrun works with CCAs to build neighborhood microgrids, Microgrid Knowledge, July 26

<u>Foster City approves new hotel required to use clean energy</u>, San Mateo Daily Journal, July 23

Solar power rebate available, The Almanac, July 22

STRATEGIC PLAN

This section describes how Media Relations activities relate to the overall goal and objectives laid out in the strategic plan. Media Relations The strategic goal for Marketing and Customer Care is: Develop a strong brand reputation that drives participation in Peninsula Clean Energy's programs and ensures customer satisfaction and retention. Media Relations' efforts relate specifically to Objectives A and B in the strategic plan.

Item/Project	Objective A: Elevate Peninsula Clean Energy's brand reputation as a trusted leader in the community and the industry	Objective B: Educate and engage stakeholders in order to gather input, inspire action and drive program participation
Items 9, 10	KT1: Position leadership as experts on CCAs and the industry	
Items 8	KT2: Cultivate relationships with industry media and influencers	
Items 1, 2, 3, 4, 5, 6, 11	KT3: Tell the story of Peninsula Clean Energy through diverse channels	
Item 7		KT5: Provide inspirational, informative content that spurs action to reduce emissions

^{* &}quot;KT" refers to Key Tactic



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: October 8, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: None

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

FROM: Jeremy Waen, Director of Regulatory Policy

Doug Karpa, Senior Regulatory Analyst

Matthew Rutherford, Senior Regulatory Analyst

SUBJECT: Update on September Regulatory Policy Activities

SUMMARY

Over the last month the Regulatory Policy team continues to be busy. Jeremy has focused his time on the numerous PG&E ERRA proceedings, further reform to the PCIA, and ongoing PG&E General Rate Case matters. Doug has been heavily focused on Integrated Resources Planning issues to plan California's energy mix through 2045 and work to reform the CPUC's Resource Adequacy construct. Matthew has continued his work in supporting PCE's programmatic efforts through Transportation Electrification, Resiliency, Supplier Diversity, and DAC-Green Tariff matters.

GENERAL POLICY MATTERS

PCE Receives CPUC Approval of DAC-GT Program Capacity Transfer

On September 30, 2021, PCE receive a disposition letter from the CPUC approving a joint request by both PCE and PG&E to transfer DAC-GT program capacity from PG&E to PCE in correspondence with PCE's upcoming enrollment of Los Banos. Without this administrative fix, there was the potential for customers within Los Banos to lose their ability to participate in the DAC-GT program due to PCE's enrollment of the community. The capacity transfer proposed in the joint request will allow for PCE to fully enroll the Los Banos community without disrupting customers ongoing participation in the DAC-GT program, which provides them with a 20% discount on their overall electricity bill.

This recently approved request was the product of PCE's policy team engaging in close to a year of negotiations with both the Commission and PG&E to arrive at a workable solution. After approaching Commissioner Guzman Aceves' office for guidance, PCE and PG&E where then able to successful negotiate an administrative solution. Both entities then jointly proposed the solution to the Commission through a coauthored advice letter. This is the first instance of a shared CCA-IOU filing of this sort. The approval of this request should provide a smoother enrollment of Los Banos while also ensuring the most vulnerable members of that community are able to reap the benefits that both the DAC-GT program and general CCA service can provide them. Further detail on all of this is provided below.

DEEPER DIVE

Power Charge Indifference Adjustment (PCIA)

Presently, there are three active cases relating to PG&E's ongoing Energy Resource Recovery Account ("ERRA") accounting processes: (i) the 2019 ERRA Compliance case, (ii) the 2020 ERRA Compliance case, and (iii) the 2022 ERRA Forecast case. ERRA Forecast proceedings establish PG&E's generation and PCIA rates for the upcoming year, while ERRA Compliance proceedings look to the previous year to evaluate whether PG&E appropriately dispatched its generation portfolio to serve load in a least-cost manner in accordance with Commission guidelines. Among other considerations, both the 2019 and 2020 ERRA Compliance proceedings are attempting to reconcile the impacts on PG&E's rate setting practices due to Public Safety Power Shutoffs ("PSPS") that took place during those years. While there have been few key events in the last month, Jeremy is continuing to work closely with counsel, technical experts, and peers at other CCAs to ensure optimal outcomes for PCE's interests.

The 2020 ERRA Compliance and 2022 ERRA Forecast proceedings are both more recent. Jeremy continues to represent PCE's interests by helping to guide the Joint CCA efforts in both cases. A more in-depth report will be provided on the 2022 ERRA Forecast and its potential implications for next year's rates once PG&E issues its revised testimony in early November.

In addition to the three cases described above relating to PG&E's ERRA process, the PCIA Rulemaking remains open to consider matters such as the GHG-free benchmark and refinements to the IOUs' Energy Resource Recovery Account (ERRA) Forecast and Compliance proceeding process and schedules. For example, on October 4, 2021, CalCCA prepared comments in response to a Commission ruling prompting questions relating to whether the ERRA Forecast process should be adjusted to advance the "November Update" issuance date to sometime in October. Such a change has advantages and disadvantages to the ERRA process and the abilities of CCAs to successfully intervene in these cases. The Commission and parties continue to weigh the pros and cons of such a change. Jeremy remains closely engaged in this proceeding and the related ERRA cases to represent PCE's interests.

(Public Policy Objective A, Key Tactic 1)

DAC-GT/CSGT Programs

On July 9, 2021, the CPUC approved PCE's Advice Letter containing solicitation documents for the procurement of permanent resources to serve the DAC-GT and CSGT programs. On July 14, 2021, the CPUC approved PCE's Advice Letter containing updates to the 2021 and 2022 budgets according to certain programmatic costs that the CPUC required of the CCAs that are offering these programs.

PCE, through its coordination with PG&E to set up back-end billing and cost recovery procedures to support the DAC-GT and CSGT programs, and through coordination with PG&E on the launching of PCE service in Los Banos in 2022, identified that there are around 400 customers in Los Banos that are currently enrolled in PG&E's DAC-GT program. As PCE's current program capacity was allocated by the CPUC in 2019, it did not consider the capacity PCE will need to serve these customers in Los Banos. PCE engaged with CPUC Commissioner Martha Guzman Aceves and her staff to propose that the corresponding portion of PG&E's DAC-GT program capacity be transferred to PCE. PG&E agreed to this proposal during a meeting with PCE, PG&E, and facilitated by the Commissioner and her staff.

On August 25, 2021, PCE filed a letter to the CPUC executive director requesting an extension on the September 7, 2021 deadline to issue PCE's RFO for permanent solar projects to serve these programs. PCE filed the request to allow the request for additional capacity to serve Los Banos customers to be approved and then included within a singular RFO. The request was then granted on September 7, 2021. And on August 31, 2021, PCE and PG&E filed a Joint Advice Letter to transfer the approximate 2.5 MW of program capacity that is needed to serve the Los Banos customers from PG&E to PCE. According to our regulatory counsel, it may be the first time that a CCA and an IOU have filed a joint advice letter. On September 30, 2021, the Joint Advice Letter was approved.

With all regulatory approvals now in place, PCE marketing, procurement, program, regulatory, finance, and customer care staff continue to meet to develop and prepare internal processes to launch the program once our updated budget is approved. PCE and the Joint CCAs have also been meeting with their billing providers and PG&E to establish the billing system programming and processes necessary to run these programs.

(Public Policy Objective A, Key Tactic 1, Key Tactic 2 and Key Tactic 3)

Transportation and Electrification

Matthew continues to lead PCE's policy advocacy to support PCE's programmatic objectives to enable electrification. Activity in the Commission's Transportation Electrification Framework (TEF) proceeding was most recently centered around a recent Proposed Decision on June 1, 2021, that was designed to create pathways for IOUs to make near-term investments in priority areas to address California's

transportation electrification goals while the TEF is finalized in a parallel track which would then allow PAs to design their own Transportation Electrification Plans for CPUC review.

The Joint CCAs argued that, among other concerns, that the Decision direction that the IOUs design their programs to only offer incentives for electric vehicle supply equipment (EVSE) installed in new buildings if the EVSE exceeds the requirements of the local building codes would disadvantage those jurisdictions that have adopted Reach Codes and disincentivize other jurisdictions from pursuing more these more aggressive building codes. The Joint CCAs instead advocated that the incentives should be provided if the new construction project is exceeding statewide codes. The Commission adopted the decision on July 21, 2021 without adopting this suggestion however they did signal they would issue a revised decision to make the incentives based upon statewide building codes, as per our suggestion. PCE has reached out to CPUC staff to clarify when we should expect further action to remedy this matter.

