

CONFIRMATION

EEI Master Power Purchase and Sale Agreement Confirmation

Between _____

and

Peninsula Clean Energy Authority

This Confirmation is entered into as of _____ (the “Effective Date”) by and between _____, a _____ (“Seller”) and Peninsula Clean Energy Authority, a California joint powers authority (“Buyer”). Buyer and Seller may each be referred to as a “Party,” and collectively as the “Parties.” This Confirmation is subject to that certain EEI Master Power Purchase and Sale Agreement between the Parties, together with the Cover Sheet thereto, dated _____, _____ (the “Master Agreement”), and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. This Confirmation and the Master Agreement, including any exhibits or amendments thereto, shall collectively be referred to as the “Agreement.” To the extent that any terms of this Confirmation conflict with those of the Master Agreement, the terms of this Confirmation shall govern.

1. DEFINITIONS. Defined terms shall have the meanings set forth below:

“Applicable Law” means (i) any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Project(s), or the terms of this Confirmation, (ii) the Tariff, and (iii) the WREGIS Operating Rules.

“Buyer Facilities” shall have the meaning set forth in Section 10 hereof.

“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

“CAISO Controlled Grid” has the meaning set forth in the Tariff.

“CAISO Credit” means the product of (i) the Index Price and (ii) the total MWh of Renewable Energy delivered to Buyer at the Delivery Point in a given hour pursuant to this Confirmation during the Delivery Period.

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

“California RPS” or “California Renewables Portfolio Standard” means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and Cal. Pub. Res. Code §§ 25740-25751, as administered by the CEC and the CPUC, and as may be modified by subsequent legislation.

“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively), as amended from time to time, promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.

“Category 1 Renewable Energy” means Renewable Energy that satisfies the requirements of Section 399.16(b)(1) of the California Public Utilities Code and the rules and regulations of the CEC applicable thereto.

“CEC” means the California Energy Commission, or its successor.

“CPUC” means the California Public Utilities Commission.

“Delivery Period” has the meaning set forth in Section 3.1.

“Delivery Point” has the meaning set forth in Section 4.

“Effective Date” means the effective date of this Confirmation as specified at the beginning of this Confirmation.

“Eligible Renewable Energy Resource” or “ERR” shall mean an Eligible Renewable Energy Resource as such term is defined in California Public Utilities Code Section 399.12 or Section 399.16.

“End Date” means the earlier of (i) the date on which all WREGIS Certificates associated with deliveries of Renewable Energy made to Buyer hereunder have been transferred to Buyer’s WREGIS Account, or (ii) one hundred and eighty (180) days after the Renewable Energy Delivery End Date.

“Energy Delivery Month” means the calendar month in which the electric energy component of the Product is delivered by Seller to Buyer at the Delivery Point in accordance with this Confirmation.

“Exhibits” shall be those certain Exhibits, which are attached hereto and made a part hereof.

“Forward Certificate Transfer” has the meaning set forth in the WREGIS Operating Rules.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Confirmation.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) any avoided emission 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 Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. 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 Project,
- (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project 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 Project for compliance with local, state, or federal operating and/or air quality permits.

If the Project is a biomass or biogas 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 Project.

"Index Price" means, for each hour, the average of the prices established by CAISO for the Fifteen Minute Market (FMM) (as defined in the Tariff) within such hour at the Delivery Point as published on the CAISO website or any successor thereto, unless a substitute publication or index is mutually agreed to by the Parties.

"MW" means megawatt.

"MWh" means megawatt-hour.

“Product” means Renewable Energy and associated WREGIS Certificates.

“Project” shall mean the Eligible Renewable Energy Resource(s) listed in Exhibit B used to provide Renewable Energy hereunder.

“Prudent Industry Practice” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Laws, the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practice shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“Renewable Energy” means electric energy and associated Green Attributes, whether now existing or first present in the future, together qualifying as a Category 1 Renewable Energy, generated by the Project.

“Renewable Energy Contract Price” shall mean _____.

“Renewable Energy Contract Quantity” shall mean the quantity of Renewable Energy to be delivered by Seller to Buyer hereunder during the relevant time periods as set forth on Exhibit A.

“Renewable Energy Credits” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028.

“Renewable Energy Delivery End Date” means the date designated as such in Section 3 of this Confirmation.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator” as set forth in the Tariff.

“Start Date” means the date designated as such in Section 3 of this Confirmation.

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended, supplemented or replaced by CAISO from time to time.

