

**Regular Meeting of the Board of Directors of the
Peninsula Clean Energy Authority (PCEA)****AGENDA****Thursday, March 24, 2022****6:30 p.m.****Zoom Link:** <https://pencleanenergy.zoom.us/j/82688645399>**Meeting ID:** 826-8864-5399 **Passcode:** 2075 **Phone:** +1(346)248-7799**NOTE: Please see attached document for additional detailed teleconference instructions.**

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

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

CALL TO ORDER / ROLL CALL**PUBLIC COMMENT**

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

ACTION TO SET AGENDA AND TO APPROVE CONSENT AGENDA ITEMS

1. Adopt Finding Pursuant to AB 361 to Continue Fully Teleconferenced Committee Meetings Due to Health Risks Posed by In-Person Meetings
2. Approval of the Minutes for the February 24, 2022 Board of Directors Meeting
3. Approval of a Contract with Aiqueous for Ongoing PowerPath Licensing and Support for a Total Not to Exceed Amount of \$450,000 From June 2022 Through December 2024

4. Approval of an Amendment to the Existing Retention Agreement With the Law Firm of Braun Blasing Smith Wynne, P.C. in an Amount not to Exceed \$150,000 for a Total Not to Exceed Amount of \$450,000

REGULAR AGENDA

5. Chair Report (Discussion)
6. CEO Report (Discussion)
7. Citizens Advisory Committee Report (Discussion)
8. Appointments to the Executive Committee and Audit & Finance Committee (Action)
9. Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase and Sale Agreement for Renewable Supply with Second Imperial Geothermal Company, and any Necessary Ancillary Documents with a Power Delivery Term of 15 Years Starting at the Commercial Operation Date on or about January 1, 2023, in an Amount Not to Exceed \$275 Million (Action)
10. Approval of Local Government Solar and Storage Program Including \$600,000 for Technical Assistance and up to \$8 Million In Capital for System Installations to be Repaid Over 20 Years (Action)
11. Update on Results of the 2021 RFO for Renewable Energy + Storage (Discussion)
12. Board Members' Reports (Discussion)

INFORMATIONAL REPORTS

13. Update on Marketing, Outreach Activities, and Account Services
14. Update on Regulatory Policy Activities
15. Update on Legislative Activities
16. Update on Community Energy Programs
17. Update on Energy Supply Procurement
18. Report on California Community Power (CCP) Joint Powers Authority

19. Industry Acronyms and Terms

ADJOURNMENT

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

Instructions for Joining a Zoom Meeting via Computer or Phone

Best Practices:

- Please mute your microphone when you are not speaking to minimize audio feedback
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- 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

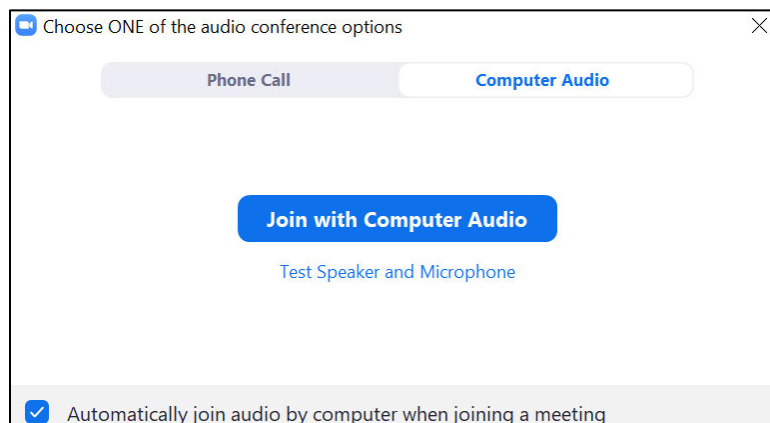
Videoconference Options:

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Option 1 Videoconference with Computer Audio:

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



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

Option 2 Videoconference with Phone Call Audio:

1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation: <https://pencleanenergy.zoom.us/j/82688645399>
2. The Zoom Application will open on its own or you will be instructed to Open Zoom.



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

Audio Only Options:

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

Option 3: Calling in via Telephone/Landline:

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



PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: March 15, 2022
BOARD MEETING DATE: March 24, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

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

SUBJECT: Resolution to Make Findings Allowing Continued Remote Meetings
Under Brown Act

RECOMMENDATION:

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

BACKGROUND:

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which rescinded his prior Executive Order N-29-20 and set a date of October 1, 2021 for public agencies to transition back to public meetings held in full compliance with the Brown Act. The original Executive Order provided that all provisions of the Brown Act that required the physical presence of members or other personnel as a condition of participation or as a quorum for a public meeting were waived for public health reasons. 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. On January 5, 2022, Governor Newsom extended the sunset provision of AB361 and Government Code Section 11133(g) to January 24, 2024 due to the surge in COVID-19

cases and hospitalizations. This is subject to change if a future Legislature and Governor elect to extend the sunset or make the provisions permanent.

AB 361 requires that, if the state of emergency remains active for more than thirty (30) days, the agency must make findings by majority vote to continue using the bill's exemption to the Brown Act teleconferencing rules. The findings are to the effect that the need for teleconferencing persists due to the nature of the ongoing public health emergency and the social distancing recommendations of local public health officials.

Effectively, this means that agencies, including PCEA, must agendize a Brown Act meeting and make findings regarding the circumstances of the emergency on a thirty (30) day basis. If at least thirty (30) days have transpired since its last meeting, the Board must vote whether to continue to rely upon the law's provision for teleconference procedures in lieu of in-person meetings.

AB 361 allows for meetings to be conducted virtually *as long as* there is a gubernatorially-proclaimed public emergency in combination with (1) local health official recommendations for social distancing or (2) adopted findings that meeting in person would present risks to health. AB 361 is effective immediately as urgency legislation and will now sunset on April 1, 2022.

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.

On October 28, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On November 18, 2021 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On December 16, 2021 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On January 27, 2022 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On February 24, 2022 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

DISCUSSION:

Because local rates of transmission of COVID-19 are 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 agendize the renewal of such findings in the event that thirty (30) days has passed since the Board's last meeting, is attached hereto.

RESOLUTION NO. _____

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

* * * * *

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

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

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

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20 that suspended the teleconferencing rules set forth in the California Open

Meeting law, Government Code section 54950 et seq. (the “Brown Act”), provided certain requirements were met and followed; and

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

WHEREAS, on January 5, 2022, Governor Newsom extended the sunset provision of AB361 and Government Code Section 11133(g) to January 1, 2024, extending the underlying proclaimed emergency due to the surge COVID-19 cases; and,

WHEREAS, California Department of Public Health (“CDPH”) and the federal Centers for Disease Control and Prevention (“CDC”) caution that the Omicron variant of COVID-19, currently the dominant strain of COVID-19 in the country, is more transmissible than prior variants of the virus, and that even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations; 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”; 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, on October 28, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

WHEREAS, on November 18, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

WHEREAS, on December 16, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

WHEREAS, on January 27, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

WHEREAS, on February 24, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

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

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that

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

* * * * *

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

Thursday, February 24, 2022
6:30 p.m.
Zoom Video Conference and Teleconference

CALL TO ORDER

Meeting was called to order at 6:31 p.m. in virtual teleconference.

ROLL CALL

Participating Remotely:

Dave Pine, San Mateo County
Rick DeGolia, Atherton, *Chair*
Julia Mates, Belmont
Coleen Mackin, Brisbane
Donna Colson, Burlingame, *Vice Chair*
Raquel Gonzalez, Colma
Roderick Daus-Magbual, Daly City
Carlos Romero, East Palo Alto
Sam Hindi, Foster City
Harvey Rarback, Half Moon Bay
Laurence May, Hillsborough
Tom Faria, Los Banos
Betsy Nash, Menlo Park
Anders Fung, Millbrae
Tygarjas Bigstyk, Pacifica
Michael Smith, Redwood City
Marty Medina, San Bruno
Laura Parmer-Lohan, San Carlos
Rick Bonilla, San Mateo
James Coleman, South San Francisco
John Carvell, Woodside

Pradeep Gupta, Director Emeritus
John Keener, Director Emeritus

Absent:

Warren Slocum, San Mateo County

Jeff Aalfs, Portola Valley

A quorum was established.

PUBLIC COMMENT

Ann Schneider
Bart Pantoja, Building Trades

ACTION TO SET THE AGENDA AND APPROVE REMAINING CONSENT AGENDA ITEMS

Director Emeritus Gupta asked if Peninsula Clean Energy staff was considering collecting data on the permitting processes for building electrification in an effort to make these processes more streamlined in the future. Rafael Reyes, Director of Energy Programs, explained that many cities are moving their permitting process online and that Peninsula Clean Energy will be looking at in the future.

Director Nash added her support of permitting improvements for the San Mateo County region.

Director Fung noted a correction to the January 27, 2022 minutes which erroneously showed Director Ann Schneider as present at that meeting.

MOTION: Director Bonilla moved, seconded by Director Rarback to set the Agenda, and approve Agenda Item Numbers 1-5, with changes as requested to Agenda Item 2.

1. Adopt Finding Pursuant to AB 361 to Continue Fully Teleconferenced Committee Meetings Due to Health Risks Posed by In-Person Meetings
2. Approval of the Minutes for the January 27, 2022 Board of Directors Meetings
3. Approval of JPA (Joint Powers Authority) Weighted Voting Shares Allocation
4. Approval of Reach Code Assistance Extension
5. Approve Direction on California Community Power (CC Power) Board Meeting Action

MOTION PASSED: 21-0 (Absent: San Mateo County, Portola Valley)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Slocum				X
Atherton	Director DeGolia	X			
Belmont	Director Mates	X			
Brisbane	Director Mackin	X			

Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			
Daly City	Director Daus-Magbual	X			
East Palo Alto	Director Romero	X			
Foster City	Director Hindi	X			
Half Moon Bay	Director Rarback	X			
Hillsborough	Director May	X			
Los Banos	Director Faria	X			
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyk	X			
Portola Valley	Director Aalfs				x
Redwood City	Director Smith	X			
San Bruno	Director Medina	X			
San Carlos	Director Parmer-Lohan	X			
San Mateo	Director Bonilla	X			
South San Francisco	Director Coleman	X			
Woodside	Director Carvell	X			
	Totals	21			2

REGULAR AGENDA

6. CHAIR REPORT

Chair DeGolia shared information on the timing of Reach Code adoption in Atherton with the adoption of the 2022 California Building Codes.

7. CEO REPORT

Jan Pepper, CEO, gave a report including an update on recruitment for the COO and CFO, California Community Power (CC Power) Long Duration Storage Project which will be brought forward at the February 25, 2022 CC Power Board meeting, updates on the Los Banos enrollment process which begins in April, and an update on the Remote Working Policy for Peninsula Clean Energy staff. Jan also shared that Peninsula Clean Energy would be distributing a letter of support for the CalCCA Transportation Electrification Bill.

8. CITIZENS ADVISORY COMMITTEE REPORT

Morgan Chaknova, Citizens Advisory Committee (CAC) Chair, gave a report including the results from the annual CAC survey, an updated working plan that will be brought to the full Peninsula Clean Energy Board in March, and a formal proposal that was submitted to the Peninsula Clean Energy Board Subcommittee on Decarbonization.

9. Selection of Chair and Vice Chair of Peninsula Clean Energy Board of Directors (Action)

Director Mates nominated Rick DeGolia and Donna Colson as Chair and Vice Chair, respectively.

Director Mackin and Director Emeritus Gupta offered their support of this nomination.

MOTION: Director Daus-Magbual moved, seconded by Director Mackin to select Rick DeGolia as Chair and Donna Colson as Vice Chair of the Peninsula Clean Energy Board of Directors.

MOTION PASSED: 20-0 (Absent: San Mateo County, Colma, Portola Valley)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Slocum				X
Atherton	Director DeGolia	X			
Belmont	Director Mates	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson	X			
Colma	Director Gonzalez				X
Daly City	Director Daus-Magbual	X			
East Palo Alto	Director Romero	X			
Foster City	Director Hindi	X			
Half Moon Bay	Director Rarback	X			
Hillsborough	Director May	X			
Los Banos	Director Faria	X			
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyk	X			
Portola Valley	Director Aalfs				X
Redwood City	Director Smith	X			
San Bruno	Director Medina	X			
San Carlos	Director Parmer-Lohan	X			
San Mateo	Director Bonilla	X			
South San Francisco	Director Coleman	X			
Woodside	Director Carvell	X			
	Totals	20			3

10. Authorize New Peninsula Clean Energy Rates Effective April 1, 2022 With a Net 5% Discount in Generation Charges for ECOplus Compared to PG&E Generation Rates (Action)

Leslie Brown, Director of Account Services, gave a presentation covering the PG&E rate change, effective March 1, 2022, the Power Charge Indifference Adjustment (PCIA) rate change, and the PG&E Generation rates. Leslie explained that the net impact would allow Peninsula Clean Energy to adjust generation rates for ECOplus.

Director Carvell asked for clarification on the residential percent increase for PG&E system average bundled rates in comparison to last year's rates. Leslie explained that the rate change would be closer to a 15% change for both T&D and generation rate changes.

Vice Chair Colson asked for clarification on the changes to the ECO100 rates. Leslie explained that ECO100 would still maintain an increase of \$0.01 per kWh when compared to the rates for ECOplus.

Director Emeritus Gupta noted that Peninsula Clean Energy is currently tied to the PG&E rate structure and suggested that in the future it could be beneficial to look at cost-based rates than generation rate setting. Jan Pepper, CEO, explained that Peninsula Clean Energy is considering a cost-of-service study to explore cost-based rates versus rates that are tied to PG&E's rates.

Public Comment: Mark Roest

MOTION: Director Faria moved, seconded by Director Pine to approve a Resolution to implement new Peninsula Clean Energy ECOplus rates effective April 1, 2022 to reflect a net 5% discount relative to March 1, 2022 PG&E rates.

MOTION PASSED: 20-0 (Absent: San Mateo County, Colma, Portola Valley)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Slocum				X
Atherton	Director DeGolia	X			
Belmont	Director Mates	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson	X			
Colma	Director Gonzalez				X
Daly City	Director Daus-Magbual	X			
East Palo Alto	Director Romero	X			
Foster City	Director Hindi	X			
Half Moon Bay	Director Rarback	X			
Hillsborough	Director May	X			
Los Banos	Director Faria	X			
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyk	X			
Portola Valley	Director Aalfs				X
Redwood City	Director Smith	X			
San Bruno	Director Medina	X			
San Carlos	Director Parmer-Lohan	X			
San Mateo	Director Bonilla	X			

South San Francisco	Director Coleman	X			
Woodside	Director Carvell	X			
	Totals	20			3

11. Peninsula Clean Energy Labor Policy (Discussion)

Jan Pepper, CEO, presented on Peninsula Clean Energy Policy 10, the Inclusive and Sustainable Workforce Policy including a recap of the policy objectives and its application for both Power Purchase Agreements (PPAs) with Third Parties and Energy Efficiency Projects. Jan went into further detail on two customer energy programs: the Low-Income Home Upgrade Program and the EV Ready Program.