On August 4, 2021, Commission issued a Draft Resolution for new IOU Rules that were required by AB 841 and would allow the costs of utility-side service upgrades to serve new EVSE to be socialized among ratepayers, rather than borne exclusively by the customer installing the new EVSE. This is also referred to as "common cost treatment."

The Draft Resolution does require detailed cost tracking and reporting of the IOUs, it allows MUDs to take advantage of common cost treatment in most cases, and it also rejects many of the IOUs' proposals for unnecessary restrictions and oversight over EVSE projects that apply for service under these rules. It also includes requirements for the IOUs to accelerate the rate at which they energize new EVSE installations. PCE and Sonoma Clean Power filed Joint Comments on the draft resolution to thank the Commission for establishing robust cost tracking and reporting requirements that go beyond what the IOUs are currently providing. The Joint CCAs also requested that these reports break down costs on a per port basis to provide better context that would allow stakeholders and regulators to estimate the total cost of meeting the State's EV charging goals through the IOUs' programs. The Joint CCAs also advocated that Automated Load Management (ALM) should be required for certain projects that take advantage of these new Service Upgrade Rules to limit the cost borne by ratepayers, or, failing that, that the Commission should establish a stakeholder process to evaluate when ALM should be required to allow the Rules to be updated in the future and provide better cost containment on these projects.

The Joint CCAs met with TURN to discuss the issues with the Draft Resolution. TURN agreed with many of our positions. Both parties discussed these issues with ED staff in the hopes of improving the current draft.

On October 7, 2021, the Resolution was approved by the Commission. Unfortunately, it does not include requirements that costs be reported on a per port basis. Instead, it requires the IOUs to report costs per kW installed at each installation site which would not provide the same level of clarity to stakeholders on the specifics of the individual projects. It also does not include ALM as a requirement to make use of these rules,

stating instead that the IOUs are to provide education and ALM offerings to customers who apply for service under these rules. The Resolution states that there is currently not enough of a consensus on ALM technology costs and applications to include it as a requirement at this time. The CPUC states that they may begin an evaluation of the IOU EV Service Rules approved by this Resolution no later than 2025.

On October 13, the CPUC held an En Banc, or a non-voting meeting of all Commissioners, to discuss the best path forward to optimize ratepayer funds and the appropriate roles of IOUs in TE acceleration in California. Commissioner comments made it clear that some viewed funding TE strictly through ratepayer revenues was regressive and suggested the state should make use of other funding sources where possible, especially for market segments that are already mature. Commissioners recognized that others, such as TE investments in MUDs, rural communities, and among the medium and heavy-duty sectors, will continue to require public investment for the foreseeable future to ensure California can meet its TE goals.

(Public Policy Objective A, Key Tactic 1, Key Tactic 2 and Key Tactic 3)

Integrated Resource Planning & Resource Adequacy

Doug continues to lead PCE's engagement in the California Public Utilities Commission's Integrated Resource Plan (IRP) and Resource Adequacy (RA) efforts on several fronts. Doug has been and will continue to be quite busy over the next month in these subject areas as the Commission just issued three relating Proposed Decisions:

- 1) On August 17, 2021, the Commission issued a ruling outlining the analysis of the aggregated Integrated Resources Plans submitted by all eligible Load Serving Entities on September 1, 2020, plus the procurement ordered in D.21-06-035 (the 11,500 MW Mid-Term Reliability Decision). The Commission also analyzed a series of different portfolios with varying load assumptions and carbon targets for 2030 of 46 MMT, 38 MMT, and 30 MMT. Although the costs of each were projected to be quite similar, the Commission has proposed to adopt a 38 MMT target. Doug has worked with CalCCA to advocate that any acceleration of procurement needs to be on a "best efforts" basis, as the existing schedule is already the fastest deemed feasible. Also, Doug has engaged with the Commission and CalCCA to advocate for lower emissions targets, especially as the CPUC planning largely ignores the economic and mortality costs of carbon emissions, while not achieving the 2045 targets in either statute or executive orders.
- 2) On September 9, 2021, the CPUC Working Group began work to develop a replacement for the existing Resource Adequacy construct. Currently, two related proposals are under consideration: PG&E's "slice-of-day" construct, which would create capacity requirements for blocks of hours throughout the day, and a proposal from Southern California Edison, which would apply an hourly requirement. Both have strong potential to credit renewable generation far more accurately for its reliability contributions than existing methods. Work on these constructs is scheduled to continue through January.

(Public Policy Objective A, Key Tactic 1 and Key Tactic 3 & Public Policy Objective C, Key Tactic 3)

Stakeholder Outreach

Doug continues to host the regular bi-weekly call with staff from CCAs, environmental, and environmental justice stakeholders. On October 6, 2021, he presented on the social and mortality costs of carbon and discussed how these externalities should be factored into statewide planning efforts such as the CPUC's Integrated Resources Plan.

(Public Policy Objective A, Key Tactic 2)

FISCAL IMPACT

Not applicable.



PENINSULA CLEAN ENERGY AUTHORITY Board Correspondence

DATE: October 14, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: None

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

FROM: Marc Hershman, Director of Government Affairs

SUBJECT: Update on PCE's September and October Legislative Activities

SACRAMENTO SUMMARY:

The 2021 session of the California Legislature ended on September 10. The Legislature is now adjourned until January 3, 2022, unless called back for a Special Session. October 10 was the last day on which the governor could sign, or veto, bills passed by the Legislature.

Much of the drama associated with the end-of-session in past years did not occur in 2021. One important factor that made for a relatively uneventful final week of session was the requirement that all legislation be in print at least 72 hours before it can be voted upon. There were other factors that made this session unusual. It was a year defined in many ways by the pandemic which played a role in the enormous budget surplus, the reduced number of bills that could be introduced by each legislator (the result of limited hearing room facilities due to COVID distancing measures) and the restricted in-person access to legislators and their staff. The gubernatorial recall election also weighed heavily on activities in Sacramento.

Of interest was the announcement during the last week of the legislative session that the Senate has formed a Subcommittee on the Clean Energy Future. This subcommittee of the Senate Energy, Utilities and Communications will be chaired by the Peninsula's Senator Josh Becker.

LEGISLATIVE ADVOCACY AND OUTREACH:

Peninsula Clean Energy Legislative Initiative in 2022

Peninsula Clean Energy is weighing the possibility of taking a leadership role in championing a legislative initiative in 2022. We are working with other CCAs and clean energy organizations to identify legislative needs and priorities.

Staff has been reaching out to our local state legislators to arrange for meetings, in the local legislative offices if conditions permit, or virtually. These meetings will present an opportunity to thank our local legislators for their strong support of SB 612 and other 2021 legislation of importance to Peninsula Clean Energy. We will also begin discussing 2022 legislation and other opportunities to work with our legislators in the year ahead.

In the coming months we will learn more about the shape of legislative districts for the 2022 election cycle. All Assembly seats will be up for election in 2022, as will be one-half of the state Senate seats. All state constitutional offices will be on the ballot.

In January 2022 the governor will provide the first state budget outlook for the next fiscal year. Also, in January all 2-year bills that were not voted upon in their house of origin in 2021 will need to move forward. The deadline for the introduction of new legislation will occur by mid-February. It is expected that new efforts at Brown Act modernization will be presented.

CalCCA Legislative Committee and Board Activity in 2021

SB 612 (Portantino) PCIA Reform, was CalCCA's priority bill for the 2021 legislative session and the first bill CalCCA sponsored. Securing Senator Portantino as the author was critical to the success of the measure. He chairs the powerful Senate Appropriations Committee through which all spending bills must pass.

SB 612 provides fair and equal access to the benefits of legacy resource products procured on behalf of IOU, CCA and Direct Access customers in proportion to their load share. It also requires the CPUC to recognize the value of GHG-free energy and any new products in assigning cost responsibility for above-market legacy resources in the same way value is recognized for renewable energy and other products.

Many Peninsula Clean Energy jurisdictions weighed in with letters of strong support for **SB 612**.

SB 612 was passed off the floor of the Senate by an overwhelming and bi-partisan vote of 33-6. However, the bill never received a hearing in the Assembly Committee on Utilities and Energy. **SB 612** can move ahead next year as a 2-year bill and could be heard and passed by the Assembly Committee on Utilities and Energy as late as next summer.

SB 68 (Becker) requires the CEC to develop guidelines for electrification of buildings and report on electrification barriers including adding energy storage or EV charging equipment to existing buildings.

After passing the Senate earlier this year, **SB 68** was heard in the Assembly Committee on Utilities and Energy on June 30. At the request of Senator Becker, Peninsula Clean Energy CEO Jan Pepper testified in support of the bill at the hearing. **SB 68** was unanimously passed by the committee. After successfully clearing both houses of the Legislature, **SB 68** was signed into law by the governor.