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

“WREGIS Account” means an account registered with WREGIS pursuant to the WREGIS Operating Rules.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

2. PRODUCT.

2.1 Seller Delivery of Renewable Energy. For each Energy Delivery Month in the Delivery Period, Seller shall deliver or make available, or cause to be delivered or made available to Buyer, the Renewable Energy Contract Quantity during the relevant time periods as set forth on Exhibit A.

2.2 RPS Standard Terms and Conditions.

STC 6: Eligibility

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

STC REC-1: Transfer of Renewable Energy Credits

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

STC REC-2: Tracking of RECs in WREGIS

Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy

Generation Information System will be taken prior to the first delivery under this contract.

STC 17: 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.

- 2.3 Delivery of WREGIS Certificates. Throughout the Delivery Period, Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with the Renewable Energy delivered to Buyer hereunder are issued and transferred to Buyer's WREGIS Account via Forward Certificate Transfer. For avoidance of doubt, Seller shall bear all WREGIS costs, charges and fees associated with the issuance and transfer of WREGIS Certificates hereunder. Seller shall comply with all Applicable Laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. The Parties acknowledge and agree that WREGIS Certificates will not be issued by WREGIS and transferred to Buyer until approximately ninety (90) days after the end of the Energy Delivery Month in which the associated Renewable Energy is generated and delivered to Buyer hereunder. Upon either Party's receipt of notice from WREGIS that a transfer of WREGIS Certificates was not recognized or completed, that Party will notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such commercially reasonable efforts as are necessary to cause such transfer to be recognized and completed. Notwithstanding the prior sentence, or anything herein to the contrary, Seller shall deliver to Buyer WREGIS Certificates in an amount equal to the amount of Renewable Energy delivered to Buyer under this Confirmation. Each Party agrees to provide copies of its records to the extent reasonably necessary for WREGIS to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party.
- 2.4 Seller's Representations and Warranties Regarding Status of Product as Category 1 Renewable Energy. Seller represents and warrants that all Product sold and delivered under this Confirmation shall qualify as Category 1 Renewable Energy.
- 2.5 New Construction and Project Information. To the extent that Seller constructs any new facilities to meet its supply obligation hereunder, Seller covenants and agrees that the construction and operation of such facility(ies) will be in accordance with any and all Applicable Laws. ***[Note: Seller plans to rely on to-be-constructed generating facilities and related milestones to be discussed.]*** Seller shall provide to Buyer promptly following request such information concerning the Project,

including concerning compliance with Applicable Law, as Buyer may reasonably request from time to time. Seller shall provide to Buyer within ten (10) days after the Effective Date a plan that is reasonably acceptable to Buyer for the proper recycling and disposal of all Project components, equipment, and materials at the end of the useful life of the Project.

2.6 No Forced Labor. Seller represents and warrants that it has not and will not knowingly utilize equipment or resources for the construction, operation or maintenance of the Project that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily (“Forced Labor”). Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor. Seller shall certify that it will not utilize such equipment or resources in connection with the construction, operation or maintenance of the Project.

3. DELIVERY PERIOD.

3.1 Start Date and Renewable Energy Delivery End Date. This Confirmation shall be in full force and effect as of the Effective Date. Delivery of Product under this Confirmation shall begin upon the Start Date indicated in the table in this Section 3, below, and continue through the End Date (the “Delivery Period”). The last Energy Delivery Month shall conclude on the Renewable Energy Delivery End Date indicated in the table in this Section 3, below. Notwithstanding anything to the contrary in this Agreement, Seller shall not deliver any WREGIS Certificates associated with Renewable Energy that is generated prior to the Start Date. This Confirmation shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof.

Start Date:	Renewable Energy Delivery End Date:

3.2 End Date. Seller shall deliver all WREGIS Certificates associated with the Renewable Energy delivered to Buyer hereunder by the End Date.

4. DELIVERY POINT. Seller shall deliver the electric energy component of the Renewable Energy to the CAISO Controlled Grid at the PNode designated by the CAISO for the Project (“Delivery Point”). Ownership of all Green Attributes associated with deliveries of Renewable Energy under this Confirmation shall pass from Seller to Buyer at the Delivery Point. All WREGIS Certificates reflecting such Green Attributes shall be delivered by Seller to Buyer in accordance with Section 2.3 of this Confirmation, and delivery of the Product shall not be deemed complete until WREGIS Certificates associated with the Product are delivered to Buyer’s WREGIS Account in accordance with Section 2.3.