Director Bonilla asked for clarification on the PPA's with third parties for solar + storage and what percentage were done with a Project Labor Agreement (PLA) and what percentage were done with Prevailing Wage. Jan explained that the information being presented was gathered from responses to Requests for Offers (RFO) received by Peninsula Clean Energy in January 2022 and California Community Power (CC Power) in December 2021 for projects that have not yet been built for solar + storage and that 80% of the offers received were offering a PLA, while 100% of the offers received would pay prevailing wage.

Public Comment: Mark Roest, Abe

Director Carvell suggested considering expanding the pool of potential contractors to complete the work for the energy programs discussed to assist Peninsula Clean Energy in achieving its goals.

Vice Chair Colson offered that through the work of the Diversity, Equity, Accessibility, and Inclusion (DEAI) Peninsula Clean Energy will have insight into vendor relationships and bidding procedures. Director Bonilla suggested that Peninsula Clean Energy may need to readjust the budget in order to attract more contractors.

Public Comment: Mark Roest, David Mauro

12. Update on DEAI Process (Discussion)

Shayna Barnes, Operations Specialist, gave an update on the Diversity, Equity, Accessibility and Inclusion (DEAI) Process including background on the project, information on the consultant, GCAP Services Inc., deliverables as outlined in the RFP, an update on the project status and the development of a DEAI survey.

Director Smith noted that the Peninsula Clean Energy is working not only to meet the legislative requirements but to also be at the forefront of energy and social justice. Director Daus-Magbual expressed his gratitude to the Peninsula Clean Energy team for their work on this item and noted that Peninsula Clean Energy is setting the precedent for energy organizations to do this kind of work.

Vice Chair Colson acknowledged the Citizens Advisory Commission who originally took on this work and brought it to the attention of the Peninsula Clean Energy Board. Vice Chair Colson also noted that Peninsula Clean Energy can create processes to serve as a model for other CCAs.

Director Hindi expressed gratitude to Vice Chair Colson and Director Smith for their leadership in this project in striving for more than the legislative requirements.

Director Mates expressed her appreciation for the work done to create a meaningful policy.

Chair DeGolia requested regular reports from the DEAI Subcommittee and suggested that the pace of the project be slow enough to ensure thoroughness.

Director Bonilla expressed his gratitude for Peninsula Clean Energy taking on this project.

Jan Pepper, CEO, thank the board for their support, and expressed her appreciation to Shayna Barnes, Kirsten Andrews-Schwind and Matthew Rutherford for their hard work.

Director Parmer-Lohan expressed her gratitude and encouraged the DEAI Committee to be holistic in the search for barriers to entry.

13. BOARD MEMBERS' REPORTS

None

ADJOURNMENT

Meeting was adjourned at 8:08 p.m.

**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: Mar 18, 2022
BOARD MEETING DATE: Mar 24, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Yes

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Rafael Reyes, Director of Energy Programs

SUBJECT: Approval of Aiqueous Contract Renewal in an Amount Not-To-Exceed \$450,000 for a Total Not-to-Exceed Amount of \$760,000 (Action)

RECOMMENDATION

Approve contract renewal with Aiqueous for ongoing PowerPath licensing and support for a total not to exceed amount of \$450,000 from June 2022 through December 2024. This extends the engagement under the current contract for June 2019 through May 2022 which will have a total cost of approximately \$310,000 for licensing and support.

BACKGROUND

Peninsula Clean Energy's mission is to reduce greenhouse gas (GHG) emissions and reinvest in its member communities. To support that mission, Peninsula Clean Energy operates incentive and service programs for e-bikes, electric vehicles (EV), heat pump water heaters (HPWH), energy storage and other clean technologies. Since 2019 Peninsula Clean Energy has used a customized Salesforce-based system called PowerPath to provide a program management and customer relationship management platform, to manage incentive reviews and approvals, customer communications, partner data access, provide accurate and consistent reporting, and develop targeted marketing lists. The customization, which is tailored for utility agencies, is provided by a technology and consulting firm named Aiqueous. Other CCA's including MCE, East Bay Clean Energy, Central Coast Community Energy also utilize Aiqueous' PowerPath platform. Utilizing the same platform provides added benefits including lower costs on shared features.

After evaluating multiple program management platforms, Peninsula Clean Energy selected and executed a contract with Aiqueous in June 2019 to set up PowerPath and provide ongoing support. This contract is set to expire May 31, 2022. A renewal of the contract is proposed with a new contract with Aiqueous to pay for ongoing software licenses and support hours to continue to use PowerPath.

DISCUSSION

Since its launch in 2019, PowerPath has been used to meet various needs across the agency. This includes:

1. Managing customer applications and rebates for the Used EV, New EV, E-Bikes, HPWH, the EV Ready programs. This includes processing applications, tracking customer communications, tracking a pipeline of projects in various stages, and processing rebate payments.
2. Customer communications including notification emails and legal agreements.
3. Data integrations with third-party program administrators to efficiently share data on an ongoing basis.
4. Data connections with multiple other platforms that Peninsula Clean Energy uses, such as Formstack for website application forms, Box for document storage, DocuSign for secure agreement execution, and Bill.com to know status of rebate payments.
5. Creating marketing lists for customer targeting. PowerPath contains a record of all Peninsula Clean Energy accounts and account characteristics (e.g. customer rate, etc.) and connects those records to program participation records to have a full view of customer's engagement with Peninsula Clean Energy.
6. Reporting and dashboard metrics.

Since inception Peninsula Clean Energy has been very satisfied with the service provided by Aiqueous under the current contract and the system has enabled delivery of programs with a high degree of consistency and quality as well as low administrative overhead.

The contract renewal with Aiqueous is to cover software and labor costs. Software costs include user licensing costs, ongoing data interchanges, security features, and a test environment. Labor costs are for up to 1,400 support hours from Aiqueous. This number of support hours is in line with support needs to date for the fixes and refinement of business processes for existing programs as well as new programs under development or conceived under Peninsula Clean Energy's Strategic Plan.

FISCAL IMPACT

The Aiqueous contract would be for a total not-to-exceed amount of \$450,000 from June 2022 through December 2024. This extends the engagement under the current contract for June 2019 through May 2022 which will have a total cost of approximately \$310,000 for licensing and support.

STRATEGIC PLAN

The proposed program supports the following elements of the strategic plan:

Goal 6 – Organization Excellence, Objective C, Data and Technology

- Key Tactic 1: Increase data analytics capability to enable energy-related analyses, program impact measures, & consumer insights for continuous improvement
- Key Tactic 2: Implement scalable systems that maximize advances in IT
- Key Tactic 3: Implement systems and procedures to ensure data accuracy, privacy, and security
- Key Tactic 4: Create an executive dashboard with key organizational metrics to guide strategic and operational decision-making
- Key Tactic 5: Provide ongoing technology training for staff and equip them with appropriate tools

RESOLUTION NO. _____

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

* * * * *

**RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER
TO EXECUTE A CONTRACT AMENDMENT WITH AIQUEOUS FOR ONGOING
POWERPATH LICENSING AND SUPPORT, AND INCREASING THE CONTRACT BY
\$450,000, FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$760,000, FOR THE
CONTRACT PERIOD BEGINNING JUNE 11, 2019 AND ENDING DECEMBER 31, 2024
IN A FORM APPROVED BY THE GENERAL COUNSEL.**

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

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

WHEREAS, Peninsula Clean Energy requires the use of a program management and customer relationship management platform to manage incentive review and approval processes, support customer and partner communications, provide accurate and consistent reporting, and develop customer targeted lists, among other functions; and

WHEREAS, following a competitive selection process a contract with the technology firm Aiqueous was signed effective on June 3, 2019 for software licenses and support for a software platform called PowerPath to provide that functionality; and

WHEREAS, the current contract will have a total cost of approximately \$310,000 for licensing and support through May 2022;

WHEREAS, Aiqueous has heretofore provided services to Peninsula Clean Energy in a highly satisfactory manner; and

WHEREAS, Peninsula Clean Energy is now seeking to execute a new two-and-a-half-year contract with Aiqueous to pay for ongoing software and labor costs for a not-to-exceed amount of \$450,000; and

WHEREAS, in order to continue the licensing and support services of Aiqueous uninterrupted, PCEA desires to extend the engagement under the current contract by extending it through December 2024 and adding \$450,000 to the not to exceed amount for a total not to exceed amount of \$760,000

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to finalize and execute a contract amendment, and increasing the contract by \$450,000, for a total not-to-exceed amount of \$760,000, for a term of June 1, 2019 through December 31, 2024 in a form approved by the General Counsel.

* * * * *



POWERPATH

Thank you for your interest in working with AIQUEOUS.

This document including all schedules ("Agreement") sets forth the agreement between AIQUEOUS and Peninsula Clean Energy ("Customer") relating to the licensing and ongoing support of AIQUEOUS' POWERPATH® and ECOiQ®. If it meets with your approval, please sign at the bottom and return to AIQUEOUS.

This Agreement is entered into and is effective as of June 1, 2022 ("Effective Date") by and among:

- 1) AIQUEOUS, LLC, a limited liability company organized under the laws of Texas ("AIQUEOUS")
- and
- 2) Peninsula Clean Energy, a joint powers authority organized under the laws of California ("Customer").

AIQUEOUS and Customer may be referred to in this Agreement individually as a "Party" or collectively as "the Parties"

1. Services and Fees

1.1 AIQUEOUS shall provide the goods and/or services contained in the Statement(s) of Work ("Schedule A.1", "Schedule A.2", and so on) in accord with the duties enumerated therein. AIQUEOUS shall be under no obligation to deliver or provide any goods or services unless specifically expressed in Schedule A and no obligations or duties other than those contained in the Agreement shall be implied.

1.2 AIQUEOUS may delegate some or all of its duties under the Agreement to one or more of its Affiliates, with the Customer's prior written approval. Such delegation shall not release AIQUEOUS of its duties and obligations under this Agreement.



1.3 Customer may request additional goods and / or services through additional Statements of Work that follow the same format and structure as Schedule A, with separate signature lines for approval on each additional Statement of Work. Subsequent Statements of Work will be named "Schedule A. [#]," with the number sign referring to the progressive number of agreed-upon Statements of Work between Customer and AIQUEOUS.

2. Customer's Responsibilities

2.1 Customer shall be solely responsible for ensuring that its collection, possession, maintenance and delivery of relevant information to AIQUEOUS, and that Customer's use of goods and services contemplated by this Agreement is, at all times, in compliance with any applicable privacy policy, law, rule or regulation, including but not limited to any privacy policy, law, rule or regulation applicable to personally identifiable information or other Confidential information.

2.2 Customer has sole and exclusive responsibility for misuse including but not limited to unlawful use of the goods and services contemplated by this Agreement and provided by AIQUEOUS to the Customer or data generated from or resulting from the use of such goods and services without limitation. Customer shall establish proper internal procedures and safeguards to prevent the misuse of those goods and services or any data or materials generated from the use of such goods and services.

2.3 Customer shall timely provide to or ensure that AIQUEOUS is provided with any and all information requested and in a format specified by AIQUEOUS in order to perform AIQUEOUS' duties under this Agreement. AIQUEOUS shall be entitled, without further inquiry, to rely on the authenticity and accuracy of any and all information and communications of whatever nature from Customer in good faith. AIQUEOUS shall not be responsible or liable to any person for any damage whatsoever caused directly or indirectly by virtue of such communications or information provided by Customer which are not authentic or are inaccurate.

2.4 Customer will also adhere to the terms and conditions in the SFDC Service Agreement (see Attachment A). Paragraph 7 of the SFDC Service Agreement, "Compelled Disclosure," does not supersede compliance with the California Public Records Act, California Government Code Section 6250 et seq.

2.5 Customer will provide the POWERPATH End User License Agreement (see Attachment B) to non-PCE affiliated external POWERPATH end users with access to POWERPATH pursuant to the terms of this Agreement. PCE shall use best efforts to ensure that its staff (Internal Users) adhere to the conditions of this Agreement. Internal Users shall not be required to sign or acknowledge POWERPATH documents or terms, electronically or otherwise, pursuant to this Agreement.



3. Conditions of Use

3.1 The goods and services contemplated in this Agreement may require use of identifying digital information in the form of User IDs and Passwords. Customer, and any and all users gaining access to the goods and services of this Agreement provided to Customer, shall not permit or allow other persons to have access to or unique identifying information including but not limited to User IDs, usernames, and password.

3.2 AIQUEOUS shall not be liable for any unauthorized access to any goods delivered to or services provided to Customer or associated data including but not limited to Aggregated Data and Confidential Information by a person using a User ID and/or password provided to Customer or used by it or one of its representatives, affiliates, employees, or other agent with authority or apparent authority. Customer shall keep all such information confidential and shall immediately notify AIQUEOUS if Customer believes or should have reason to believe that any unauthorized access has occurred or may occur.

3.3 AIQUEOUS may block access to any of the goods and services described by this Agreement without prior notice if AIQUEOUS believes that unauthorized use is being made of goods or services provided to Customer.

4. Term of Agreement and Termination

4.1 The term of this Agreement shall be from the Effective Date of the Agreement through December 31, 2024. In the event that Customer wishes to expand the Parties' duties in relation to the Agreement including but not limited to by extending the term of the agreement, Customer and AIQUEOUS shall agree in writing to the additional duties and consideration in advance of such expansions becoming effective.

4.2 The Parties each have the right to terminate the contract by giving the other Party at least thirty (30) days' notice in writing. Any such written notice shall be served by certified or registered mail, return receipt requested, and shall not be considered effective notice unless so delivered.

5. Data Protection

5.1 Customer acknowledges that AIQUEOUS may incidentally come into contact with "Confidential Information" in the course of performance of its contractual duties. In the event "Confidential Information" is accessed by AIQUEOUS, it shall only be utilized to the extent



required for AIQUEOUS to carry out its services. Confidential information includes, but is not limited to, the following: personal and entity names, e-mail addresses, addresses, phone numbers, any other public or privately-issued identification numbers, IP addresses, MAC addresses, and any other digital identifiers associated with entities, geographic locations, users, persons, machines, or networks.

5.2 During the course of satisfying the agreement, data will become available to both parties including certain confidential personal information. To protect Customer data, AIQUEOUS may perform background checks on all existing and new hires to AIQUEOUS and will inform Customer if there are any concerns that could impact Customer data security, as well as steps taken to resolve those concerns.

5.3 AIQUEOUS will implement and maintain physical, procedural, administrative, and electronic security controls to include identity and access, system logging, data protection, vulnerability management, and application security to protect the confidentiality, integrity, and availability of all Customer data, as well as any interface, network, system, and software that processes, stores, or transmits Customer data, consistent with generally-accepted industry best practices.

5.4 On a bi-annual basis as commercially reasonable, AIQUEOUS and Customer may meet to review AIQUEOUS' data security processes and policies to ensure their adequacy in protecting Customer data.

5.5 External users of POWERPATH shall be required to electronically sign an End User License Agreement that specifies requirements for protecting Customer data security prior to receiving a user account. Customer shall require all persons using goods and/or services provided by AIQUEOUS to the aforementioned End User License Agreement as a condition of their use of those goods and/or services. Customer shall not permit and shall actively prevent persons who have not yet signed the End User License Agreement from gaining access to such goods and services.