AB 843 (Aguiar-Curry) would enable CCAs to access existing state programs that provide funding for renewable bioenergy electricity projects, including biomass and biogas. Under current law the Investor-Owned Utilities can access these funds, but the CCAs were not included when the program was established back in 2012. PCE and CalCCA were supporters of this bill, which passed the Assembly on a 78-0 vote and the Senate, where it passed with a vote of 37-0. The Assembly concurred in amendments made by the Senate. That vote was 56-0. The bill was signed by the governor with the new law going into effect on next year.

(Public Policy Objective B, Key Tactic 1)

Additional 2021 Legislation PCE has been tracking:

AB 525 (Chiu) establishes aggressive offshore wind planning goals and makes other changes to accelerate the development of offshore wind. **AB 525** was signed into law by the governor.

SB 67 (Becker) The bill would establish the California 24/7 Clean Energy Standard Program, which would require that 85% of retail sales annually and at least 60% of retail sales within certain subperiods by December 31, 2030, and 90% of retail sales annually and at least 75% of retail sales within certain subperiods by December 31, 2035, be supplied by eligible clean energy resources, as defined. **SB 67** was held before being heard in the Senate Committee on Energy, Utilities and Communications and is now a 2-year bill. As such, it will need to clear the Senate early in 2022.

SB 771 (Becker) would provide a state-only (not local) sales tax exemption for incomequalified participants who replace an older vehicle through the Clean Cars 4 All program with a low- or zero-emission vehicle. SB 771 was voted off the floor of the Senate 34-4 and has not been referred to an Assembly committee for consideration. It could become a 2-year bill.

(Public Policy Objective B, Key Tactic 1)



PENINSULA CLEAN ENERGY JPA Board Correspondence

DATE: October 12, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

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

Rafael Reyes, Director of Energy Programs

SUBJECT: Community Programs Report

SUMMARY

By request the following report was produced to detail the program investments by jurisdiction effective October 1, 2021. The report includes all PCE incentive programs (EVs, bikes, solar, water heaters, reach codes) and most technical assistance supports. The report does not include pilots, outreach grants, schools program, and program-wide costs. Because EV charging incentives are sizeable and pending, these are listed separately.

City/town	Est. Pop.	% of County	Total Incentives	% Incentives Paid by City	Total Projects	Incent	ng EV Charging ives (Est. includes ad CEC cofunding)
Atherton	7,000	0.9%	_	0.25%	3	\$	40,500.00
Belmont	27,000		· · · · · · · · · · · · · · · · · · ·	3.74%	28	\$	1,045,000.00
Brisbane	5,000			1.17%	6	\$	365,000.00
Burlingame	31,000			2.59%	32	\$	1,744,500.00
Colma	1,300		. ,	1.12%	2	\$	90,000.00
Daly City	107,000			6.53%	95	\$	110,000.00
East Palo Alto	30,000			2.38%	28	\$	100,000.00
El Granada	6,000			2.21%	7	\$	-
Emerald Hills	5,000			0.94%	5	\$	-
Foster City	34,000	4.4%	\$ 49,248.40	2.09%	30	\$	45,000.00
Half Moon Bay	13,000			16.77%	19	\$	297,000.00
Hillsborough	11,000	1.4%	\$ 43,159.74	1.83%	4	\$	-
La Honda	1,000	0.1%	\$ 36,523.69	1.55%	1	\$	-
Menlo Park	34,000	4.4%	\$ 127,865.80	5.42%	66	\$	1,156,500.00
Millbrae	23,000	3.0%	\$ 80,129.20	3.40%	42	\$	708,000.00
Montara	2,500	0.3%	\$ 32,964.21	1.40%	5	\$	-
Moss Beach	4,000	0.5%	\$ 40,168.95	1.70%	2	\$	9,000.00
Pacifica	39,000	5.1%	\$ 121,060.00	5.13%	51	\$	870,500.00
Pescadero	200	0.0%	\$ 57,073.17	2.42%	2	\$	320,000.00
Portola Valley	4,500	0.6%	\$ 35,895.99	1.52%	11	\$	420,000.00
Redwood City	86,000	11.2%	\$ 263,197.58	11.16%	129	\$	3,933,000.00
San Bruno	43,000	5.6%	\$ 76,674.48	3.25%	36	\$	2,664,000.00
San Carlos	31,000	4.0%	\$ 129,613.91	5.50%	45	\$	185,500.00
San Mateo	104,000	13.6%	\$ 185,521.70	7.87%	109	\$	3,038,675.00
South San Francisco	67,000	8.7%	\$ 123,018.05	5.22%	64	\$	3,877,000.00
Woodside	5,500	0.7%	\$ 20,404.74	0.87%	4	\$	-
County of San Mate	n/a	n/a	\$ 46,626.25	1.98%	0	\$	124,000.00
County Pop.	767,000		\$ 2,358,053.14		826	\$	21,143,175.00

The following programs are in progress, and detailed information is provided below:

- 1. Building and EV Reach Codes
- 2. Existing Buildings
 - 2.1. Appliance Rebates
 - 2.2. Low-Income Home Upgrades & Electrification
 - 2.3. Building Pilots
- 3. Distributed Resources
 - 3.1. Local Government DER Project Development
 - 3.2. Power On Peninsula Homeowner
- 4. Transportation
 - 4.1. "EV Ready" Charging Incentive Program
 - 4.2. Used EV Rebate Program
 - 4.3. EV Ride & Drives/Virtual Engagement
 - 4.4. E-Bikes for Everyone Rebate Program
 - 4.5. Municipal Fleets Program
 - 4.6. Transportation Pilots

DETAIL

1. Building and EV Reach Codes

Background: In 2018 the Board approved a building "reach code" initiative to support local governments in adopting enhancements to the building code for low-carbon and EV ready buildings. The initiative is a joint project with Silicon Valley Clean Energy (SVCE). The program includes small grants to municipalities, technical assistance, and tools, including model codes developed with significant community input. The tools and model code language are available on the project website (www.PeninsulaReachCodes.org).

In addition, in January 2020 the Board approved an extension of the reach code technical assistance plus additional elements – Education and training for developers and contractors, and consumer education program on the benefits of all-electric buildings. This technical assistance is now publicly available at www.AllElectricDesign.org. Lastly in December 2020, the Board approved the draft contract amendment with TRC Engineers to extend the scope to include technical assistance for developing policy language for existing buildings.

Status:

- Reach Codes: In PCE territory, Burlingame, Brisbane, Colma, Daly City, E. Palo Alto, Menlo Park, Millbrae, Pacifica, Redwood City, San Carlos, San Mateo, San Mateo County, and South San Francisco have adopted reach codes. A number of additional agencies are in progress including Atherton, Belmont, Half Moon Bay and Portola Valley. South San Francisco is now considering a commercial building code. Its initial code was solely for the residential sector. Across San Mateo and Santa Clara Counties, 26 agencies have adopted some kind of all-electric reach code. PCE is providing some support to Half Moon Bay and South San Francisco commercial stakeholder engagement. Project attention is now turning to the 2022 code cycle. Draft new model codes are expected to become available at the beginning of next year. The Half Moon Bay Council has provided direction to staff to develop reach codes with new and existing building electrification measures.
- Training and Technical Assistance: Training and technical assistance efforts are being deemphasized to focus on the 2022 model code development, though developer technical assistance is still available.
- Existing Building policy development: A policy and financing literature review and analysis of existing building electrification and multifamily EV charging was completed. The technical consultant, TRC, is currently developing cost-effectiveness studies for multiple building prototypes. A menu of policy options has been presented to Menlo Park's city council on August 31 and council provided direction to develop pilot programs and other measures.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective A:

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

2. Buildings Programs

2.1. Appliance Rebates

Background: In May 2020, the Board approved a 4-year, \$6.1 million for electrifying existing buildings. This included \$2.8 million for implementing an appliance rebate program. PCE successfully launched the heat pump water heater rebates on January 01, 2021 for San Mateo residents. PCE rebates are offered in partnership with BayREN's Home+ program. BayREN offers a rebate of \$1,000 and PCE offers an additional rebate of \$1,000 for methane gas to HPWH or \$500 for electric resistance to HPWH. PCE also offers a bonus rebate for low-income customers (CARE/FERA participants) of \$1,000 and \$1,500 for electrical panel updates of up to 100 Amp and \$750 for up to 200 Amp that might be needed to accommodate the HPWH.