5. SCHEDULING, TAGGING AND CAISO SETTLEMENTS.

- 5.1 Scheduling. As between Buyer and Seller, Seller shall be the Scheduling Coordinator for the Project and shall schedule the Renewable Energy into the CAISO Market at the Delivery Point in accordance with the Tariff.
- 5.2 E-Tagging. Seller shall generate all e-tags required to deliver and schedule the Renewable Energy.
- 5.3 CAISO Settlements. Seller shall bear all costs and expenses associated with generation of the Renewable Energy and delivery of the Renewable Energy to Buyer at the Delivery Point, including all transmission costs and CAISO costs and charges. As part of its compensation under this Confirmation, Seller shall retain all CAISO revenues associated with the delivery of Renewable Energy to Buyer at the Delivery Point.

6. PRICING.

- 6.1 Renewable Energy Contract Price and Payment. Buyer will pay Seller each Energy Delivery Month, pursuant to Section 8.1, an amount equal to the product of (i) the Renewable Energy Contract Price and (ii) the total MWh of Renewable Energy delivered to Buyer at the Delivery Point in such Energy Delivery Month. Seller will pay Buyer each Energy Delivery Month, pursuant to Section 8.1, the aggregate CAISO Credit for each hour in such Energy Delivery Month. The amounts due to Seller under this Section 6.1 shall be netted against the CAISO Credit due to Buyer in the monthly invoices.

7. CONTRACT QUANTITY.

- 7.1 Renewable Energy. The Renewable Energy Contract Quantity is set forth in Exhibit A and shall be delivered during the time periods specified in Exhibit A.

8. MONTHLY BILLING. Seller's monthly invoice to Buyer shall be settled in accordance with this Section 8.

- 8.1 Monthly Invoice Timeline. Seller shall deliver each monthly invoice for the previous Energy Delivery Month to Buyer not later than the tenth (10th) day of the month following such Energy Delivery Month. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the twenty-fifth (25th) day of the month following the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day.
- 8.2 Supporting Information. Seller shall deliver along with each monthly invoice records of Project meter data, CAISO settlements information, e-tags (if applicable) and such other information as Buyer may reasonably request concerning Seller's performance hereunder. Upon request, Seller shall use commercially reasonable efforts to provide to Buyer such information in real time, including through access

to the Project's meters and Supervisory Control and Data Acquisition system.

9. COMPLIANCE REPORTING.

9.1 Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on its own behalf and will require resource information, electronic tagging information, and other documentation to be provided by Seller. Seller shall provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product.

9.2 Cap and Trade Regulations. As between Buyer and Seller, Seller shall be the importer, if applicable, and shall bear all obligation and costs associated with the Cap and Trade Regulations with respect to the purchase and sale of Renewable Energy under this Confirmation.

10. FIRM OBLIGATION. Seller's obligation to deliver Product in an amount equal to the Renewable Energy Contract Quantity and at the times specified in Exhibit A is a firm obligation and shall not be excused for any reason other than an event of Force Majeure to the extent provided in Section 3.3 of the Master Agreement. Seller shall inform Buyer in advance, if practicable, and as soon practicable in any case, of any failure of Seller to deliver Product hereunder, including if due to Force Majeure.

11. BUYER FACILITIES AND RE-SALE. Nothing in this Confirmation shall limit Buyer's ability to develop its own generation facilities or purchase energy from other parties ("Buyer Facilities"); provided, however, that Buyer shall remain responsible to pay Seller for any Product delivered in accordance with this Confirmation. Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Confirmation. Buyer agrees to communicate information regarding such resale to Seller and Seller agrees to use commercially reasonable actions to recognize the subsequent purchaser as the purchaser of the Product, and to otherwise facilitate the re-sale by Buyer, upon written request by Buyer. Seller shall have no liability to any subsequent purchaser of the Product other than Buyer hereunder.

12. STANDARD OF CARE AND GOOD FAITH. When performing its obligations hereunder, each Party shall act in good faith and shall perform all work in a manner consistent with Prudent Industry Practices.

13. SECURITY PROVISIONS.

13.1 Compliance with Security Documents. The Parties will comply with the security provisions of the Master Agreement in connection with this Confirmation; no additional security will be provided by either Party.

Notwithstanding anything contained in the Master Agreement to the contrary, this Confirmation shall only be effective when executed by both Parties.

IN WITNESS WHEREOF, the undersigned Parties have signed this Confirmation effective as of the Effective Date.

Peninsula Clean Energy Authority, a
California joint powers authority

Sign: _____

Sign: _____

Print: _____

Print: _____

Title: _____

Title: _____

Exhibit A

Renewable Energy Contract Quantity

**Exhibit B
Project**