6. Aggregated Data

6.1 "Aggregated Data" means "aggregated and statistical data derived from the operation of the Service, including, without limitation, information, improvements, updates, enhancements, business practices, trends, analyses, metadata, performance results or other information or data which may develop in the course performance of the Parties' duties under this Agreement. "Aggregated Data" shall not include any personally-identifying information.



6.2 Nothing in this Agreement shall be construed as prohibiting AIQUEOUS from utilizing Aggregated Data for purposes of improving or operating AIQUEOUS' business, provided that AIQUEOUS' use of Aggregated Data will not reveal "Confidential Information" including personally-identifying information to the public at-large.

7. AIQUEOUS' Proprietary Information and Other Property

7.1 AIQUEOUS' property shall remain the property of AIQUEOUS. No other person, including but not limited to Customer, shall acquire any license, right to use, right to sell, right to create derivative works, right to disclose, right to lease, nor any other ownership or controlling interest in AIQUEOUS property, in whole or in part.

7.2 Customer is expressly prohibited from and shall not copy, reproduce, distribute, share, modify, or make claims of ownership to goods or services delivered by AIQUEOUS, in whole or in part, and including but not limited to: any data generated or made possible by implementation of this Agreement without AIQUEOUS' prior written consent.

7.3 Without limiting the foregoing in any way, Customer may not copy, reproduce or retransmit any logo, graphic, image, form or feature of AIQUEOUS-delivered goods or services unless expressly permitted by AIQUEOUS in writing in advance of such copying, reproduction or retransmission. This Agreement does not limit any rights or remedies that AIQUEOUS may pursue for unlawful transmission, distribution, or other actions against its legal interests. All rights to materials provided to Customer under this Agreement not expressly granted to Customer by this Agreement are reserved to AIQUEOUS.

7.4 Customer shall not make any unlicensed modifications of, derivative works based on, improvements, enhancements, or variations upon any goods or services provided it by AIQUEOUS before, during, or after the Effective Date of this Agreement. Should Customer, or any person, individual, third-party gaining access to AIQUEOUS' goods and services through those provided to Customer, make such works, Customer hereby agrees to and does assign to AIQUEOUS all rights, titles, and interests (whether possessed solely or jointly) to AIQUEOUS to any so created works. Customer agrees to execute, acknowledge, and deliver to AIQUEOUS upon AIQUEOUS' request and at Customer's expense, all assignments and/or other instruments that AIQUEOUS may reasonably request to effectuate such assignment.

7.5 Customer shall not disclose information about AIQUEOUS property including but not limited to all goods and services comprising the subject matter of this Agreement, this Agreement, and any and all actions by the Parties in bringing about this Agreement, to any person not authorized in prior writing by AIQUEOUS, unless required to do so by enforceable



order of law or as necessary to fully satisfy this Agreement. Customer shall make all commercially reasonable efforts to prevent any such disclosure.

8. Method of Communication

8.1 AIQUEOUS and its suppliers, vendors, or affiliates may choose to communicate with you from time to time about the goods or services that comprise the subject matter of this Agreement, data and/or information of any type arising out of, created, generated, or gathered following the Effective Date of the Agreement, or any other subject matter arising out of or related to this Agreement.

8.2 Customer consents to receive communications from AIQUEOUS electronically. Customer shall keep its email address and other digital contact information up-to-date and immediately provide AIQUEOUS with any changes to such information.

8.3 AIQUEOUS may communicate via electronic means contemplated by this Agreement including but not limited to email, Internet postings, application updates and notifications, and any other digital means of communication. Customer agrees that all agreements, notices, disclosures and other communications that AIQUEOUS provides electronically satisfy any legal requirement that such communication be in writing.

8.4 Customer agrees and fully understands that its consent to do business electronically as required by this Agreement extends to all duties arising out of and under this Agreement as between both parties.

8.5 Customer agrees and fully understands that Customer is solely responsible for providing any required equipment in order to receive any such electronic communications, including but not limited to Internet access costs.

9. Limitations of Liability & Indemnification

9.1 To the maximum extent permitted by applicable law, AIQUEOUS shall not be directly or indirectly liable for any indirect, special, incidental, exemplary, consequential or any other such damages caused by the subject matter of this Agreement or use of the goods and service arising thereunder, whether or not foreseeable.

9.2 AIQUEOUS shall not be held responsible for any damages relating to telecommunication failures, loss, corruption, security breach, or theft of data, infliction of viruses, spyware, malware, or any other allegedly injurious software.



9.3 Any and all fines, responsibility, and liability under applicable law resulting from wrongful or illegal use of AIQUEOUS' materials or services provided to Customer under this Agreement are solely the liability and responsibility of Customer, whether or not caused by an authorized user or use authorized or otherwise contemplated by this Agreement.

9.4 To the maximum extent permissible under applicable law, each party shall indemnify and hold harmless the other from and against any third party claims, liabilities, costs, and expenses that either party suffers, incurs, or pays as a result of any Claim except to the extent that they result from the wilful misconduct of the other party.

9.5 This limitation of liability constitutes a fundamental basis of the bargain supporting the Agreement and is, in combination with the fees and prices described by Schedule A, essential consideration necessary to the enforceability of this Agreement.

10. Invoicing

AIQUEOUS shall send invoice(s) as the scope of configuration services are completed and when the licenses are activated. At Customer's discretion, annual licenses may be purchased upfront. In the event of the termination of contract, AIQUEOUS shall issue a refund for the prorated, unused amount.

11. Public Listing

11.1 Customer agrees that with prior written approval AIQUEOUS may publicly list Customer as an AIQUEOUS customer in connection with its marketed-relating activities.

11.2 Customer shall not be restricted in its distribution of this Agreement as required by law, including, but not limited to, compliance with the California Public Records Act, California Government Code Section 6250 et seq.

12. Miscellaneous

12.1 Assignment – Neither party may assign its rights or obligations under this Agreement (except as noted in Section 1.2) without the prior written consent of the other party; any attempt to do so will be null and void by the terms of this Agreement. Notwithstanding the foregoing, either Party may assign (or assume and assign) its rights and obligations under this Agreement, in whole or in part, to any of its affiliates. This Agreement will be binding upon such parties and their respective legal successors and permitted assigns.



12.2 Choice of Law, Choice of Forum - This Agreement shall be interpreted in accord with and governed by the laws of the State of Texas (with the exception of choice of law provisions which would result in the application of the law of another jurisdiction).

12.3 Entire Agreement (Integration Clause) - This Agreement (including any schedule hereto) contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes and nullifies all previous communications, representations, understandings and agreements of any sort whatsoever between the Parties.

12.4 Non-Exclusivity – The duties of AIQUEOUS hereunder shall not preclude AIQUEOUS from providing services of an identical, comparable, or different nature to any other person, individual, or entity.

12.5 No Partnership – This Agreement does not intend to nor shall it be deemed to constitute a partnership, joint venture, merger, nor any other mutual endeavour between the Parties.

12.6 No Warranties - AIQUEOUS expressly makes no warranties (express, implied, contractual, or statutory) to Customer with respect to the Agreement other than those contained in the Agreement's express provision. AIQUEOUS disclaims all implied warranties or merchantability and fitness for a particular purpose.

12.7 Severance – If any provision, in part or in whole, of this Agreement is or become invalid, illegal, or unenforceable, the provision shall be deemed to be modified to the minimum extent necessary to make it valid, legal, and enforceable. If such a modification is not possible, the provision(s) shall be deemed deleted and such deletion shall not affect the validity, legality, and enforceability of the rest of this Agreement.

12.8 No Third Party Beneficiaries – This Agreement is entered into for the sole and exclusive benefit of the Parties and shall not be interpreted in such a manner as to give rise to or create any justiciable interests, rights, benefits, profits, or any other gains for other persons, entities, or agencies.

12.9 Force Majeure - AIQUEOUS shall not be responsible for any losses or damages, including losses or damages resulting from AIQUEOUS' failure to fulfill its obligations under this Agreement if such losses, damages, or failure to perform is caused, directly or indirectly, by war, terrorist or analogous activity, the act of any Government Authority, riot, loss of power, loss of Internet connectivity, storm, accident, fire, lockout, strike, computer error or failure, delay or breakdown in communications or electronic transmission systems, or analogous events. AIQUEOUS shall use commercially reasonable efforts to perform and/or minimize such damages and losses in the case of any such event.



12.10 Resolution Plan - If work completed for each respective payment period or milestone is not agreed on by both parties, AIQUEOUS will propose a course of action to meet expectations within an additional 40 hours of effort. If after this course of action is completed by both parties still do not agree to completion of expectations, AIQUEOUS will propose a Resolution Plan, to be approved by both parties, containing a level of effort estimate to complete the plan. Upon reaching 75% of this estimate, AIQUEOUS will evaluate whether the estimate is valid and will suffice or if revisions are necessary with client approval for a revised Resolution Plan. As will be stated in the Resolution Plan, Client will be billed an hourly rate, in addition to the pricing estimates contained herein, for each hour within that level of effort to complete the Resolution Plan. If approval is not provided for the additional effort, or if expectations are still not met via the above, work will stop until an agreement can be reached and added as an addendum to this contract.



Please sign and return to proceed as set forth.

Peninsula Clean Energy

Name

Title

Signature

Date

AIQUEOUS

Jonathan Kleinman

Name

President

Title

Signature

Date



SCHEDULE A.1

Statement of Work and Payment of Fees

To assist in their goal to reduce greenhouse gas emissions, Peninsula Clean Energy (PCE) seeks to utilize POWERPATH and ECOiQ in the management of their electric vehicle, building electrification, energy efficiency, and demand response programs.

Through this schedule, AIQUEOUS will provide the following:

- 1.) Annual software licensing; and
- 2.) Annual maintenance and support.

Licensing & Support Fees

POWERPATH licensing fees for the 2022-2024 period are as follows:

Profile or Product	License Type	License count	2022 Monthly Cost*	2022 Cost*	2023 Cost	2024 Cost
User Administrator	Salesforce License	7	\$220 / user	\$10,780	\$19,404	\$20,374
Platform User	Salesforce Platform	9	\$220 / user	\$13,860	\$24,948	\$26,195
Community Plus User	Customer Community Plus	20	\$15 / user	\$2,100	\$3,780	\$3,969
Security	Salesforce Shield		15% of user licensing costs	\$4,011	\$7,220	\$7,581
Full Sandbox	Full Copy Sandbox		15% of user licensing costs	\$4,011	\$7,220	\$7,581



ECOIQ**	Base Access	1	\$833	\$5,833	\$10,500	\$11,025
ECOIQ**	CLEAResult Connector	1	\$250	\$1,750	\$3,150	\$3,308
ECOIQ**	4013 Connector	1	\$250	\$1,750	\$3,150	\$3,308
ECOIQ**	Generic Connector	1	\$250	\$1,750	\$3,150	\$3,308
Support Labor	Base		\$150 / hr	\$43,750	\$78,750	\$82,69
Subtotal				\$89,595	\$161,272	\$169,335
POWERPATH	Contingency licenses (2)	2	\$220 / user		\$5,544	\$5,821
ECOIQ**	Contingency Connections (2)			\$3,500	\$6,300	\$6,615
TOTAL				\$93,095	\$173,116	\$181,771

*License and support costs will increase by 5% annually.

**ECOIQ aggregate licensing is limited to 1TB of data storage and 1 million API calls per month.

Exceeding those limits will require a re-evaluation of licensing costs.

The maximum value for this contract is \$450,000

Incident Management – Response and Troubleshooting

The AIQUEOUS Team will provide support services from 7 am to 4 pm Pacific Time, Monday through Friday. In the event that PCE reports any incidents, the AIQUEOUS team will respond to such reports by assigning the priority as follows:



- **Highest:** Unable to complete work, data loss has occurred and disrupts services for all users. Response time within 2-4 hours.
- **High:** Unable to complete work, data loss is possible and disrupts services for 1 or more users. Response time within 2-4 hours.
- **Medium:** Partially able to complete work, or there is a work around delaying users ability to complete work. This could also include any items that would increase efficiency or make work easier on participants. Response time within 4-6 hours.
- **Low:** No disruption of services or work but would create efficiency. (Resolution counts against hours cap for Support, see below). Response time within same or next business day.
- **Lowest:** No disruption of services or work but would be nice to have. (Resolution counts against hours cap for Support, see below). Response time within same or next business day.

Priority Level Reference Chart		
Priority Level	Definition	Expected Response (Within Business Hours)
Highest	Unable to complete work, data loss has occurred and disrupts services for all users.	2-4 hours
High	Unable to complete work, data loss is possible and disrupts services for 1 or more users.	2-4 hours
Medium	Partially able to complete work, or there is a work around delaying users ability to complete work. This could also include any items that would increase efficiency or make work easier on participants.	4-6 hours
Low	No disruption of services or work but would create efficiency. (Resolution counts against hours cap for Support, see below).	By end of business day, unless received outside normal hours.
Lowest	No disruption of services or work but would be nice to have. (Resolution counts against hours cap for Support, see below).	By end of business day, unless received outside normal hours.

AIQUEOUS will respond to an incident, depending on the priority, within the average time frames listed above, starting from the time customer notifies us of the incident.

Ongoing Maintenance and Support



AIQUEOUS will manage feature or service requests through the same ticketing system to be used for Incident Management. Feature or service requests enhance existing POWERPATH functionality or add new functionality to the platform. Examples include:

- Additional configuration of POWERPATH and existing third-party applications, whether additional fields, reports, dashboards, workflows, roles, permissions, etc.;
- New third-party applications to provide additional capabilities for the system beyond originally proposed (e.g., installation scheduling, payment of fees);
- New data system integration; and / or
- User management (e.g., new user licensing, changing roles or permissions for existing users, support in the event of Administration staff turnover);

Future feature additions or refinements will be prioritized and bundled for development for staged releases.

System support will be provided on a case-by-case basis, solely via tickets submitted through AIQUEOUS' ticket management system. PCE will, in writing and no later than five (5) business days prior to the next two-week cycle of support services scheduled by AIQUEOUS, sufficiently define the request for support. AIQUEOUS will confirm receipt of PCE requests in no case more than two (2) business days after receipt.

As part of its confirmation, AIQUEOUS may request, if necessary, further information from PCE to complete a quote, for which PCE will provide to AIQUEOUS in no more than two (2) business days. Within five (5) business days or less following receipt of all sufficient information, AIQUEOUS will provide a quote for all things necessary to complete the requested deliverables and / or services. The quote will include an estimate of costs for staff hours to complete the work and estimated start and delivery dates. The quote may include other necessary costs for software, third party services, or additional licensing.

AIQUEOUS will not begin work without PCE authorization and written acceptance of AIQUEOUS' quote. Completion of deliverables and services are subject to PCE approval and must be accepted by PCE prior to invoicing by AIQUEOUS.

Should the delivery of support services identify additional or more complex requirements than could reasonably have been estimated by AIQUEOUS based upon the request for deliverables, AIQUEOUS will submit a follow up request for additional staff hours and / or any other necessary costs. AIQUEOUS will not begin any additional work without PCE authorization and acceptance of AIQUEOUS' supplemental quote.

Unused pre-paid support hours will carry over to the next fiscal year. Unused, pre-paid support hours as of December 31, 2024 will carry over into the next contract cycle pending an extension of POWERPATH licensing.