Status: The heat pump water heater (HPWH) rebate program was launched on January 01, 2021 and to date we have received 63 applications and 60 have been paid or approved. Currently five San Mateo County contractors and 19 contractors outside the county are enrolled in the program. PCE has been promoting the incentive through digital ads, email outreach and other channels.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective A:

 Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

2.2. (Low-Income) Home Upgrade Program

Background: In May 2020, The Board approved \$2 million for implementing a turn-key low-income home upgrade program. The measures implemented through the program will vary depending on each home's needs but will include at least one electrification measure such as installing a HPWH or replacing a gas furnace with electric. The contract with the administration and implementation firm, Richard Heath & Associates (RHA), was executed after being approved by the Board in the March 2021 meeting.

Status: The program was announced on September 28, 2021 and received coverage in the San Mateo Daily Journal. Over 100 homes have already been identified with potential to participate through PCE outreach and partner El Concilio.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective B:

- Key Tactic 1: Invest in programs that benefit underserved communities
- Key Tactic 3: Support workforce development programs in the County

2.3. Building Pilots

Background: In May 2020, The Board approved \$300,000 for piloting a new innovative technology from Harvest Thermal Inc., a Bay Area-based startup, that combines residential space and water heating into a unified heat pump electric system with a single water storage tank. Through this project, this technology will be installed in 5 homes within the San Mateo County to assess its performance and demonstrate its effectiveness for emission reductions.

Status: The home recruitment process began in late April and the project received 290 applications. Homes are being selected based on technical criteria (home characteristics, energy usage patterns, and technical feasible of the upgrade within budget). The top 8 homes have been identified and contractor bids are taking place through the end of September. Final 5 participation homes will be selected based on project costs based on bids. Installation of the systems are expected to take place in Q4 2021 through Q1 2022. TRC has been contracted to provide independent measurement and verification services for the project. Lastly, the Technical Advisory Committee (TAC) met September 30, 2021 to review and provided feedback on the project. TAC members will include former building officials, former contractor, city commissioner, peer CCA program managers, CPUC staff, CAC member and Board member Jeff Aalfs.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective C:

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

3. Distributed Energy Programs

Peninsula Clean Energy has Board-approved strategies for the promotion of 20 MW of new distributed energy resources in San Mateo County and a three-year, \$10 million strategy to deploy local electricity resiliency programs in San Mateo County. The projects described below are efforts towards meeting both of these goals.

3.1. Local Government DER Project Development

Background: In October 2020, the Board approved a DER Site Evaluation Services contract with McCalmont Engineering for DER site evaluation and designs for County and municipal facilities identified as candidates for solar-only non-resilience or solar + storage resilience projects.

Status: We have completed site visits and DER designs for fourteen (14) facilities. The total portfolio size would be up to 2.1 MW of new solar, assuming all facility owners participate. We have begun active exploration of an aggregate procurement and novel contracting mechanism as part of our overall strategic initiatives with DERs through which customers could receive DER benefits and savings with no up-front costs and where

Peninsula Clean Energy would manage procurement, operations, performance, and maintenance. We have begun seeking commitments from participating local governments to take part in this procurement should pricing received via competitive solicitation and our parallel exploration of financing and ownership mechanisms enable Peninsula Clean Energy to provide a Power Purchase Agreement (PPA) with community benefits. Brisbane, Hillsborough, and San Carlos have already committed to participate. Other member jurisdictions are expected soon.

3.2. Power On Peninsula – Homeowner

Background: Power on Peninsula – Homeowner is a solar+storage energy resiliency program run by Peninsula Clean Energy in partnership with Sunrun and TerraVerde Energy. This program provides energy storage systems paired with solar power to single family and multifamily Peninsula Clean Energy customers. Customers who sign up for this program receive an incentive up to \$1,250. At Peninsula Clean Energy's direction, Sunrun will dispatch the stored energy during evening hours when renewable generation on the California grid is low. This will also help Peninsula Clean Energy to reduce its peak load and thereby reduce our resource adequacy requirements.

Status: In August, Sunrun and Peninsula Clean Energy staff launched included the POP-Residential program in an Energy Programs Bulletin, a direct mailer to homeowner customers, and began to plan a marketing effort to send email messages to homeowners as well. Staff is planning to launch a customer satisfaction survey for program participants towards the end of the year. Additionally, staff signed a contract with a firm to provide labor compliance assistance and has begun developing the process for analyzing workforce data.

Strategic Plan: The activities and programs described in the DER and Energy Resilience activities support the following objectives and key tactics in Peninsula Clean Energy's strategic plan:

- Power Resources Goal 1: Secure sufficient, low-cost, clean sources of electricity that achieve Peninsula Clean Energy's priorities while ensuring reliability and meeting regulatory mandates
 - Objective C Local Power Sources: Create a minimum of 20 MW of new power sources in San Mateo County by 2025
 - Key tactic 2: Implement Board-approved strategy to increase community resilience.
 - Key tactic 3: Work with local government partners to identify and catalog opportunities for distributed energy resources across San Mateo County.

4. Transportation Programs

4.1. Used EV Rebate Program

Background: Launched in March 2019, the Used EV Rebate Program (formerly referred to as "DriveForward Electric") provides an incentive up to \$4,000 for the purchase of used plug-in hybrid electric vehicles (PHEVs) and full battery electric vehicles (BEVs) to income-qualified San Mateo County residents (those making 400% of the Federal Poverty Level or less). The incentives may be combined with other state-funded income-qualified EV incentive programs. In October 2020, the Board approved expanding the program to offer used EV incentives to all San Mateo County residents, while maintaining the increased incentives for income-qualified residents. In February 2021, the Board a contract with GRID Alternatives ("GRID") to administer the expanded program.

Status: The revamped program launched August 10, 2021 with a <u>press release</u>. Major changes to the program include:

- Base rebates now available to all residents. Increased rebates for income-qualified residents are still available.
- Customers are required to apply and be approved prior to purchase to be eligible for the rebate.
- Additional vehicle eligibility criteria was added, including a \$25,000 price cap on eligible vehicles.
- A dealership network was set up for customers to claim the rebate instantly at point of sale. 8 San Mateo County dealerships have joined the network thus far.

The 'old' program incentivized 105 rebates since the launch in March 2019. Nine (9) rebates have been provided under the new program and a large queue of over 140 applications are in progress. Because vehicle supplies are extremely tight in the market currently and pricing is high, it is taking applicants longer than normal to purchase vehicles.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective A:

• Key Tactic 1: Drive personal electrified transportation towards majority adoption

Goal 3 – Community Energy Programs, Objective B:

• Key Tactic 1: Invest in programs that benefit underserved communities

4.2. "EV Ready" Charging Incentive Program (ongoing, no updates)

Background: In December 2018 the Board approved \$16 million over four years for EV charging infrastructure incentives (\$12 million), technical assistance (\$2 million), workforce development (\$1 million), and administrative costs (\$1 million). Subsequent to authorization of funding, PCE successfully applied to the California Energy Commission (CEC) for the CEC to invest an additional \$12 million in San Mateo County for EV charging infrastructure. Of PCE's \$12 million in incentives, \$8 million will be administered under the CEC's California Electric Vehicle Incentive Project (CALeVIP) and \$4 million under a dedicated, complementary PCE incentive fund. The dedicated PCE incentives will address Level 1 charging, assigned parking in multi-family dwellings, affordable housing new construction, public agency new construction, and charging for resiliency purposes.

Status: PCE's technical assistance and outreach is ongoing. In total 100+ different locations are in the technical assistance process requesting over 775 charging ports. In the course of technical assistance, PCE delivered 46 evaluations equaling 950+ ports. PCE's dedicated incentive program of \$4 million has received 21 applications for funding for a total of 356 ports. Ten applications were approved totaling 285 ports and \$578,000.

CALeVIP is processing Year-1 applications and PCE staff anticipate 834 L2 ports and 326 DCFC ports to be funded for a total of \$16M (\$12M in DCFC funds and \$4M in L2 funds). Year 2 and Year 3 funding application review has not started. PCE contacted all CALeVIP applicants in San Mateo to offer technical assistance and facilitate project success.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective A:

- Key Tactic 1: Drive personal electrified transportation to majority adoption
- Key Tactic 5: Support local government initiatives to advance decarbonization

Goal 3 – Community Energy Programs, Objective B:

Key Tactic 3: Support workforce development programs in the County

4.3. EV Ride & Drives / Virtual Engagement

Background: In February 2019, the Board approved continuation of the EV Ride & Drive program over three years (2019-2021) following a 2018 pilot. It provides for community and corporate events in which community members can test drive a range of EVs. The program generated 19 events and 3,033 experiences since inception in 2018. Event surveys indicate that the ride and drive was the first EV experience for 64% of participants and 87% report an improved opinion of EVs. Trailing surveys 6 months or more after events have yielded a 33% response rate and 17% of respondents indicate they acquired an EV after the event. Due to the COVID-19 pandemic, ride & drive events have been paused. As a result, staff developed a suite of virtual EV engagement pilot programs that replaced the in-person ride & drive events. Staff evaluated these pilots in January 2021 and phased out some due to low uptake and to prioritize limited funding for the most successful programs – Virtual EV Forums & EV Rental Rebate.

Status: The Virtual EV Forums in partnership with large San Mateo County employers continued through the end of FY20-21. Four EV Forums have been held. The EV Rental Rebate, which offers a rebate up to \$200 on the rental of an EV and as of October 8, 2021 has issued 124 rebates, has seen good uptake and shown positive impact in participant's opinions of EVs and likeliness to get an EV as their next vehicle. Most of the FY21-22 EV Ride & Drive/Engagement budget will be dedicated to the EV Rental Rebate. Staff will consider re-starting ride & drive events again sometime next calendar year.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective A:

• Key Tactic 1: Drive personal electrified transportation towards majority adoption

4.4. E-Bikes for Everyone Rebate Program

Background: The Board approved the E-Bikes Rebate program in July 2020. This program has a total budget of \$300,000, originally intended for three years, to provide approximately 300 rebates of up to \$800 to residents with low to moderate incomes over the course of the program. Silicon Valley Bicycle Coalition is under contract to PCE as an outreach and promotional partner and local bike shops are under contract to provide the rebate as a point-of-sale discount to customers. Enrolled bike shops include Summit Bicycles, Mike's Bikes, Sports Basement, and RidePanda (as an online retail partner).

Status: The program launched in May and sold out within a week. Over 275 e-bikes have been purchased so far. Staff are preparing to return to the Board with a proposal for additional funding.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective A:

• Key Tactic 1: Drive personal electrified transportation to majority adoption

Goal 3 – Community Energy Programs, Objective B:

• Key Tactic 1: Invest in programs that benefit underserved communities

4.5. Municipal Fleet Program

Background: The Board approved the Municipal Fleet Program in November 2020. This program will run for three years with a total budget of \$900,000 and is comprised of three components to help local agencies begin their fleet electrification efforts: hands-on technical assistance and resources, gap funding, and a vehicle to building resiliency demonstration that will assess the costs and benefits of utilizing fleet EVs as backup power resources for agencies in grid failures and other emergencies.

Status: The program is under development. An RFP is under development will be released in Q4 to hire a consulting team to work with PCE on providing detailed technical assistance to agencies, including project cost estimations and EV infrastructure designs.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective A:

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

Goal 3 – Community Energy Programs, Objective C:

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

4.6. Transportation Pilots

Ride-Hail Electrification Pilot

Background: This pilot, approved by the Board in March 2020, is PCE's first program for the electrification of new mobility options. The project partners with Lyft and FlexDrive, its rental-car partner, to test strategies that encourage the adoption of all-electric vehicles in ride-hailing applications.

Status: The pilot formally kicked off in December 2020 and PCE staff are coordinating with Lyft on development. Vehicles are anticipated to start becoming available in Q1 2022. Supply chain issues are currently slowing new vehicle orders.

MUD Low-Power EV Charging Pilot

Background: This project was initially approved by the Board in 2018. This pilot program has completed a needs assessment among various multi-unit dwelling (MUD) ownership types as well as a review of various low-power charging technology solutions. 13 Plugzio devices (smart outlets) have been installed at 3 MUDs in Millbrae and Foster City. A cost-efficiency analysis found that the project saved nearly \$180,000 in costs at one MUD alone, compared to the cost of traditional Level 2 charging (40 amps of power to each station), which would have triggered the need for significant upgrades. Installing L2 instead of L1 would have been over 4X more expensive in these cases. Lessons learned from this pilot are already informing inclusion of low-power charging solutions in PCE's EV Ready Program.

Status: A final report is being developed now.

EV Managed Charging Pilot

Background: PCE contracted with startup FlexCharging to test managed charging through vehicle-based telematics. The system utilizes existing Connected Car Apps and allows PCE to manage EV charging via algorithms as a non-hardware-based approach to shift more charging to occur during off-peak hours. The proof-of-concept test ran during the first half of 2020 and was a successful demonstration.

Status: Staff released an RFP for the telematics-based platform for the Phase 2 pilot and are currently interviewing finalists. The contract for the recommended winner will be brought to the Board for approval likely in November. PCE is collaborating with an academic team from the University of California, Davis' Davis Energy Economics Program (DEEP) to develop an incentive structure experiment that will be used to inform PCE's Managed Charging Program design. The contract with UC Davis will be brought to the Board for approval in October.

Curbside Charging Pilot

Background: Curbside charging has the potential benefit of bringing new charging solutions to drivers that lack residential charging (e.g. MUDs, renters, etc.). This pilot is assessing the cost effectiveness of curbside charging in various scenarios, including streetlight-mounted stations, scaling potential, and potential technical and policy barriers that need to be addressed prior to installation. If the assessment phase shows curbside charging to be viable, PCE will facilitate pilot installations in 1-2 cities in the second phase.

Status: PCE is reviewing the final technical and policy analyses now and is exploring metering and other policy considerations with PG&E.

Strategic Plan:

Goal 3 – Community Energy Programs

 Implement robust energy programs that reduce greenhouse gas emissions, align energy supply and demand, and provide benefits to community stakeholder groups

Goal 3 – Community Energy Programs, Objective A:

- Key Tactic 1: Drive personal electrified transportation to majority adoption
- Key Tactic 2: Bolster electrification of fleets and shared transportation
- Key Tactic 5: Support local government initiatives to advance decarbonization

Goal 3 – Community Energy Programs, Objective B:

• Key Tactic 1: Invest in programs that benefit underserved communities

Goal 3 – Community Energy Programs, Objective C:

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



PENINSULA CLEAN ENERGY JPA Board Correspondence

DATE: October 15, 2021

BOARD MEETING DATE: October 28, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer

SUBJECT: Energy Supply Procurement Report – October 2021

BACKGROUND

This memo summarizes energy procurement agreements entered into by the Chief Executive Officer since the last regular Board meeting in September. This summary is provided to the Board for information purposes only.

DISCUSSION

Execution Month	Purpose	Counterparty	Term
September	Sale of Resource	Pacific Gas & Electric	
September	Adequacy	Company	3 months
September	Sale of Resource	Pacific Gas & Electric	
September	Adequacy	Company	5 months
Contombor	Sale of Resource	East Bay Community Energy	
September	Adequacy	Authority	1 month
Santambar	Purchase of Resource	East Bay Community Energy	
September	Adequacy	Authority	1 month
Contombor	Purchase of Resource	Silicon Valley Clean Energy	
September	Adequacy	Authority	1 month
Contombor	Sale of Resource	Silicon Valley Clean Energy	
September	Adequacy	Authority	2 months
Contomber	Purchase of Resource	Silicon Valley Clean Energy	
September	Adequacy	Authority	1 month

September	Sale of Resource	Silicon Valley Clean Energy	
Coptomisor	Adequacy	Authority	1 month
September	Sale of Resource		
September	Adequacy	Sentinel Energy Center, LLC	1 month
September	Sale of Resource		
September	Adequacy	City of Palo Alto	1 month
September	Purchase of Carbon-		
September	Free Energy	Avangrid Renewables, LLC	12 months
October	Purchase of Resource		
Octobel	Adequacy	San Jose Clean Energy	1 month
September	Purchase of Carbon-	Morgan Stanley Capital Group	
September	Free Energy	Inc.	3 years
September	Purchase of Carbon-	Shell Energy North America	
Sehreninei	Free Energy	(US), L.P.	3 years

In January 2020, the Board approved the following Policy Number 15 – Energy Supply Procurement Authority.

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

1) Short-Term Agreements:

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

Table 1:

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

	 September) by October 31st of the prior year 	
Flexible Resource Adequacy	In year 1, must demonstrate capacity to meet 90% of monthly flexible obligation by October 31st of the prior year	Up to 12 months

- c. Chief Financial Officer has authority to approve any contract for Resource Adequacy with a term of twelve (12) months or less if the CEO is unavailable and with prior written approval from the CEO.
- d. The CEO shall report all such agreements to the PCE board monthly.
- 2) Medium-Term Agreements: Chief Executive Officer, in consultation with the General Counsel, the Board Chair, and other members of the Board as CEO deems necessary, has the authority to approve Energy Procurement contracts with terms greater than twelve (12) months but not more than five (5) years, in addition to Resource Adequacy contracts as specified in Table 1 above. The CEO shall report all such agreements to the PCE board monthly.
- 3) **Intermediate and Long-Term Agreements:** Approval by the PCE Board is required before the CEO enters into Energy Procurement contracts with terms greater than five (5) years.
- 4) **Amendments to Agreements**: Chief Executive Officer, in consultation with the General Counsel and the Board Chair, or Board Vice Chair in the event that the Board Chair is unavailable, has authority to execute amendments to Energy Procurement contracts that were previously approved by the Board.