Invoicing

Based on the licensing and support fees, above, AIQUEOUS will invoice PCE as follows:



June 1, 2022: \$89,595

January 1, 2023: \$161,272

January 1, 2024: \$169,335

These amounts are subject to change, based upon PCE's use of the contingency line items.

Payment Terms

Unless otherwise provided herein, all fees are due and payable within thirty (30) days of the date of invoice. Late payments will bear interest at the rate of 1.5% per month, or, if lower, the maximum rate allowed by law.



Please sign and return to proceed as set forth.

Peninsula Clean Energy

Name

Title

Signature

Date

AIQUEOUS

Jonathan Kleinman

Name

President

Title

Signature

Date



Attachment A:

SFDC Service Agreement



SFDC Service Agreement

“AppExchange” means the online directory of on-demand applications that work with the Salesforce.com (“SFDC”) Service, located at <http://www.appexchange.com> or at any successor websites.

“Customer Data” means all electronic data or information submitted by You as and to the extent it resides in the Platform or SFDC Service.

“Platform” means the online, Web-based platform service provided by SFDC to Reseller in connection with Reseller’s provision of the Reseller Application to You.

“Reseller” means AIQUEOUS, LLC.

“Reseller Application” means ECOiQ ®.

“SFDC Service” means the online, Web-based service generally made available to the public via <http://www.salesforce.com> and/or other designated websites, including associated offline components but excluding Third-Party Applications. For purposes of this SFDC Service Agreement, the SFDC Service does not include the Platform.

“SFDC” means, collectively, salesforce.com, inc. and its affiliates.

“Third-Party Applications” means online, Web-based applications and offline software products that are provided by third parties and are identified as third-party applications, including but not limited to those listed on the AppExchange and the Reseller Application.

“Users” means Your employees, representatives, consultants, contractors, agents and third parties with whom You conduct business who are authorized to use the Platform subject to the terms of this SFDC Service Agreement as a result of a subscription to the Reseller Application having been purchased for such User, and have been supplied user identifications and passwords by You (or by SFDC or Reseller at Your request).

“You” and **“Your”** means the customer entity which has contracted to purchase subscriptions to use the Reseller Application subject to the conditions of this SFDC Service Agreement, together with any other terms required by Reseller.

1. Use of Platform.

- (a) Each User subscription to the Reseller Application shall entitle one User to use the Platform via the Reseller Application, subject to the terms of this SFDC Service Agreement, together with any other terms required by Reseller. User subscriptions cannot be shared or used by more than one User (but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment with You or otherwise changed job status or function and no longer require use of the Platform). For clarity, Your subscription to use the Platform hereunder does not include a subscription to use the SFDC Service generally or to use it in connection with applications other than the Reseller Application. If You wish to use the SFDC Service or any of its functionalities or services other than those included in the Reseller Application, or to create or use additional custom objects beyond those which appear in the Reseller Application in the form that it has been provided to You by Your Reseller, visit www.salesforce.com to contract directly with SFDC for such services. In the event Your access to the Reseller Application provides You with access to the SFDC Service generally or access to any Platform or SFDC Service functionality within it that is in excess of the functionality described in the Reseller Application’s user guide, and You have not separately subscribed under a written contract with SFDC for such access, then You agree to not access or use such functionality, and You agree that Your use of such functionality, or Your creation or use of

salesforce.com, inc.

additional custom objects in the Reseller Application beyond that which appears in the Reseller Application in the form that it has been provided to You by your Reseller, would be a material breach of this Agreement.

- (b) If Your subscription to use the Platform hereunder includes Salesforce Mobile, You understand that prior to purchasing Salesforce Mobile, You should refer to the Mobile Device list located at <http://www.salesforce.com/mobile/devices/> for information on mobile devices that are supported by SFDC. You agree that SFDC will not provide any refunds, credits or other compensation or remedies in connection with Your purchase of Salesforce Mobile for any mobile devices that are not supported by SFDC. Third party mobile device, operating system and network connectivity providers may, at any time, cease distribution of, interrupt, deinstall and/or prevent use of Salesforce Mobile clients on supported mobile devices without entitling You to any refund, credit or other compensation or remedies.
- (c) Notwithstanding any access You may have to the Platform or the SFDC Service via the Reseller Application, Reseller is the sole provider of the Reseller Application and You are entering into a contractual relationship solely with Reseller. In the event that Reseller ceases operations or otherwise ceases or fails to provide the Reseller Application, SFDC has no obligation to provide the Reseller Application or to refund You any fees paid by You to Reseller.
- (d) You (i) are responsible for all activities occurring under Your User accounts; (ii) are responsible for the content of all Customer Data; (iii) shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Platform and the SFDC Service, and shall notify Reseller or SFDC promptly of any such unauthorized use You become aware of; and (iv) shall comply with all applicable local, state, federal and foreign laws and regulations in using the Platform.
- (e) You shall use the Platform and the SFDC Service solely for Your internal business purposes and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Platform or the SFDC Service available to any third party, other than to Users or as otherwise contemplated by this SFDC Service Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Platform or the SFDC Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Platform or the SFDC Service or its related systems or networks.
- (f) You shall not (i) modify, copy or create derivative works based on the Platform or the SFDC Service; (ii) frame or mirror any content forming part of the Platform or the SFDC Service, other than on Your own intranets or otherwise for Your own internal business purposes; (iii) reverse engineer the Platform or the SFDC Service; or (iv) access the Platform or the SFDC Service in order to (a) build a competitive product or service, or (b) copy any ideas, features, functions or graphics of the Platform or the SFDC Service.

2. **Third-Party Providers.** Reseller and other third-party providers, some of which may be listed on pages within SFDC's website and including providers of Third-Party Applications, offer products and services related to the Platform, the SFDC Service, and/or the Reseller Application, including implementation, customization and other consulting services related to customers' use of the Platform and/or the SFDC Service, and applications (both offline and online) that interoperate with the Platform and/or the SFDC Service such as by exchanging data with the Platform and/or the SFDC Service or
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by offering additional functionality within the user interface of the Platform and/or the SFDC Service through use of the Platform and/or SFDC Service's application programming interface. SFDC does not warrant any such third-party providers or any of their products or services, including but not limited to the Reseller Application or any other product or service of Reseller, whether or not such products or services are designated by SFDC as "certified," "validated" or otherwise. Any exchange of data or other interaction between You and a third-party provider, including but not limited to the Reseller Application, and any purchase by You of any product or service offered by such third-party provider, including but not limited to the Reseller Application, is solely between You and such third-party provider. In addition, from time to time, certain additional functionality (not defined as part of the Platform or SFDC Service) may be offered by SFDC or Reseller to You, for an additional fee, on a pass-through or OEM basis pursuant to terms specified by the licensor and agreed to by You in connection with a separate purchase by You of such additional functionality. Your use of any such additional functionality shall be governed by such terms, which shall prevail in the event of any inconsistency with the terms of this SFDC Service Agreement.

3. **Integration with Third-Party Applications.** If You install or enable Third-Party Applications for use with the Platform or SFDC Service, You acknowledge that SFDC may allow providers of those Third-Party Applications to access Customer Data as required for the interoperation of such Third-Party Applications with the Platform or SFDC Service. SFDC shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third-Party Application providers. In addition, the Platform and SFDC Service may contain features designed to interoperate with Third-Party Applications (e.g., Google, Facebook or Twitter applications). To use such features, You may be required to obtain access to such Third-Party Applications from their providers. If the provider of any such Third-Party Application ceases to make the Third-Party Application available for interoperation with the corresponding Platform or SFDC Service features on reasonable terms, SFDC may cease providing such Platform or SFDC Service features without entitling You to any refund, credit, or other compensation.
 4. **Access by Reseller.** To the extent Reseller serves as the administrator of the Reseller Application for You, You acknowledge that your use of the Reseller Application may be monitored by Reseller and Reseller may access Customer Data submitted to the SFDC Service or Reseller Application. By agreeing to this SFDC Service Agreement, you are consenting to such monitoring and access by Reseller.
 5. **Return of Customer Data.** You have thirty (30) days from the date of termination your Reseller Application subscription term in which to request a copy of Customer Data, which will be made available to You in a .csv format. Any modifications to such Customer Data made by the Reseller Application outside of the Platform (if any) will not be captured in Customer Data as returned and the return of any such modified data shall be the responsibility of Reseller.
 6. **Proprietary Rights.** Subject to the limited rights expressly granted hereunder, SFDC reserves all rights, title and interest in and to the Platform and the SFDC Service, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth in this SFDC Service Agreement. The Platform and the SFDC Service is deemed SFDC confidential information, and You will not use it or disclose it to any third party except as permitted in this SFDC Service Agreement.
 7. **Compelled Disclosure.** If either You or SFDC is compelled by law to disclose confidential information of the other party, it shall provide the other party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.
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8. **Suggestions.** You agree that SFDC shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into any SFDC products or services any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the operation of the Platform and/or the SFDC Service.
 9. **Suspension and Termination.** Your use of the Platform and the SFDC Service may be immediately terminated and/or suspended upon notice due to (a) a breach of the terms of this SFDC Service Agreement by You or any User, (b) the termination or expiration of Reseller's agreement with SFDC pursuant to which Reseller is providing the Platform as part of the Reseller Application to You, and/or (c) a breach by Reseller of its obligations to SFDC with respect to the subscriptions it is providing to You in connection with this SFDC Service Agreement. If You use the Reseller Application in combination with a SFDC Service Org other than the Org provisioned solely for use with the Reseller Application (a "Shared org") You acknowledge and understand that (i) access to such Org, including the Reseller Application used in connection with such Org, may be suspended due to Your non-payment to SFDC or other breach of Your Agreement with SFDC, and (ii) in the event Your relationship with SFDC is terminated as a result of non-payment or other material breach of Your agreement with SFDC, Your Platform subscriptions would also be terminated. In no case will any such termination or suspension give rise to any liability of SFDC to You for a refund or other compensation.
 10. **Subscriptions Non-Cancelable.** Subscriptions for the Platform are non-cancelable during a subscription term, unless otherwise specified in Your agreement with Reseller.
 11. **No Warranty.** SFDC MAKES NO WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SFDC DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.
 12. **No Liability.** IN NO EVENT SHALL SFDC HAVE ANY LIABILITY TO YOU OR ANY USER FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
 13. **Further Contact.** SFDC may contact You regarding new Platform and SFDC Service features and offerings.
 14. **Third Party Beneficiary.** SFDC shall be a third party beneficiary to the agreement between You and Reseller solely as it relates to this SFDC Service Agreement.
 15. **Applicability.** The terms of this SFDC Service Agreement govern the Platform provided to You by Reseller in connection with Reseller's provision of the Reseller Application to You. For clarity, the terms of this SFDC Service Agreement do not supersede any agreement between SFDC and You with respect to SFDC Services purchased by You directly from SFDC.
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Attachment B:

End User License Agreement

Welcome to AIQUEOUS' ("VENDOR" or "we" or "us") POWERPATH platform (the "Platform"). VENDOR offers the Platform as a service to its customers, who in turn arrange with VENDOR to allow their trading partners to access the Platform. Please read this Agreement carefully because this Agreement will govern your use of the Platform and shall constitute a legally binding agreement between VENDOR and you. **By clicking "I Accept" or by accessing the Platform in any way, you indicate your acceptance of the Agreement in full and VENDOR's right to enforce the terms of the Agreement against you.**

If you do not agree to the exact terms of this Agreement, you may not use the Platform and VENDOR and Customer may remove all access. VENDOR reserves the right, in its sole discretion, to change, modify, or otherwise alter this Agreement at any time. All such changes, modifications or alterations shall be effective upon their posting on the Platform. Please review the Agreement periodically to review the terms of your continued use of the Platform. Your continued use of the Platform or any content, information or materials accessible through it, after such posting or notification means you accept the modifications.

License and Use Restrictions. The customer for whom VENDOR maintains this Platform (the "Customer") has specifically arranged with VENDOR to obtain access to the Platform for you. VENDOR grants you a limited license to access and use the Platform and its software, contents, information and materials solely to conduct your normal business operations with the Customer. The license to use the Platform and its software, content, information or materials is limited to your direct business dealings with the Customer and you agree that you shall not use the Platform or its software, content, information or materials: (i) in relation to or for the benefit of any other person, entity or business; (ii) for any other purpose, whether personal, commercial or otherwise; or (iii) for any data mining or similar data gathering.

You agree not to store in any form, distribute, transmit, display, reproduce, modify, create derivative works from, sell or otherwise exploit any of the software, content, information or materials available on or through this Platform for any purpose except as expressly allowed by this Agreement. By using the Platform, you warrant to VENDOR that you shall not use the Platform, or any of the software, content, information or materials obtained from or accessed through the Platform, for any purpose that is unlawful, in violation of any third party's intellectual property or other legal rights or otherwise prohibited by this Agreement. VENDOR does not grant any license or other authorization to you or any other third party of its trademarks,

registered trademarks, service marks, copyrightable material or other intellectual property, by placing them on this Platform. You agree not to resell or transfer your right to use or access the Platform. If you violate any terms of this Agreement, your permission to use the Platform automatically terminates.

Registration and Identifying Data. The Customer has provided us certain information about you in order to allow us to establish a User ID and password for you to use to access the Platform to transact business with the Customer. Such information includes your name and e-mail address and company name. We use the Data to issue you a unique User ID and password and to identify you as an authorized user when you access the Platform. VENDOR may also place software communicating data concerning your use of the Platform including but not limited to a cookie on your system in order to identify your IP address when you return to the Platform. VENDOR is not responsible for any inaccuracies in the Data provided by the Customer and you hereby waive any claim or cause of action arising out of or related to the Customer's provision of the Data to us or our possession or use of such Data for purposes of this Agreement or for managing the Platform. You further agree to indemnify VENDOR against any such claims by third parties related to or alleging relation to your use or User ID or password. Furthermore, and in consideration of your use of the Platform, you agree to maintain and update your information to keep it true, accurate, current and complete. If any Data provided by Customer or you is untrue, inaccurate, not current or incomplete, VENDOR has the right to terminate your right to access the Platform and refuse any and all current or future use of the Platform by you.

User IDs and Passwords. Access to the Platform is restricted and requires a user identification code ("User ID") and a password issued by VENDOR. You shall not permit or allow other persons to have access to or use your User ID and password. You shall not access the Platform by any User ID and password not associated with you and issued by VENDOR or Customer. You are the only person authorized to use your User ID and password. Unauthorized use of or access to the Platform is strictly prohibited. You agree that you are responsible for the use of the Platform under your User ID. In accessing the Platform, you specifically agree that: (i) VENDOR is entitled to act on instructions received under your User ID; (ii) VENDOR is not liable for any unauthorized access to the Platform or your Data by a person using your User ID and password; (iii) you shall keep your User ID and password confidential and you shall notify VENDOR immediately if you believe someone else has obtained your User ID and password or any unauthorized access to the Platform has occurred or may occur; and (iv) VENDOR may block access to the Platform without prior notice if we believe your User ID is being used by someone other than you or for to otherwise access or use the Platform in contravention of this Agreement.