STRATEGIC PLAN

The contracts executed in October support the Power Resources Objective A for Low Cost and Stable Power: Develop and implement power supply strategies to procure low-cost, reliable power.

California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacommunitypower.org

TO: CC Power Board of Directors **DATE:** 10/8/21

FROM: Tim Haines - Interim General Manager

SUBJECT: Report on CC Power Board of Directors Meeting – 10/8/21

The CC Power Board of Directors held a Special Meeting on Friday, 10/8/21, via Zoom. Details on the Board packet, presentation materials, and public comment letters can be found under the Meetings tab at the CC Power website: https://cacommunitypower.org

Highlights of the meeting included the following:

- Matters subsequent to posting the Agenda. None
- Public Comment. Mr. Rathi Lai, Critical Impact Consulting, encouraged the Board to
 ensure meaningful engagement with the environmental justice community in the
 development of CC Power policies.
- Consider and Possibly Approve Resolution 21-10-01 Determination that Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees as a Result of the Proclaimed State of Emergency

Brittany Iles, General Counsel's office, explained that recently passed AB 361 authorizes CC Power to continue to conduct its meetings telephonically or virtually with conditions. The Board adopted the proposed resolution allowing the meeting to proceed. This determination will remain in effect for 30 days.

 Consider and Possibly Approve Resolution 21-10-02 Notice of Intent to Bring Tumbleweed LDS Project Contracts to CC Power Board for Approval No Earlier Than Sixty Days Subsequent to this Notice

Monica Padilla, Director of Power Resources, Silicon Valley Clean Energy, delivered a presentation on the background on the RFO, evaluation, negotiation and contracting process for LS Power Tumbleweed project. The presentation provides considerable detail and is posted on the CC Power website at the above link.

Ms. Padilla noted that the LDS procurement is mandated by CPUC Decision 21-06-035. She reviewed the procurement requirements by participating member and the expected contribution toward those mandates provided by the Tumbleweed project.

Mr. Kevin Fox with Keyes & Fox explained the individual contracts associated with the project and the overall joint contracting structure. Mr. Tony Braun provided a summary of the CC Power and Participating Member Board approval process.

Following the presentation, the Chair opened the discussion up to the Board. The Board expressed universal support for the project, appreciation for Participating Member and CC Power staff and consultants, and recognized this as a major milestone for the Membership and CC Power. Board Member Sears requested clarification regarding CPUC regulatory uncertainty.

Members of the public spoke in support of the project. Representatives of labor, environmental and environmental justice organizations also encouraged the CC Power Board to adopt policy guidelines for future projects.

The Board approved the resolution unanimously.

The Chair adjourned the meeting.

California Community Power Long Duration Energy Storage

Notice to Proceed with LS Power Tumbleweed October 8, 2021 CC Power Special Board Meeting

Objective

Provide background on RFO, evaluation, shortlisting and negotiation process to support approval of
Notice of Intent to execute an Energy Storage Service Agreement, and ancillary agreements with,
LS Power for Tumbleweed Long Duration Energy Storage

RFO Background & Timeline

June '20 Interest & Information Gathering (RFI)

Oct '20 CCAs Issue a Joint-Request for Offers (RFO) for up to 500 MW of LDS

Feb '21

California Community Power (CC Power) Formed/Long Duration Storage Project Oversight Committee formalized

Jun '21 LDS Projects Shortlisted, ESSA Negotiations start, and begin to development of CC Power/CCA Agreements

Jun '21 CPUC Issues Mid-term Reliability Procurement Order – LDS POC Develop Pathways to Achieve Compliance

Oct '21 CC Power and individual CCA Approval Process for LDS Project #1 – LS Power's Tumbleweed

RFO Timeline

Activity	Original Date
Issuance of RFO	October 15, 2020
Offerors Webinar	October 28, 2020
Offer Submission Deadline	December 1, 2020
Project Shortlisting	Mid-May 2021
Developer/Buyer Negotiations	June – October 2021
CC Power 60-day Notice for Contract Approval	October 2021
CC Power Final Contract Approval (Tentative)	December 2021
Individual CCA Board Approval	December 2021 – February 2022

RFO Objectives & Requirements

Objectives

- Procure cost-effective LDS to integrate renewables & support grid reliability
- Joint-procurement to share resources and project risk
- Meet future potential IRP procurement mandates
- Technology and location agnostic with desire to evaluate emerging technologies
- Full tolls for capacity and energy value

Requirements

- CAISO resource or Import with dynamic transfer rights
- Must be able to qualify for Resource Adequacy
- Grid-charged with minimum 8-hour discharge duration
- COD no later than June 1, 2026
- Minimum delivery term 10 years
- 50 MW minimum
- Complete bid submission

Offers

- Projects on-line as early as 2023
- 51 Entities submitted offers (over 9,000 MW)
- Total of 221 unique pricing offers
 - 160 Full Toll Offers
 - 57 RA Only Offers
- 8 Technology types
 - 18 distinct technologies
- 8,10,12-hour, and multi-day discharge durations

Technology Battery aqueous-air flow lithium-ion zinc **Chemical Flow** iron redox flow vanadium flow **Compressed Air** Fuel Cell - Hydrogen Hybrid hydrogen, combined-cycle gas gen li-ion, combined-cycle gas gen Mechanical – Gravity **Pumped Hydro Thermal** ice (HVAC) liquid air molten Salt molten Salt & Gas gen volcanic stone water heat exchange 6

Primary Offers

- Identified <u>98 primary offers</u> out of the initial list of 221
- Primary offers were chosen based on the following principles:
 - Conforming offers only
 - Lowest price
 - Shortest delivery term (10-15 years)

Evaluation Process



Conforming Y/N and shorten list to 98 offers

Review each offer and determine if it meets minimum criteria

Round 1

Evaluate and Score Projects based on 100-point scoring rubric

Quantitative and Qualitative Assessment of individual projects based on NPV, Risk, Developer experience, Technology, Environmental Impact, and Delivery Term

Round 2

Rank Projects and Identify Top Candidates for Further Analysis

Top Projects per Technology and Max of 10 -17 will undergo further Quantitative and Qualitative Assessment

Shortlist

Project Oversight Committee Recommendation

Two levels of Projects recommended for Shortlisting & Negotiations to CC Power

Two-Round Evaluation Process

Round One

SVCE & Gridwell

98 Primary offers were chosen based on the following principles:

SCPA & Ascend

- Conforming offers only
- Lowest price

Expected Value

Project Cost minus

Deterministic Value

CCCE, SCPA, SVCE

& PCE

Shortest delivery term (10-15 years)

Locational Value Based on congestion/price mapping Project Risk & Ability to meet RA requirements Technology Viability Offer/Developer, Environmental and Offer parameters (term and terms)

MCE & RCEA

All Primary Offers were scored and ranked. Top 17 moved to Round 2

SCPA, MCE, PCE

& RCEA

Lithium-Ion vs. Emerging Technologies

- The top 10 projects were the highest scores (all li-ion).
- The remaining 7 spots were allocated to the highest scoring non li-ion projects.
 - The decision to include non li-ion and classify as "emerging technologies" was to introduce technology diversity to the potential shortlist.
 - 56 out of the 98 primary offers represented li-ion

Round 2 - Evaluation Process

Deep dive on 17 primary offers

Round Two



^{*}Emerging technologies defined as non-Li-Ion including 2nd life EV, Gravity, Hydrogen, Liquid Air, Compressed Air, Iron Redox Flow, and Pumped Storage Hydro

Round 2 Evaluation: NPV Modeling



Project Value

- 1. Cost were assumed fixed, with the exception of projects with a variable operating component
- 2. Expected value ranged from negative to marginally positive
- 3. Value highly variable and uncertain over time
 - 1. Location matters
 - 2. dependent on and how the storage is operated (day ahead vs. real time)
 - 3. A/S value expected to decrease over time
- 4. Resource Adequacy value (avoided cost) is dependent on regulatory structure