Assistance with Accessing or Using the Platform. If you need any assistance or instructions to access or use the Platform, or any of the software, content, information or materials available on or through the Platform, or if you need any assistance with your User ID or password, you agree that you shall first contact the Customer. In the event the Customer cannot assist you,

then the Customer may contact VENDOR, or may instruct you to contact VENDOR, to obtain the requested assistance. You understand that VENDOR shall not offer or provide any assistance if you have not first contacted the Customer.

Assistance with Accessing or Using the Platform. If you need any assistance or instructions to access or use the Platform, or any of the software, content, information or materials available on or through the Platform, or if you need any assistance with your User ID or password, you agree that you shall first contact the Customer. In the event the Customer cannot assist you, then the Customer may contact VENDOR, or may instruct you to contact VENDOR, to obtain the requested assistance. You understand that VENDOR shall not offer or provide any assistance if you have not first contacted the Customer.

Conduct. By using the Platform you agree that you shall not do any of the following:

(i) restrict or inhibit any other user from using the Platform or any other website maintained by VENDOR or its suppliers; (ii) post or transmit any unlawful, fraudulent, libelous, defamatory, obscene, pornographic, profane, threatening, abusive, hateful, offensive, or otherwise objectionable information of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, national or international law, including without limitation the U.S. export control laws and regulations; (iii) post or transmit any information or software which contains a virus, trojan horse, worm or other harmful component; (iv) post, publish, transmit, reproduce, distribute or in any way exploit any software, content, information or other material obtained through the Platform for commercial purposes (other than as expressly permitted by this Agreement); or (v) upload, post, publish, transmit, reproduce, or distribute in any way, software, content, information or other material obtained through the Platform which is protected by copyright, or other proprietary right, or derivative works with respect thereto, without obtaining permission of the copyright owner or right holder. VENDOR has no obligation to monitor the Platform. However, you acknowledge and agree that VENDOR has the right to monitor the Platform from time to time and to disclose any information as necessary or appropriate to satisfy any law, regulation or other governmental request, to operate the Platform properly, or to protect itself, its other users, or its suppliers or customers. VENDOR reserves the right to refuse to post, or to remove, any information or materials, in whole or in part, at its sole discretion, including but not limited to materials deemed unacceptable, undesirable, inappropriate and/or in violation of this Agreement.

Conduct Regarding Confidential and Private Information

User shall not disclose, transmit, copy, reproduce, or make any unauthorized use of any information whatsoever acquired through customer's access to VENDOR's goods and services including but not limited to: any and all Customer data, personally identifying information of any kind whatsoever, financial and property ownership information of any kind whatsoever, and any information owned by or concerning any person, entity, event, or data available through VENDOR's goods and/or services or relating to the subject matter of this Agreement.

VENDOR Proprietary Materials. Portions of the Platform, including without limitation the software, graphics, layout and content, are protected by copyright laws. VENDOR reserves all such rights. In addition, portions of this Platform are protected by trademark, trade dress, service mark, unfair competition and other laws. You may not copy or reproduce this Platform, in whole or in part, without VENDOR's prior written consent. Without limiting the foregoing in any way, you may not copy, reproduce or retransmit any logo, graphic, image, form or feature of this Platform unless expressly permitted by VENDOR in writing in advance of such copying, reproduction or retransmission. This Agreement does not limit any rights that VENDOR may have under trademark, trade secret, copyright, patent or other laws. Use of VENDOR's products as source material for derivative works, data input, data aggregation, extraction of information by whatever method, or analogous such purposes is strictly prohibited. Should any such works be created in violation of this Agreement, User and Customer shall transfer and assign full rights to any such works to VENDOR at the User and the Customer's expense immediately on the first of either the request of VENDOR or the acquisition of such rights.

Customer Content. All content ("Customer Content") available to you through the Platform is provided by the Customer and not by VENDOR. Customer Content includes, but is not limited to, data, information, rates, modifiers, factors, taxes, fee schedules, documents, forms, text, rules, policies, images, logos or other mandatory or non-mandatory items or content of any kind provided by Customer to VENDOR to be displayed, accessed or used through or with the Platform or otherwise necessary to produce rates, information or forms through the Platform. You shall not hold or attempt to hold VENDOR liable for any loss or damage of any sort incurred as a result of or related to the Customer Content, including without limitation, any loss or damage resulting from or related to: (i) your access, inability to access or use of the Customer Content; (ii) any errors, omissions or inaccuracies in the Customer Content; (iii) your dealings with the Customer or any third parties with respect to the Customer Content;

(iv) any services provided by the Customer related to the Customer Content; and (v) any acts, omissions or decisions by you as a result of the Customer Content. Neither VENDOR nor any of its suppliers or data or content providers guarantees the accuracy, completeness or timeliness of any software, content, information or materials available on or through this Platform, including without limitation the Customer Content, and they shall not be liable for any errors or delays in such Customer Content or other software, content, information or materials available on or through this Platform.

Disclaimer of Warranties. Your use of the Platform, including any software, content, information or materials contained therein (including without limitation the Customer Content), is entirely at your own risk. **THE PLATFORM, AND ALL SOFTWARE, CONTENT, INFORMATION AND MATERIALS ACCESSIBLE ON OR THROUGH THE PLATFORM, IS PROVIDED "AS IS," AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VENDOR, ITS AFFILIATES, LICENSORS, THIRD-PARTY IMPLIED, OR STATUTORY REGARDING THE PLATFORM AND ALL SOFTWARE, RELATED CONTENT, INFORMATION AND MATERIALS ACCESSIBLE ON OR THROUGH THE PLATFORM,**

INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY AND NON- INFRINGEMENT. VENDOR AND THE SUPPLIERS DO NOT WARRANT OR GUARANTEE THE ACCURACY, RELIABILITY, COMPLETENESS, USEFULNESS, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR QUALITY OF ANY SOFTWARE, CONTENT, INFORMATION OR MATERIALS AVAILABLE ON OR THROUGH THE PLATFORM, REGARDLESS OF WHO ORIGINATES THAT CONTENT. VENDOR DOES NOT WARRANT THAT THE PLATFORM OR ANY SOFTWARE, CONTENT, INFORMATION OR MATERIALS AVAILABLE ON OR THROUGH THE PLATFORM IS SECURE, FREE FROM BUGS, VIRUSES, INTERRUPTION, ERRORS, THEFT OR DESTRUCTION OR THAT THE PLATFORM OR ANY SOFTWARE, CONTENT, INFORMATION OR MATERIALS WILL MEET YOUR REQUIREMENTS. YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOU BEAR ALL RISKS ASSOCIATED WITH USING OR RELYING ON THE PLATFORM OR ANY SOFTWARE, CONTENT, INFORMATION OR MATERIALS AVAILABLE ON OR THROUGH THE PLATFORM. VENDOR IS NOT LIABLE OR RESPONSIBLE IN ANY WAY FOR ANY SOFTWARE, CONTENT, INFORMATION OR MATERIALS POSTED ON OR LINKED FROM THE PLATFORM, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN CUSTOMER CONTENT, OR FOR ANY LOSSES OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF OR RELIANCE ON ANY CUSTOMER CONTENT. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. CONTENT OR SERVICE PROVIDERS, DISTRIBUTORS, DEALERS AND SUPPLIERS (COLLECTIVELY "SUPPLIERS") DISCLAIM ALL GUARANTEES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS,

Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VENDOR, ITS AGENTS, AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES RELATING TO TELECOMMUNICATION FAILURES, LOSS, CORRUPTION, , WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF VENDOR OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN VENDOR AND YOU. VENDOR WOULD NOT BE ABLE TO PROVIDE THE PLATFORM WITHOUT SUCH LIMITATIONS.

Termination and Amendment. Your privilege to use or access the Platform may be terminated by VENDOR immediately and without notice if you fail to comply with any term of this Agreement. Upon such termination, you must immediately cease accessing or using the Platform and you shall not attempt to re-register or otherwise make use of the Platform, including but not limited to use of the personal information (User ID, password, etc.) of another user. Furthermore, you acknowledge that VENDOR reserves the right to take action -- technical,

legal or otherwise -- to block, nullify or deny your ability to access the Platform. You understand that VENDOR may exercise this right in its sole discretion.

VENDOR reserves the right, in its sole discretion, at any time and from time to time to change, modify or discontinue, temporarily or permanently, the Platform (or any part thereof). VENDOR shall not be liable to you or any third party for any such modification, suspension or discontinuance.

You agree to defend, indemnify and hold VENDOR and its affiliates and Suppliers, and each of their officers, directors, employees, agents, attorneys and other representatives harmless from any and all claims, liabilities, costs and expenses, (including reasonable attorneys' fees) arising in any way from any violation of this Agreement or civil or criminal law by you or users of your User ID or password.

Electronic Communications. The decision whether to do business electronically is yours, and you should consider whether you have the required hardware and software capabilities necessary to do so. When you visit the Platform or send e-mails to us, you are communicating with us electronically. In addition, VENDOR and its Suppliers may choose to communicate with you from time to time about the Platform, the Data, your User ID and password, or any other subject matter arising out of or related to this Agreement or your access to or use of the Platform. You consent to receive communications from us electronically. We may communicate with you by e-mail or by posting notices on this Platform. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communication be in writing. You may print any electronic communications by using your web browser's print function. Your consent to do business electronically and our agreement to do so covers all transactions you conduct through the Platform for as long as you have a current User ID. You are solely responsible for providing, at your own expense, access to the Internet and any required equipment in order to receive such electronic communications. By clicking "I Accept," you are confirming to us that you have the means to access, and to print or download, communications. You agree to notify the Customer promptly of any change in your e-mail address. If you later decide that you do not want to receive future communications electronically from us, write to the Customer to notify them of that request. If you withdraw your consent to receive communications from us electronically, we may terminate your access to and use of the Platform.

Miscellaneous. This Agreement is a complete statement of the entire agreement between you and VENDOR, and sets forth the entire liability of VENDOR and its Suppliers and your exclusive remedy with respect to your access and use of the Platform and any of its Software, content, information or materials. The Suppliers, agents, distributors, dealers, and employees of VENDOR are not authorized to make modifications to the Agreement, or to make any additional representations, commitments or warranties binding on VENDOR, and you agree not to seek to obtain any such modifications, representations, commitments or warranties from any such suppliers, agents, distributors, dealers or employees. Any waiver of the terms of this Agreement

by VENDOR must be in a writing signed by an authorized officer of VENDOR and expressly referencing the applicable provision of the Agreement that is waived. If any provision of the Agreement is held to be invalid or unenforceable under applicable law, then the remaining provisions shall continue in full force and effect and the invalid or unenforceable provision shall be modified and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, or if no such modification or interpretation is possible, then such invalid or unenforceable provision shall be deleted. The Agreement shall be governed by Texas law, without regard to its choice of law or conflicts of law principles. The parties hereby consent to the exclusive jurisdiction and venue in the state and federal courts in Texas. Headings are included for convenience only and shall not be considered in interpreting this Agreement.

**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: March 14, 2022
BOARD MEETING DATE: March 24, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable PCE Joint Powers Board

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

SUBJECT: Approval of an Amendment to the Existing Retention Agreement With the Law Firm of Braun Blaising Smith Wynne, P.C. in an Amount Not to Exceed \$150,000, for a Total Not to Exceed Amount of \$450,000

RECOMMENDATION:

Adopt a Resolution authorizing CEO to execute with the law firm of Braun Blaising Smith Wynne, P.C. an amendment to the existing retention agreement in substantially the same form as the original agreement authorized on June 8, 2017 and then replaced with an agreement approved by the Board on June 27, 2019.

The June 27, 2019 agreement established a not to exceed amount of \$300,00 for the described services. The proposed amendment would further increase the amount authorized by \$150,000 for a total not to exceed amount of \$450,000.

BACKGROUND:

Peninsula Clean Energy (PCE) Authority has had an on-going relationship with outside counsel, Braun Blaising Smith Wynne. Over the last five years, Braun Blaising Smith Wynne has provided PCE with broad support in its litigation of complicated regulatory proceedings and the preparation of compliance documentation before the California Public Utilities Commission ("CPUC") across a wide range of topic areas.

The initial retention agreement between PCE and Braun Blaising Smith Wynne was entered into on June 8, 2017. On June 27, 2019, the PCE Board authorized a second agreement to replace the prior retention agreement and to establish the retention amount of \$300,000. PCE staff now seeks approval by the PCE Board to further amend this retention agreement to increase the not to exceed by an additional \$150,000 to \$450,000 total.

DISCUSSION:

Braun Blaising Smith Wynne, P.C. continues to provide PCE with significant assistance in numerous dockets at the California Public Utilities Commission, the California Energy Commission, the Air Resources Board, and with certain legislative activities. In addition

to policymaking support, the firm also provides continual support across the agency for the preparation of State mandated compliance filings as well. PCEA has been very satisfied with the assistance this firm has provided to date. The services provided have eroded the existing retention amounts. Accordingly, we are asking the Board to authorize the CEO to execute an amendment to the existing retention agreement previously approved by the Board to allow for an additional \$150,000 in potential spend so that the firm can continue to support our agency in this manner.

RESOLUTION NO. _____

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

* * * * *

**RESOLUTION AUTHORIZING PENINSULA CLEAN ENERGY AUTHORITY CEO TO
EXECUTE AN AMENDMENT TO THE EXISTING RETENTION AGREEMENT WITH THE LAW
FIRM OF BRAUN BLAISING SMITH WYNNE P.C. IN AN AMOUNT NOT-TO-EXCEED
\$150,000 FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$450,000.**

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

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

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

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

WHEREAS, the General Counsel has determined it was necessary to seek
outside legal services related to state regulatory oversight and policy and on June 8,
2017, the executive director authorized the General Counsel to retain Braun Blaising

Smith Wynne, P.C., on behalf of Peninsula Clean Energy for that purpose to execute a retention agreement; and

WHEREAS, the Board authorized a second agreement to replace the prior retention agreement and to establish the retention amount of \$300,000 on June 27, 2019; and

WHEREAS, Braun Blaising Smith Wynne, P.C., has been providing assistance to PCE in various capacities and the cost of its legal services will exceed the amount currently authorized.

WHEREAS, PCEA seeks to expand the retention amount with Braun Blaising Smith Wynne, P.C. by \$150,000 for a total retention amount of \$450,000.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the CEO is authorized to execute an amendment with the law firm of Braun Blaising Smith Wynne, P.C. to the existing retention agreement previously approved by the Board as long as the total amount of all amendments or agreements do not exceed \$450,000.

* * * * *

[CCO-113499]



PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: March 17, 2022
BOARD MEETING DATE: March 24, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority (PCEA) Board of Directors
FROM: Jan Pepper, Chief Executive Officer
SUBJECT: CEO Report

REPORT

Staff Updates

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

[Chief Operating Officer](#)
[Chief Financial Officer](#)

All-Staff In-Person Meeting

Peninsula Clean Energy had an all-staff, in-person, off-site meeting all day on March 17, after 2 years working remotely. It was a real treat to have everyone back together in one place, and to express our gratitude and appreciation for what everyone has done to keep our organization moving and progressing over the last 2 years. It was also wonderful to finally meet in person with those staff members who have joined Peninsula Clean Energy during the last two years! Even as we continue moving forward on our primarily remote work model, we look forward to future all-staff, in-person events, possibly on a quarterly basis.

Legislative Updates

PCE is submitting letters of support for AB 1814, CalCCA's sponsored bill on transportation electrification, and AB 1944, which allows jurisdictions to choose to hold hybrid public meetings going forward.

CalCCA held their Sacramento Lobby Day on Tuesday, March 15, which I attended remotely. We had opportunities to meet with Assembly Member Phil Ting, State Senator John Laird, and representatives from the environmental community to discuss legislation supported by CalCCA and other energy related bills.

Impact of COVID-19 on PCE Load

Attached to this report are summary graphs of the impact of COVID-19 on Peninsula Clean Energy's load. The first graph, "Monthly Load", shows the change in load on a monthly basis from March 2020 through February 2022. There was a 1% decrease in Peninsula Clean Energy's load in January-February 2022 compared to January-February 2021. The second graph, "Monthly Load Changes by Customer Class", shows that industrial and residential load was lower in January-February 2022 compared to the same months in 2021. Commercial load was higher in January-February 2022 compared to January-February 2021. The third graph, "Load Shapes (PCE)", shows the change overall in our load on an hourly basis. The load in January and February 2022 continued to be lower than 2020 and 2021 in the afternoon and late evening hours. Thank you to Mehdi Shahriari on our Power Resources team for compiling these graphs.

Monthly Load

- Almost same amount of load in April 2021 – July 2021 compared to April 2020 – July 2020
- 4% decrease in PCE's load in August-December 2021 compared to August-December 2020. Load in August-October of 2020 was significantly higher than forecast due to heatwaves, fires, and smokes.
- 1% decrease in PCE's load in January-February 2022 compared to January-February 2021



Peninsula Clean Energy

Monthly Load Changes by Customer Class

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

Agricultural	-12%	-7%	26%	3%	-9%	5%	4%	0%	6%	0%	-5%	-7%
Industrial	-8%	4%	-8%	-8%	-11%	-21%	-22%	-25%	-21%	-29%	-23%	-20%
Small Commercial	0%	10%	7%	4%	2%	0%	1%	-3%	-5%	-4%	-4%	-4%
Medium Commercial	-6%	10%	9%	7%	6%	4%	3%	0%	13%	17%	18%	20%
Large Commercial	-3%	8%	4%	3%	5%	4%	1%	2%	9%	8%	5%	7%
Residential	0%	-7%	-6%	-7%	-6%	-13%	-12%	-7%	-11%	-2%	-5%	-6%
Street Lights-Other	-1%	0%	0%	-2%	-4%	-4%	-3%	-4%	-4%	-5%	-5%	-4%
PCE	-2%	1%	0%	-1%	-1%	-6%	-6%	-5%	-4%	0%	-1%	-1%
Month	3	4	5	6	7	8	9	10	11	12	1	2

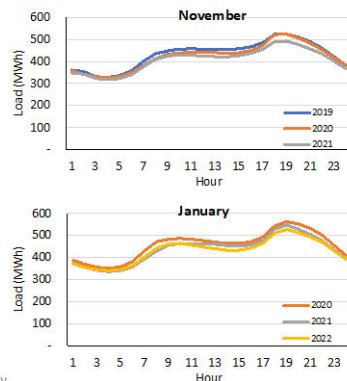
Peninsula Clean Energy

* For months 3-12, the heatmap shows how much load in 2021 was lower/higher compared to same month in 2020. For months 1-2, the heatmap shows how much load in 2022 was lower/higher compared to same month in 2021.

3

Load Shapes (PCE)

- In November, 2021 load was lower compared to 2019-2020 load in afternoon and late evening hours.
- In December, 2021 load was very similar to 2019-2020 load.
- In January-February, 2022 load was lower than 2020-2021 load in the afternoon and late evening hours.



Peninsula Clean Energy

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Reach Codes

Below is an updated table showing the status of Reach Code adoption by Peninsula Clean Energy jurisdictions. Changes since the last report include:

- Half Moon Bay: reach codes adopted for all-electric new construction and end-of-flow
- Hillsborough: had first reading scheduled on March 14 for an electric-preferred code

- Atherton: study session held in February with intent to proceed sometime in 2022
- Belmont: study session held in February with first reading scheduled for April
- San Bruno: study session held in March with intent to proceed sometime in 2022

Member Agency	Reach Code Status	Building (proposed)	EV
Brisbane	Adopted	All-electric w/ exceptions	PCE model code (variant)
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)
Menlo 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
Half Moon Bay	Adopted	All-electric new construction + end of flow	Under consideration
Colma	Adopted	Prewiring required	Increase EV capable
Hillsborough	First reading Mar 14	Electric-preferred code	
Portola Valley	1 st reading TBD	(All-electric w/ exceptions)	(existing EV code)
Atherton	Study session Feb 16. Intent to proceed in 2022.		
Belmont	Study session Feb 8. Reading Apr 12.		
San Bruno	Study session Mar. 8. Intent to proceed.		
Foster City	Council briefing 2020		
Woodside	Declined		

Other Meetings and Events Attended by CEO

Peninsula Clean Energy had a “meet and greet” with CPUC Commissioner Darcie Houck on Friday March 11. Thank you to Peninsula Clean Energy board members Rick DeGolia (Mayor of Atherton) and Rod Daus-Magbual (Mayor of Daly City) for attending this meeting with staff

Peninsula Clean Energy had a “meet and greet” with CEC Commissioner Andrew McAllister on Friday, March 18 to provide an update on the progress on our strategic goals, and discuss opportunities for collaboration between the CEC and Peninsula Clean Energy on our decarbonization efforts.

Peninsula Clean Energy has a “meet and greet” scheduled for Monday, March 21 (which is occurring after publication of this report) with CEC Commissioner Patty Monahan. A verbal update will be provided at the board meeting.

Peninsula Clean Energy has a “meet and greet” scheduled for Thursday, March 24 (which is occurring after publication of this report) with CPUC Commission President Alice Reynolds. A verbal update will be provided at the board meeting.

Attended weekly and monthly CalCCA Board and Executive Committee meetings.

Attended March 16 meeting of CC Power Board of Directors

Participated in SV5 (formerly called MAG5) meetings.



PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: March 4, 2022
BOARD MEETING DATE: March 24, 2022
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 Second Imperial Geothermal Company, and any necessary ancillary documents with a Power Delivery Term of 15 years starting at the Commercial Operation Date on or about January 1, 2023, in an amount not to exceed \$275 million.

RECOMMENDATION:

Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase Agreement for Renewable Supply Second Imperial Geothermal Company, and any necessary ancillary documents with a Power Delivery Term of 15 years starting at the Commercial Operation Date on or about January 1, 2023, in an amount not to exceed \$275 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 baseload supply such as from geothermal. Geothermal provides for steady power generation 24 hours per day and throughout the year. There is some slight seasonal variation with higher generation in the winter months than the summer which is complementary to Peninsula Clean Energy's load and generation portfolio. This project would be the second geothermal project to be added to Peninsula Clean Energy's supply portfolio. 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.

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>

Overview of Project

Project Name	Second Imperial Geothermal Company
Technology	Binary geothermal
Solar Capacity	26 MW
Commercial Operation Date	1/1/2023
Developer	Ormat Technologies, Inc.
Location	Imperial County, CA

The project is a 26 MW geothermal facility located near Heber, CA in Imperial County. The Commercial Operation Date is January 1, 2024. The project is expected to deliver enough energy to meet approximately 5.5% 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 the Imperial Irrigation District and has firm transmission service rights to deliver at the CAISO intertie of Mirage 230 kV. The project is being built in an industrial area adjacent to an existing project which will be decommissioned.

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

Developer

The project is owned and being developed by Ormat Technologies, Inc. (Ormat). Ormat is a vertically integrated company with over five decades of experience. Ormat owns, operates, designs, manufactures and sells geothermal power plants primarily based on the Ormat Energy Converter – a power generation unit that converts low-, medium- and high-temperature heat into electricity. Ormat has engineered, manufactured and constructed power plants totaling over 3,200 MW of gross capacity. Ormat currently owns a generating portfolio of 947 MW (net), spread globally. In the United States 520 MW of that capacity is located in Nevada and California. With over 72 U.S. patents, Ormat's power solutions have been refined and perfected under the most demanding environmental conditions.

Environmental Review

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

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

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

For this project, the analysis showed that the project was not located in a protected area based on the USGS Protected Areas Database² (PAD-US). This project is located on Salt Affected Soils of California as defined by Natural Resources Conservation Service which means the land has little agricultural value.³

Workforce Requirements

Ormat has committed to payment of prevailing wages for the construction of the project and will make efforts to secure union labor.

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". Geothermal 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 eleven long-term renewable contracts, which make up approximately 53.1% 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	13.8%
Mustang 2 Solar	100	Operating	November-2020	15	King	7.5%
Chaparral Solar	100	Development	December-2023	15	Kern	7.7%
Arica Solar	100	Development	April-2024	15		7.8%
Gonzaga Ridge Wind Farm	76.35	Development	December-2024	15	Merced	4.6%
Geysers Geothermal	35	Operating	July-2022	10	Sonoma & Lake	7.9%

² USGS PAD-US: <https://www.usgs.gov/core-science-systems/science-analytics-and-synthesis/gap/science/protected-areas>

³ <https://datasin.org/datasets/c788fd949abf4aed9a85e82a0112bf3f/>

Sky River Wind	30	Operating	September-2021	20	Kern	2.9%
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	0.1%
Clover Small Hydro	1	Operating	April-2018	15	Shasta	0.1%
Total Contracted						53.1%
Second Imperial Geothermal	26	Development	January-2023	15	Imperial	5.5
Total With Pending						58.6%

The Second Imperial Geothermal project is a 26 MW renewable generating resource, covering an additional 5.5% 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 this project to Peninsula Clean Energy's portfolio of supply resources is net neutral in expected supply costs. The fiscal impact of the project will not exceed \$275 million over the 15-year term of the Agreement.

STRATEGIC PLAN:

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

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

ATTACHMENTS:

Second Imperial Geothermal Renewable Power Purchase Agreement (Redacted Version)

RESOLUTION NO. _____

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

* * * * *

**RESOLUTION DELEGATING AUTHORITY TO CHIEF EXECUTIVE OFFICER TO
EXECUTE POWER PURCHASE AND SALE AGREEMENT FOR RENEWABLE
SUPPLY WITH SECOND IMPERIAL GEOTHERMAL COMPANY, AND ANY
NECESSARY ANCILLARY DOCUMENTS WITH A POWER DELIVERY TERM OF 15
YEARS BEGINNING AT THE COMMERCIAL OPERATION DATE ON OR ABOUT
JANUARY 1, 2023, IN AN AMOUNT NOT TO EXCEED \$275 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 Second Imperial Geothermal Company (Contractor), to procure 26 MW of power generation from the project, based on Contractor's desirable offering of products, pricing, and terms; and

WHEREAS, the project will contribute toward the Board's goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy by providing renewable generation for a term of fifteen years starting on or about January 1, 2023; 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 \$275 million.

* * * * *

CONFIDENTIAL
HEBER 2 RFB – EXECUTION VERSION

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Second Imperial Geothermal Company, a California limited partnership

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

Description of Facility: A binary geothermal power plant located in Imperial County, California, with a generating capacity of approximately 26 MW, subject to adjustment as described in Section 4 of Exhibit B.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	Complete
CEC Pre-Certification Obtained	Complete
Documentation of Conditional Use Permit if required: CEQA <input type="checkbox"/> Cat Ex, <input type="checkbox"/> Neg Dec, <input checked="" type="checkbox"/> Mitigated Neg Dec, <input type="checkbox"/> EIR	Complete
Executed Interconnection Agreement	Complete
Executed Turbine Procurement Agreement	Completed: 12/31/2021
Expected Construction Start Date	5/1/2022
Expected Commercial Operation Date	1/1/2023

Delivery Term: 15 Contract Years.

Expected Energy:

Contract Year	Expected Energy (MWh)
1	216,000 MWh
2	214,920 MWh
3	213,845 MWh
4	212,776 MWh
5	211,712 MWh
6	210,654 MWh
7	209,600 MWh
8	208,552 MWh
9	207,510 MWh
10	206,472 MWh
11	205,440 MWh
12	204,413 MWh
13	203,391 MWh
14	202,374 MWh
15	201,362 MWh

Contract Capacity: 26 MW**Contract Price:** The Contract Price of the Product shall be:

Contract Year	Contract Price
1-15	

Product:

- ☒ Delivered Energy
- ☒ Green Attributes (Portfolio Content Category 1) associated with Delivered Energy
- ☒ Capacity Attributes

Scheduling Coordinator: Seller/Seller Third Party

Security and Damage Payment

Development Security:



Performance Security:



Damage Payment: See definition of “Damage Payment”

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of March __, 2022 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12.

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms, “controlled by”, and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at 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.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, and the Cover Sheet.

“**Approved Meter**” means a Transmission Provider approved revenue quality meter or meters, Transmission Provider approved data processing gateway or remote intelligence gateway (if required), telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Delivered Energy delivered to the Delivery Point.

“Availability Incentive Payments” has the meaning set forth in the CAISO Tariff.

“Available Generating Capacity” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to generate 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.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. Pacific Standard Time (PST) for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Default” means a failure by Buyer (or its agents) to perform Buyer’s obligations hereunder, and includes an Event of Default of Buyer.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.9(a).

“CAISO” means the California Independent System Operator Corporation, or any successor entity performing similar functions.

“CAISO Costs” means the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Resource ID for the Facility for, or attributable to, Scheduling or deliveries from the Facility under this Agreement in each applicable Settlement Interval.

“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 Revenues” means the credits and other payments incurred or received by Seller, as the Facility’s Scheduling Coordinator, as a result of Scheduled Energy or Delivered Energy delivered by Seller to any CAISO-administered market, including costs and revenues associated with CAISO dispatches, for each applicable Settlement Interval.

“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) as 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 associated with the Contract Capacity that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

“Capacity Damages” has the meaning set forth in Section 4 of Exhibit B.

“CEC” means the California Energy Commission, or any successor agency performing similar statutory functions.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the earlier of the Commercial Operation Date and the Conditional Commercial Operation Date, as applicable, that the CEC has pre-certified, as such date may be extended pursuant to Section 3.9) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Delivered Energy delivered to the Delivery Point 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 Certification and Verification.

“CEQA” means the California Environmental Quality Act.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless 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 equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

“Claim” has the meaning set forth in Section 16.2.

“COD Certificate” has the meaning set forth in Section 2 of Exhibit B.

“Commercial Operation” has the meaning set forth in Section 2 of Exhibit B.

“Commercial Operation Date” has the meaning set forth in Section 2 of Exhibit B.

“Commercial Operation Delay Damages” means an amount equal to [REDACTED]

“Compliance Actions” has the meaning set forth in Section 3.12.

“Compliance Costs” has the meaning set forth in Section 3.12.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.12.

“Conditional COD Capacity” has the meaning set forth in Section 2 of Exhibit B.

“Conditional COD Certificate” has the meaning set forth in Section 2 of Exhibit B.

“Conditional COD Cure Period” has the meaning set forth in Section 2.c of Exhibit B.

“Conditional COD Damages” has the meaning set forth in Section 2.c of Exhibit B.

“Conditional Commercial Operation” has the meaning set forth in Section 2 of Exhibit B.

“Conditional Commercial Operation Date” has the meaning set forth in Section 2 of Exhibit B.