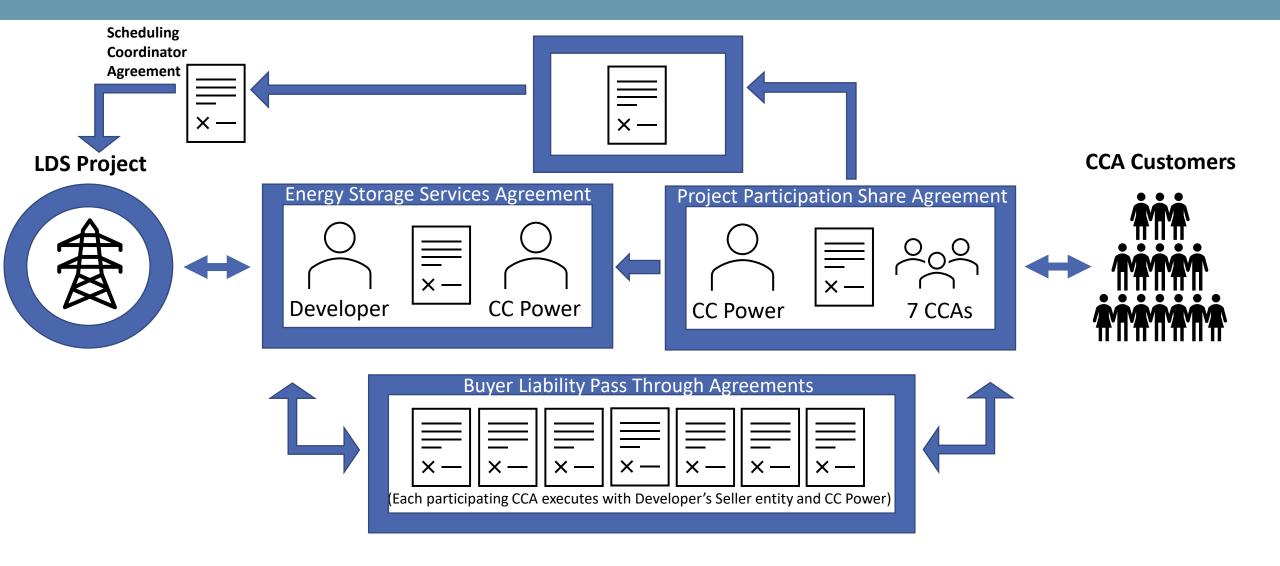
Shortlisting

- Based on updates during round 2, the POC agreed upon a two-tier shortlist.
 - <u>Tier 1</u> Offers that scored the highest and received the most confidence in delivering a long duration storage product.
 - <u>Tier 2</u> Offers that require more information for CC Power negotiating team to commit to executing a contract.
- The two-tiered approach also provides additional capacity to deal with projects dropping
- Focus of negotiations on Tier 1 Projects
- CC Power General Manager finalized Shortlist

Negotiation Team & Agreements

- Confirmation and refinement of Term Sheet Offer
 - Led to dropping a couple of projects
- Exclusivity Agreements between CC Power & Seller/Developer
- Energy Storage Service Agreement Proforma development
- Credit/Collateral Requirements
- Project Participation Share Agreement
- Operating Agreement
- Pathways Need based on CPUC requirements, project size and CCA member interest in moving forward and specific projects

Contract Structure



Participating CCAs in LDS Procurement

7 CCAs agreed to move forward with joint LDS procurement

















Mid-Term Reliability Decision (2023-2026)

<u>D.21-06-035</u> adopted by CPUC on June 24, 2021 to address midterm reliability needs

- LSEs required to collectively procure 11,500 MW NQC of new resources
- Follow-on to November 7, 2019 CPUC decision mandating 3,300 MW NQC procurement for 2021-2023 to maintain reliability
- Contract of at least 10 years
- Allocated to LSEs by load share
- Resources must be zero-emission or RPS eligible (no fossil resources)
- 4,500 MW of obligation subject to specific category requirements (next slide)

Procurement Timing

Timing of overall procurement requirement and specific categories is assigned in tranches between 2023 and 2026

Procurement Obligation in NQC¹ MW for All LSEs by Category and Year

Procurement Category	2023	2024	2025	2026	Total
Zero-emissions generation, generation paired with storage, or demand response resources ²	-	-	2,500	-	2,500
Firm zero-emitting resources ³	-	-	-	1,000	1,000
Long-duration storage resources ³	-	-	-	1,000	1,000
Remaining New Capacity Required			-	-	7,000
Total Annual Capacity Requirements	2,000	6,000	1,500	2,000	11,500

- 1. Obligation is in NQC MW (not nameplate) and subject to ELCC factor (next slide)
- 2. Zero-emissions resources required to replace Diablo Canyon must be procured by 2025, but may occur in any of the years 2023-2025; therefore, the columns do not add to the total.
- 3. LSEs may request an extension by February 1, 2023 up to 2028 for the LLT resources. Minimum 8-hour discharge

Effective Load Carrying Capacity Factors

CPUC released an <u>ELCC study</u> in September 2021 to convert facility nameplate to Net Qualifying Capacity ("NQC)

• 2025 and 2026 figures are indicative and will be finalized by end of 2022

Incremental ELCCs for Storage Resources

Procurement Category	2023	2024	2025 Indicative	2026 Indicative
4-Hour Battery	96.3%	90.7%	74.2%	69.0%
6-Hour Battery	98.0%	93.4%	79.6%	75.1%
8-Hour Battery	98.2%	94.3%	82.2%	78.2%
8-Hour Pumped Storage Hydro				76.8%
12-Hour Pumped Storage Hydro				80.8%

LDS Obligation for Participating CCAs

Long Duration Storage requirement in NQC MW and converted to nameplate using the available 2024 and 2026 ELCCs

CCA	NQC MW	Nameplate MW (2024 ELCC)	Nameplate MW (2026 ELCC)
CleanPowerSF	15.5	16.4	19.8
Peninsula Clean Energy	19.0	20.1	24.3
Redwood Coast Energy	3.5	3.7	4.5
San Jose Clean Energy	21.5	22.8	27.5
Silicon Valley Clean Energy	20.5	21.7	26.2
Sonoma Clean Power	12.5	13.3	16.0
Valley Clean Energy	4.0	4.2	5.1
Total	96.5	102.3	123.4

Obligation is less than sought through RFO

LDS Project #1

- Project LS Power's Tumbleweed
- Product 69 MW/552 MWh Tolling Agreement
- Location Rosamond, Kern County
- Technology –Li-ion
- Interconnection Status PCDS
- **COD** 7/1/24
- Discharge Duration 8 hours
- Price fixed \$/kw-mo
- **Term** 15 years



Tumbleweed Shares per CCA

 Expected capacity share per CCA is based on a pro rata share of CPUC's Mid-term Reliability Procurement Order

Participating CCA	MTR Procurement Capacity Order LDS MW	% of MTR Requirement	Tumbleweed Allocation MW
CPSF	15.5	16%	11.1
PCE	19	20%	13.6
RCEA	3.5	4%	2.5
SJCE	21.5	22%	15.4
SVCE	20.5	21%	14.7
SCPA	12.5	13%	8.9
VCE	4	4%	2.9
Total	96.5		69.0

- Participating CCAs will seek authority to take a maximum capacity to cover:
 - Increased capacity should a CCA not obtain approval to move forward
 - Step-up capacity of up to 25% of contracted capacity

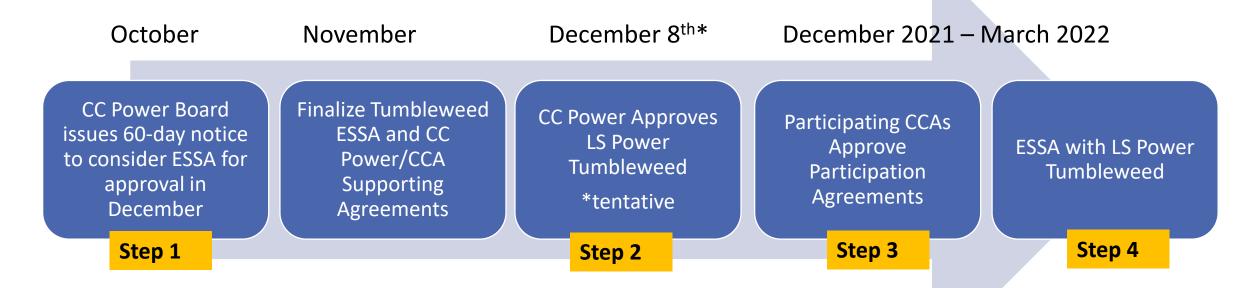
Tumbleweed Approval Process

Step 1: CC Power Board issues 60-day notice to consider ESSA for approval in December - Today

Step 2: CC Power Board approves ESSA, PPSA, BLPTA & Operating Agreement condition on individual CCA Approval

Step 3: CCAs seek respective Board Approvals of PPSA, BLPTA and Operating Agreement

Step 4: Tumbleweed Agreements become effective



Process will be repeated for additional LDS Project Agreements – condition on negotiations and interest from other CCAs

Summary

- 1. Tumbleweed NPV to participating CCAs is highly uncertain
- 2. Procurement of Long Duration Storage (8-hours or more) is mandated through MTR order
- 3. LS Power's Tumbleweed project will meet 56 to 68 percent of participating members MTR obligation
- 4. Tumbleweed COD is 2024, which may provide for a greater ELCC (94.3%) than 2026 COD (78.2%). Seeking CPUC clarification
- 5. Seeking provisions for prevailing wages, a PLA and prohibition of forced labor.