“Confidential Information” has the meaning set forth in Section 18.1.

“Construction Start” has the meaning set forth in Section 1.a of Exhibit B.

“Construction Start Date” has the meaning set forth in Section 1.a of Exhibit B.

“Contract Capacity” means the amount of generating capacity of the Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet, as the same may be adjusted pursuant to Section 4 of Exhibit B.

“Contract Price” has the meaning set forth on the Cover Sheet.

“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 earlier of the Commercial Operation Date and the Conditional Commercial Operation Date, as applicable, and each subsequent Contract Year shall commence

on the anniversary of the earlier of the Commercial Operation Date and the Conditional Commercial Operation Date, as applicable.

“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 this Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“CPUC” means the California Public Utilities Commission or any successor agency performing similar statutory functions.

“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 by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, that such Party is required to curtail deliveries of Delivered Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;

(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 electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by CAISO or 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 Delivered 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.

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Daily Delay Damages” means an amount equal to [REDACTED]

“Damage Payment” means the dollar amount that equals [REDACTED]

“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 Delivered Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Market Curtailment Period, which amount shall be calculated as the difference between (a) the product of (i) the arithmetic average of the Facility’s metered output rate, in MW, for the twenty-four (24) hour periods immediately before and after such Market Curtailment Period, by (ii) the duration of such Market Curtailment Period, less (b) the amount of Delivered Energy delivered to the Delivery Point during the Market Curtailment Period, if any; provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

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

“Deficient Month” has the meaning set forth in Section 4.9(e).

“Delivered Energy” means the as-available electric energy generated by the Facility, which is net of Electrical Losses and Station Use and delivered to the Delivery Point, as measured by the Facility Meter.

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

“Delivery Term” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the earlier of the Commercial Operation Date and the Conditional Commercial Operation Date, as applicable, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Section 3 of Exhibit B.

“Development Security” means (i) cash, (ii) a Letter of Credit, (iii) a Guaranty, or (iv) a Surety Bond, in each case in the amount set forth on the Cover Sheet.

“Disclosing Party” has the meaning set forth in Section 18.2.

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

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

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

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

“Energy” means electrical energy generated by the Facility.

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

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

“Expected Commercial Operation Date” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

“Expected Construction Start Date” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Construction Start.

“Expected Energy” means the quantity of Delivered Energy attributable to the Contract Capacity that Seller expects to be able to deliver from the Facility during each Contract Year in the quantity specified on the Cover Sheet.

“Facility” means the geothermal 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 Energy to the Delivery Point.

“Facility Meter” means the Approved Meter that will measure all electric energy generated by the Facility, including Delivered Energy. Without limiting Seller’s obligation to deliver Delivered Energy to the Delivery Point, the Facility Meter may be located at the low voltage or the high voltage side of the main step up transformer, and Delivered Energy will be subject to adjustment in accordance with Transmission Provider meter requirements and Prudent Operating Practices to account for Electrical Losses.

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

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Delivered Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“Forward Certificate Transfers” has the meaning set forth in Section 4.9(a).

“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 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 and its displacement of conventional energy generation. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, or (ii) investment tax credits or production tax credits associated with the construction or operation of the Facility, or 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.

“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., SP-15), all of which should be calculated for the remaining Contract Term, and include 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 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 or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“Green-e Certified” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“Green-e Energy National Standard” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

“Guaranteed Commercial Operation Date” means the Expected Commercial Operation Date, as such date may be extended (i) on a day-for-day basis for each day that Seller pays Daily Delay Damages, and (ii) by the Development Cure Period.

“Guaranteed Construction Start Date” means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

“Guaranteed Energy Production” means [REDACTED] of the total Expected Energy, measured in MWh, for the applicable Performance Measurement Period.

[REDACTED]

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

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

“Indemnifiable Loss(es)” has the meaning set forth in Section 16.1(a).

“Initial Synchronization” means the initial delivery of Delivered Energy to the Delivery Point.

“Installed Capacity” means the actual generating capacity of the Facility, as measured in MW at the Delivery Point, that achieves, as applicable, Conditional Commercial Operation on the Conditional Commercial Operation Date and Commercial Operation on the Commercial Operation Date, in each case adjusted for ambient conditions on the date of the performance test in accordance with the criteria set forth in Exhibit I-1, and as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto.

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

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

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

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

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

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

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

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

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, 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 (including back-leverage debt), equity (including 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 or its Affiliates, and any trustee or agent or similar representative 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 or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) 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 or (b) being reasonably acceptable to Buyer, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Liquidated Damages” means, collectively, the Daily Delay Damages, the Commercial Operation Delay Damages, and the Conditional COD Damages.

“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., SP-15), 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 Section 4.7. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

“Major Maintenance” means planned maintenance for the purpose of achieving a major overhaul or material maintenance that impacts the output of the Facility for seven (7) or more consecutive days.

“Market Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility during a Settlement Period or Settlement Interval in which there is a Negative LMP that is equal to or below the

Negative LMP Strike Price; provided, that the duration of any Market Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

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

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

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

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

“**Nameplate Capacity**” means 41.52 MW.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Delivery Point is less than zero dollars (\$0).

“**Negative LMP Strike Price**” means zero dollars per MWh (\$0/MWh), as such price may be revised by Buyer by providing Notice to Seller in accordance with Exhibit C; provided, however, that in no event shall the Negative LMP Strike Price be greater than zero dollars per MWh (\$0/MWh).

“**NERC**” means the North American Electric Reliability Corporation or any successor entity performing similar functions.

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

“**Non-Availability Charges**” has the meaning set forth in the CAISO Tariff.

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

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

“**Notice of Claim**” has the meaning set forth in Section 16.2.

“**OEM**” has the meaning set forth in Section 13.4(c).

“**Operating Restrictions**” means those rules, requirements, and procedures set forth on Exhibit O.

“**Parasitic Load**” means the Energy produced by the Facility (or under the circumstances set forth in Section 4.10, energy from on-site solar generation) that is used to power the lights,

motors, pumps, auxiliary facilities of the well field, control systems, cooling systems, ancillary equipment, and other electrical loads that are necessary for the operation of the power systems and related facilities for the production of Energy.

“Participating Transmission Owner” or **“PTO”** means an entity that owns, operates and maintains transmission or distribution lines and associated facilities 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 set forth in Exhibit A.

“Party” or **“Parties”** has the meaning set forth in the Preamble.

“Performance Measurement Period” means each Contract Year during the Delivery Term.

“Performance Security” means (i) cash, (ii) a Letter of Credit, (iii) a Guaranty, or (iv) a Surety Bond, in each case in the amount set forth on the Cover Sheet.

[REDACTED]

“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.

“Planned Outage” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance, including any Major Maintenance, that has been scheduled in advance in accordance with Section 4.6(a).

“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 Financing” has the meaning set forth in Section 14.5.

“Prevailing Wage Requirement” has the meaning set forth in Section 13.4.

“Product” has the meaning set forth on the Cover Sheet.

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

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility and independent power producer industry during the relevant time period with respect to grid-interconnected, utility-scale geothermal generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale geothermal generating facilities in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

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

“Remaining Extension Period” means one hundred twenty (120) days minus the number of days after the Guaranteed Construction Start Date that the Construction Start Date occurred.

“Remedial Action Plan” has the meaning in Section 2.4.

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

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute, a Future Environmental Attribute, or Capacity Attribute.

“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 any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 19-10-021 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

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

“Schedule” has the meaning set forth in the CAISO Tariff, and **“Scheduled”** has a corollary meaning.

“Scheduled Energy” means the Delivered Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), 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.

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

“Security Interest” has the meaning set forth in Section 8.9.

“Seller” has the meaning set forth on the Cover Sheet.

“Seller’s WREGIS Account” has the meaning set forth in Section 4.9(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). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Period” has the meaning set forth in the CAISO Tariff.

“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 point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A.

“Site Control” means that Seller (or, prior to the Delivery Term, its Affiliate): (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.

“SP-15” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

“Station Use” means the Energy produced by the Facility that is used (prior to being measured by the Facility Meter) to serve the Facility’s Parasitic Load.

“Surety Bond” means a surety bond in a form reasonably acceptable to Buyer and issued by a commercial insurance company or other financial institution headquartered in the United States (a) 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 or (b) being reasonably acceptable to Buyer.

“System Emergency” means any condition that 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.

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

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

“Tax Credits” means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

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

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

“Test Energy” means Delivered Energy delivered (a) commencing on January 1, 2023, and (b) ending upon the occurrence of the earlier of the Commercial Operation Date and the Conditional Commercial Operation Date, as applicable; provided, however, that if the Commercial Operation Date is January 1, 2023, then there will be no Test Energy hereunder.

“Test Energy Rate” has the meaning set forth in Section 3.6.

“Transmission Provider” means any entity or entities transmitting or transporting the Delivered Energy on behalf of Seller or Buyer to or from the Delivery Point.

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

“Transmission System Outage” means an outage on the Transmission System, other than a System Emergency, that prevents Buyer, PTO, or the CAISO (as applicable) from receiving System Energy onto the Transmission System.

“Ultimate Parent” means Ormat Technologies, Inc., a Delaware corporation.

“WECC” means the Western Electricity Coordinating Council or its successor.

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

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.9(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of January 4, 2021, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**"); provided, however, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(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 18 and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

2.2 **Conditions Precedent.** The Delivery Term shall commence upon the date that Seller notifies Buyer in writing that Seller has completed all of the following conditions, unless within five (5) Business Days after such date, Buyer notifies Seller in writing that, in Buyer's reasonable judgment, one or more of the following conditions has not been met and identifies specifically the additional information or deliverable required in order for such condition(s) to be met:

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H-1 or Exhibit H-2, as applicable, and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-2 setting forth the Installed Capacity on the Commercial Operation Date or Conditional Commercial Operation Date, as applicable;

(b) An Interconnection Agreement between Seller and the PTO, and any other related agreement(s) necessary for the Delivered Energy to be scheduled and delivered to the CAISO, shall have been executed and delivered and be in full force and effect for not less than the length of the Delivery Term, taking into account renewal rights under such agreements and a copy of the Interconnection Agreement and any such other related agreements have been delivered to Buyer;

(c) All required regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and shall be in full force and effect, and all conditions thereof that are capable of being satisfied on the Commercial Operation Date or Conditional Commercial Operation Date, as applicable, have been satisfied, provided, that, Seller may demonstrate satisfaction of this subsection 2.2(c) by delivery to Buyer of a copy of a temporary or final certificate of occupancy (or equivalent) for the Facility;

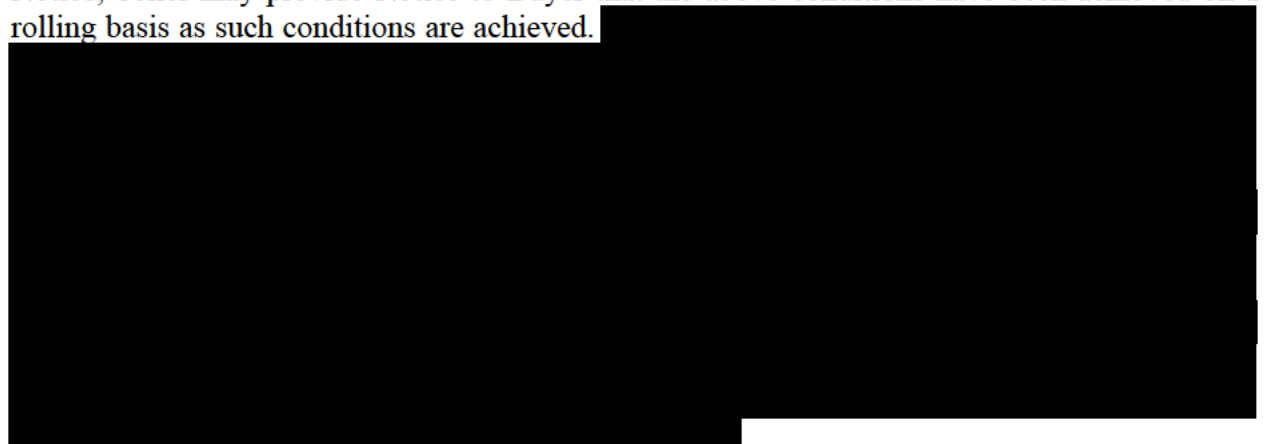
(d) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the earlier of the Commercial Operation Date and the Conditional Commercial Operation Date, as applicable);

(e) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being complete prior to the Commercial Operation Date or Conditional Commercial Operation Date, as applicable, under WREGIS rules, including (as applicable) 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;

(f) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(g) Seller has paid Buyer for all amounts owing by Seller under this Agreement, if any, as of the earlier of the Commercial Operation Date and the Conditional Commercial Operation Date, as applicable, including Daily Delay Damages, Commercial Operation Delay Damages and Conditional COD Damages (as applicable).

Seller shall provide Notice to Buyer not earlier than sixty (60) days before the date Seller expects to achieve COD (the “**Expected COD Notice**”). After Buyer has received the Expected COD Notice, Seller may provide Notice to Buyer that the above conditions have been achieved on a rolling basis as such conditions are achieved.



2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to meetings at Buyer’s request between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller misses any Milestone Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, 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), 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 Construction Start Date and Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and receive all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. In accordance with Exhibit C, Buyer shall pay for Deemed Delivered Energy during Market Curtailment Periods. Buyer has no obligation to purchase from Seller any Product for which the associated Delivered Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order. In no event shall Seller have the right to deliver any portion of the Product from sources other than the Facility under this Agreement.

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

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period there may be Imbalance Energy. To the extent there is any Imbalance Energy, any payments or charges related to such Imbalance Energy shall be for the account of Seller.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.12, in such event, Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice

from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy**. No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount (the "**Test Energy Rate**") equal to seventy-five percent (75%) of the Contract Price for a period not to exceed ninety (90) days, after which the amount shall be [REDACTED] for all additional Test Energy. For the avoidance of doubt, (a) the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6, and (b) Buyer has no right to purchase or receive any Product prior to January 1, 2023, and Seller may retain for its own use or sell to one or more third parties all such Product and retain all associated revenue.

3.7 **Capacity Attributes**. Upon Buyer's request, Seller shall reasonably cooperate and assist Buyer in its efforts to obtain Capacity Attributes from the Facility. Seller shall not be required to bear any additional third-party costs to enable Buyer to obtain Capacity Attributes.

3.8 **Qualification for Mid-Term Reliability**. Seller shall use commercially reasonable efforts to qualify the Facility to count toward Buyer's mid-term reliability procurement obligations under CPUC Decision 21-06-035 and maximize the amount of Facility capacity that qualifies thereunder, including working with IID to validate a derated baseline capacity for the Facility prior to the repower that is the subject of this Agreement.

3.9 **CEC Certification and Verification**. Subject to Section 3.12, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the earlier of the Commercial Operation Date and the Conditional Commercial Operation Date, as applicable. Within thirty (30) days after the earlier of the Commercial Operation Date and the Conditional Commercial Operation Date, as applicable, Seller shall apply with the CEC for final CEC Certification and Verification. Subject to Section 3.12, within one hundred eighty (180) days after the earlier of the Commercial Operation Date and the Conditional

Commercial Operation Date, as applicable, which deadline will be extended on a day-for-day basis if there is a delay in CEC Certification and Verification and that delay is caused by any reason other than an act or omission of Seller, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10 **Reserved.**

3.11 **RPS Standard Terms and Conditions.**

(a) STC REC-2. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

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

(c) STC REC-1. Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(d) 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.