CC Power Board Request

Approve Resolution No. 21-10-02 to provide 60-Day Notice of Intent to Execute Energy Storage Agreement with LS Power Tumbleweed for Long Duration Energy Storage.

Credits

Project Oversight Committee

CCA	POC Member	Other Staff
CleanPowerSF	Michael Hyams	Erin Mulberg
Peninsula Clean Energy	Siobhan Doherty	
Redwood Coast Energy	Richard Engel	Jocelyn Gwynn
San Jose Clean Energy	Jeanne Sole	Phil Cornish
Silicon Valley Clean Energy	Monica Padilla	Karthik Rajan
Sonoma Clean Power	Deb Emerson	Ryan Tracey and Hannah Rennie
Valley Clean Energy	Gordon Samuel	

Gridwell Consulting – Carrie Bentley

Keyes & Fox – Kevin Fox

Ascend Analytics – David Millar, Brent Nelson and Valerie Katz

BBSW – Tony Braun, Justin Wynne, Brittany Iles, Kris Kirkegaard

Timothy Haines

California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacommunitypower.org

TO: CC Power Board of Directors **DATE:** 10/20/21

FROM: Tim Haines - Interim General Manager

SUBJECT: Report on CC Power Board of Directors Meeting - October 20, 2021

The CC Power Board of Directors held its normally scheduled meeting on Wednesday, October 20, 2021, via Zoom. Details on the Board packet, presentation materials, and public comment letters can be found under the Meetings tab at the CC Power website: https://cacommunitypower.org

Highlights of the meeting included the following:

- Matters subsequent to posting the Agenda. No matters were brought up.
- **Public Comment.** No public comment was provided.
- **Consent Calendar** The Board unanimously approved the following items:
 - o Minutes of the September 15, 2021Regular Board Meeting
 - o Minutes of the 10/8/21 Special Board meeting
 - Resolution 21-10-13 Reconsideration of the Determination that Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees as a Result of the Proclaimed State of Emergency
- **Board Chair's Report**. There was no Chair report.
- **General Manager's Report.** Long Duration Storage & Firm Clean Resources Updates Interim GM Haines presented reviewed the Long Duration Storage project review and approval timeline. Mr. Haines informed the Board that on October 22 confidential redline versions of the contracts will be provided and final documents are expected after October 29. Mr. Haines also pointed out that additional LDS Project Agreements are expected to follow and will use the same approval process. In the Firm Clean Resources discussion, the Interim GM noted the FCR Request for Offers will be released on October 22 and will include the Board's Workforce, Environmental and Environmental Justice policy, the joint contracting approach and lessons learned from the Long Duration Storage Project.
- Consider and Possibly Approve Resolution 21-10-14 Appointment of Treasurer/Controller and Designation of Officer to Receive Service on Behalf of CC Power. Interim GM Haines explained that pursuant to statute and the Joint Powers Agreement CC Power must appoint a Treasurer and Controller. Staff

recommends Tom Habashi, 3CE Chief Executive Officer to replace the original Treasurer/Controller who has resigned from 3CE. Mr. Haines explained that Board Member Habashi will be supported by himself and the Maher Accountancy. The resolution also designates Interim GM Haines to receive service on behalf of the Board.

- **Introduction of the 2022 Budget** Interim GM Haines presented 2022 budget material to the Board. The presentation provided an overview of the 2021 budget and the steps to be taken to arrive at a budget at the December Board meeting.
- **Discussion of Any Individual Member Items** No items were presented.



COMMONLY USED ACRONYMS AND KEY TERMS

AB xx - Assembly Bill xx

ALJ - Administrative Law Judge

AMP- Arrears Management Plans

AQM - Air Quality Management

BAAQMD - Bay Area Air Quality Management District

CAC – Citizens Advisory Committee

CAISO - California Independent System Operator

CalCCA - California Community Choice Association

CAM - Cost Allocation Mechanism

CARB - California Air Resources Board, or California ARB

CARE- California Alternative Rates for Energy Program

CBA - California Balancing Authority

3CE- Central Coast Community Energy (Formerly Monterey Bay Community Power-MBCP)

CCA - Community Choice Aggregation (aka Community Choice Programs (CCP) or

CCE – Community Choice Energy (CCE)

CCP - Community Choice Programs

CEC - California Energy Commission

CPP- Critical Peak Pricing

CPSF – Clean Power San Francisco

CPUC – California Public Utility Commission (Regulator for state utilities)

CSGT - Community Solar Green Tariff

DA - Direct Access

DAC-GT - Disadvantaged Communities Green Tariff

DER - Distributed Energy Resources

DG - Distributed Generation

DR – Demand Response

DRP - Demand Response Provider

DRP/IDER - Distribution Resources Planning / Integrated Distributed Energy Resources

EBCE – East Bay Community Energy

ECOplus – PCE's default electricity product, 50% renewable and 90% GHG-free (in 2019)

ECO100 – PCE's 100% renewable energy product

EDR – Economic Development Rate

EE – Energy Efficiency

EEI - Edison Electric Institute; Standard contract to procure energy & RA

EIR – Environmental Impact Report

ELCC – Effective Load Carrying Capability

ESP – Electric Service Provider

ESS – Energy Storage Systems

ERRA - Energy Resource Recovery Account

EV – Electric Vehicle

EVSE – Electric Vehicle Supply Equipment (Charging Station)

FERA- Family Electric Rate Assistance Program

FERC – Federal Energy Regulatory Commission

FFS – Franchise Fee Surcharge

GHG – Greenhouse gas

GHG-Free – Greenhouse gas free

GTSR - Green Tariff Shared Renewables

IDER - Integrated Distributed Energy Resources

IOU – Investor Owned Utility (e.g PG&E, SCE, SDG&E)

IRP - Integrated Resource Plan

ITC - Investment Tax Credit (it's a solar tax credit)

JCC – Joint Cost Comparison

JPA - Joint Powers Authority

kW - kilowatt (Power)

kWh – Kilowatt-hour (Energy)

LIHEAP- Low Income Home Energy Assistance Program

Load Shaping - changing when grid energy is used

LSE - Load Serving Entity

MCE - Marin Clean Energy

Methane Gas-formerly known as 'natural gas'

Microgrid – building or community energy system

MW - Megawatt (Power) = 1000 kW

MWh - Megawatt-hour (Energy) = 1000 kWh

MUD - Multi-unit Dwelling

NBCs – non-bypassable charges

NEM - Net Energy Metering

NERC - North American Electric Reliability Corporation

NDA – Non-Disclosure Agreement

NG - Natural Gas

OES – Office of Emergency Services

OIR - Order Instituting Rulemaking

PCC - Portfolio Content Category (aka "buckets") - categories for RPS compliance

PCC1 – Portfolio Content Category 1 REC (also called bucket 1 REC)

PCC2 – Portfolio Content Category 2 REC (also called bucket 2 REC)

PCC3 – Portfolio Content Category 3 REC (also called bucket 3 REC or unbundled REC)

PCE – Peninsula Clean Energy Authority

PCIA – Power Charge Indifference Adjustment

PCL - Power Content Label

POU – Publicly Owned Utility

PPA - Power Purchase Agreement

PSPS - Public Safety Power Shutoff

PV – Photovoltaics (solar panels)

RA – Resource Adequacy

RE – Renewable Energy

REC - Renewable Energy Credit/Certificate

RICAPS - Regionally Integrated Climate Action Planning Suite

RPS - California Renewable Portfolio Standard

SB xx - Senate Bill xx

SCP – Sonoma Clean Power

SJCE - San Jose Clean Energy

SMD – Share My Data, interval meter data

SQMD – Settlement Quality Meter Data

SVCE – Silicon Valley Clean Energy

TNCs – Transportation Network Companies (ridesharing companies)

TOU RATES – Time of Use Rates

VGI – Vehicle-Grid Integration

V2G – Vehicle-to-Grid

VPP – Virtual Power Plant

WECC – Western Energy Coordinating Council

WREGIS – Western Renewable Energy Generation Information System

WSPP – Western Systems Power Pool; standard contract to procure energy and RA