3.12 **Compliance Expenditure Cap.** If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product, then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses ("**Compliance Costs**") Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at [REDACTED] of Contract Capacity ("**Compliance Expenditure Cap**"). Seller's

internal administrative costs associated with obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the Compliance Costs 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 Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated Compliance Costs.

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 or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap, as applicable (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 3.12 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, the Compliance Actions that are the subject of the Notice for the remainder of the Term.

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

3.13 **Commercially Reasonable Efforts; Project.** The term "commercially reasonable efforts" as used in Section 3.11 means efforts consistent with and subject to Section 3.12. The term "Project" as used in Section 3.11(b) means "Facility".

ARTICLE 4 OBLIGATIONS AND DELIVERIES

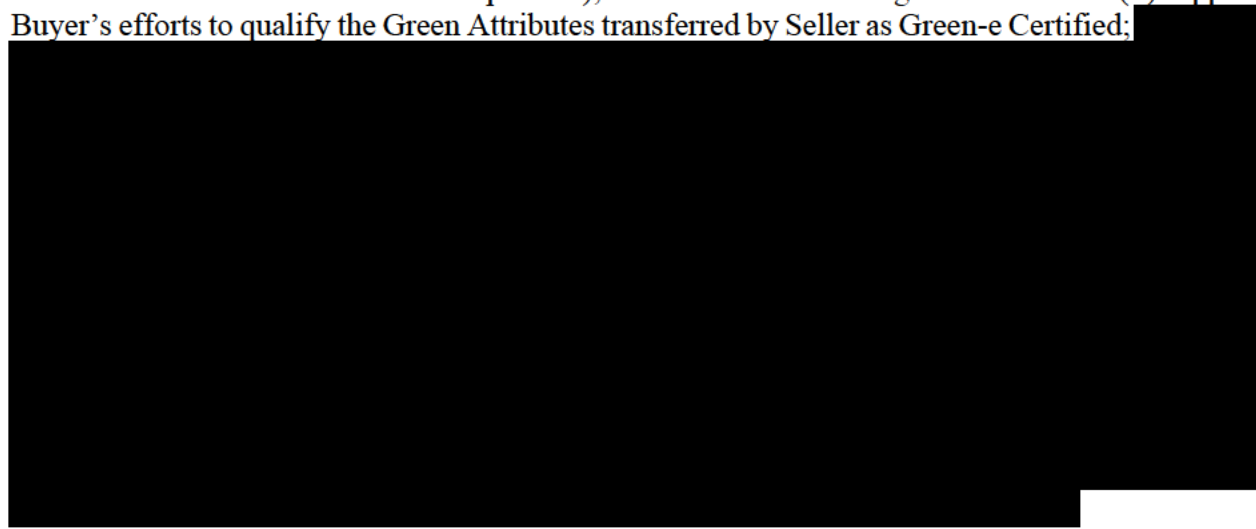
4.1 Delivery.

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the earlier of the Commercial Operation Date and the Conditional Commercial Operation Date, as applicable, and through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement; provided, upon a request by Buyer, Seller shall use commercially reasonable efforts to arrange to deliver the Product to an alternate delivery point requested by Buyer, including efforts to re-direct transmission, provided that Buyer agrees to reimburse Seller for any incremental out-of-pocket costs to Seller to do so and the Settlement Point specified in Exhibit A is revised to match the alternate delivery point. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of

Delivered Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Delivered Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses. The Delivered Energy will be scheduled to the CAISO by Seller (or Seller's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with the Delivered Energy during the Delivery Term are exclusively dedicated to and will be conveyed to Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Delivered Energy, 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.

(c) Upon request of Buyer, Seller shall use commercially reasonable efforts to (i) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (ii) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified;



4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Delivered Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

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

4.3 Scheduling Coordinator Responsibilities.

(a) Seller to be Scheduling Coordinator. During the Delivery Term, Seller shall act as Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO to Schedule and deliver the Product to the Delivery Point on

behalf of Buyer. Each Party shall perform all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement.

(b) CAISO Market Participation. During the Delivery Term, Seller, as the party responsible for all Scheduling Coordinator activities with respect to the Facility, shall submit bids into the Day-Ahead Market and the Real-Time Market.

(c) CAISO Costs and CAISO Revenues. As the Scheduling Coordinator for the Facility, Seller shall be responsible for all CAISO Costs and shall be entitled to all CAISO Revenues; provided, any net costs or charges assessed by the CAISO which are due to Buyer's failure to perform its obligations shall be Buyer's responsibility. The Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges or other CAISO charges associated with the Facility not providing sufficient Resource Adequacy capacity are the responsibility of 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, the cost of such sanctions or penalties arising from the scheduling, outage reporting, or generator operation of the Facility shall be Seller's responsibility.

(d) Future Changes to Scheduling Protocols. During the Delivery Term, the Parties agree to discuss in good faith requested changes by either Party to the CAISO scheduling procedures set forth in this Agreement.

(e) Customer Market Results Interface Access. Seller shall provide to Buyer read-only access to Seller's (or its SC's) Customer Market Results Interface for the Facility.

(f) RA Substitution. In the event that the CAISO Tariff requires Seller (or its SC) to provide substitute Resource Adequacy Benefits (including due to outages of the Facility), Seller shall use commercially efforts to make such substitution, which will be at no additional cost to Buyer, and Seller shall be liable for any costs or penalties for failing to do so; provided, Buyer shall indemnify and hold Seller harmless against any costs (including the cost of substitute Resource Adequacy Benefits) or liabilities associated with Buyer's failure to provide the necessary import allocation rights. In the event that, as a result of a change in Law, Buyer is (or, in order to maintain the balance of benefits and burdens contemplated hereunder, should be) responsible for taking or refrain from taking certain actions in order to facilitate the provision of Resource Adequacy Benefits hereunder and Seller's substitute Resource Adequacy requirement occurs as a result of a failure by Buyer to take or refrain from taking such action, Buyer shall indemnify and hold Seller harmless against any costs (including the cost of substitute Resource Adequacy Benefits) or liabilities associated with Buyer's failure to take or refrain from taking such action.

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

(a) Annual Forecast of Energy. No less than forty-five (45) 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 Delivered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Energy. No less than ten (10) Business Days before the beginning of each month of the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Energy for each day of the following month in a form reasonably acceptable to Buyer.

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the hourly expected hourly Energy for each hour of the immediately succeeding day ("Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day, and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the hourly expected Energy.

(d) Real-Time Forecast Updates. Seller shall notify Buyer if there are change(s) of one (1) MW / (1) MWh or more, as applicable, in the Available Generating Capacity or the hourly expected Delivered Energy, in any case whether due to Forced Facility Outage, Transmission System Outage, Force Majeure or other cause, including (as appropriate) information regarding the beginning date and time of any event resulting in the change in Available Generating Capacity, the expected end date and time of any such event, and any other information required by the CAISO or reasonably requested by Buyer.

(e) CAISO Tariff Requirements. Seller shall comply with all applicable obligations under the CAISO Tariff that may be applicable to the Facility (if any), including, as applicable, providing appropriate operational data and meteorological data, and will fully cooperate with Buyer and CAISO, in providing all data, information, and authorizations required thereunder.

4.5 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Delivered Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, provided that Seller is not required to reduce such amount to the extent such Curtailment Order or notice is inconsistent with the limitations of the Facility set out in the Operating Restrictions, if and to the extent that Seller's deviations from the Curtailment Order or notice due to the Operating Restrictions are permitted by applicable Law, Interconnection Agreement and similar agreements.

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

(a) Facility Maintenance.

(i) Seller shall provide to Buyer written schedules for Planned Outages for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments no later than ten (10) Business Days after receiving any such schedule, and Seller will in good faith take into account any such comments. Seller will deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) Business Days after receiving Buyer's comments. Seller shall be permitted to reduce deliveries of Product during any such period of such Planned Outages.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.6(a)(i), but Major Maintenance shall not be performed more than one week before or after the scheduled time (provided that the outage remains within the same month(s) as originally scheduled) unless Seller first provides Buyer notice prior to rescheduling. Such notice of the change in time of Major Maintenance shall be provided at least (a) in the event that Seller moves the date of such Major Maintenance to an earlier date, fifty (50) Business Days prior to the first day of the month in which such Major Maintenance is to be re-scheduled, and (b) in the event that Seller moves the date of such Major Maintenance to a later date, fifty (50) Business Days prior to the first day of the month in which such Major Maintenance was originally scheduled.

(iii) Major Maintenance shall not exceed fifteen (15) days once every five (5) years, and one hundred twenty (120) days once during the Term.

(iv) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to October 31st, (iii) such outage is required in accordance with Prudent Operating Practice, or (iv) the Parties agree otherwise in writing.

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

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

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

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

4.7 Guaranteed Energy Production. Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance

Measurement Period only to the extent of any Force Majeure Events, System Emergency, Buyer's Default or other failure to perform, Curtailment Periods, Market Curtailment Periods, Transmission System Outage, or Major Maintenance. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, in addition to the Delivered Energy delivered by Seller during the applicable Performance Measurement Period Seller shall be deemed to have delivered to Buyer (1) with respect to Market Curtailment Periods, any Deemed Delivered Energy and (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Buyer's Default or other failure to perform, Transmission System Outage, Major Maintenance, or Curtailment Periods ("**Lost Output**"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G ("**Energy Replacement Damages**").

4.8



4.9 **WREGIS.** Seller shall, subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer 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 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 earlier of the Commercial Operation Date and the Conditional Commercial Operation Date, as applicable, 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 account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause the Imperial Irrigation District or another qualified third party 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 Delivered Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.9. 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 delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of 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 Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month. 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.

(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 4.9 after the Effective Date, the Parties promptly shall modify this Section 4.9 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month.

4.10 **Parasitic Load.** Seller has the right, but not the obligation, to install and operate solar generating capacity located behind the Facility Meter at the Site; provided, that Seller shall ensure that such solar generation (a) is only used to serve Parasitic Load associated with the Facility, and (b) is not delivered to Buyer for sale hereunder. If Seller elects to install such solar generating capacity at the Site, Seller shall provide Notice to Buyer no later than six (6) months in advance of installation, in which case the geothermal Energy generated by the Facility that would have otherwise served Parasitic Load associated with the Facility shall, for the purposes of this Agreement, constitute Delivered Energy and shall be sold to Buyer in accordance with the provisions of this Agreement. Buyer acknowledges that using on-site solar generation to supply the Facility's Parasitic Load will result in an increase in Delivered Energy and associated Green Attributes delivered by Seller hereunder by reducing Station Use, and Buyer agrees that such increase in Delivered Energy and Associated Green Attributes will be sold to Buyer in accordance with the terms of this Agreement; provided, however, that such solar photovoltaic generating

system will be designed to serve solely the Facility's Parasitic Load behind the Facility Meter, and in no event shall Seller's installation of on-site solar generation to supply the Facility's Parasitic Load result in the Contract Capacity increasing the annual average capacity by more than 4 MW. Seller may install, or cause to be installed, such solar photovoltaic generating system behind the Facility Meter at the Site within three (3) year following the occurrence of the Commercial Operation Date. Seller shall provide to Buyer a certificate from an independent engineer certifying (i) that such solar photovoltaic generation is not capable of being delivered to Buyer as Delivered Energy or otherwise delivered to any third party and (ii) the actual nameplate capacity of such solar photovoltaic generation system, which shall not exceed 15 MW.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to 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 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 any. 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 Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

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

ARTICLE 6 MAINTENANCE OF THE FACILITY

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

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to

prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Delivered Energy to Buyer.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; provided that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Delivered Energy using the Facility Meter. All meters will be operated pursuant to applicable Transmission Provider-approved calculation methodologies and maintained as Seller's cost. Seller shall separately meter all Station Use, and shall ensure that no Parasitic Load is served from Delivered Energy. Subject to meeting any applicable Transmission Provider requirements, the Facility Meter shall be programmed to adjust for Electrical Losses from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram to be set forth as Exhibit P, an updated version of which shall be provided by Seller to Buyer at least thirty (30) days prior to the earlier of the Commercial Operation Date and the Conditional Commercial Operation Date, as applicable. Each 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 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 directly relating to the Facility and all inspection, testing and calibration data and reports (if applicable). Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web (if applicable) or directly from the meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate, it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; provided, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for product within ten (10) Business Days after the end of the prior monthly billing period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Delivered Energy produced by the Facility as read by the Facility Meter, the amount of Station Use, the calculation of Delivered Energy, Deemed Delivered Energy, Lost Output, and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Seller shall provide Buyer with reasonable access to any records, including invoices or settlement data from CAISO, necessary to verify the accuracy of any invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the prime rate published on the date of the invoice in The Wall Street Journal or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days’ Notice to the other Party, either 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. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds ten thousand (\$10,000).

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 or 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.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. 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 third party not affiliated with any Party and such third 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 or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and G, 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 its obligations under this Agreement, Seller shall deliver the Development Security to Buyer on or before the Effective Date, and Buyer shall be entitled to draw on the Development Security solely in accordance with Section 8.9. Seller shall maintain the Development Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security; [REDACTED]

[REDACTED] Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall 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 ten (10) Business Days after Notice from Buyer (in the event of an occurrence described in Sections 8.7(i) or (ii)) or five (5) Business Days after Notice from Buyer (in the event of an occurrence described in Section 8.7(iii)), as applicable, to deliver substitute Development Security. If the Development Security is a Surety Bond and the issuer of such Surety Bond (x) fails to maintain the minimum financial requirements specified in the definition of Surety Bond, (y) indicates its intent not to renew such Surety Bond and such Surety Bond expires prior to the Commercial Operation Date, or (z) fails to honor Buyer's properly documented request to draw on such Surety Bond by such issuer, Seller shall have fifteen (15) Business Days after Notice from Buyer (in the event of an occurrence described in Sections 8.7(x) or (y)) or seven (7) Business Days after Notice from Buyer (in the event of an occurrence described in Section 8.7(z)), as applicable, to deliver substitute 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 earlier of the Conditional Commercial Operation Date and the Commercial Operation Date, as applicable; provided that Seller may, by Notice to Buyer, convert the Development Security to Performance Security. Buyer shall be entitled to draw on the Performance Security solely in accordance with Section 8.9. If the Performance Security is a Guaranty, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days after Notice from Buyer (in the event of an occurrence described in Sections 8.8(i) or (ii)) or five (5) Business Days after Notice from Buyer (in the event of an occurrence described in Section 8.8(iii)), as applicable, to deliver substitute Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable. If the Performance Security is a Surety Bond and the issuer of such Surety Bond (x) fails to maintain the minimum financial requirements specified in the definition of Surety Bond, (y) indicates its intent not to renew such Surety Bond and such Surety Bond expires prior to the end of the Term, or (z) fails to honor Buyer's properly documented request to draw on such Surety Bond by such issuer, Seller shall have fifteen (15) Business Days after Notice from Buyer (in the event of an occurrence described in Sections 8.8(x) or (y)) or seven (7) Business Days after Notice from Buyer (in the event of an occurrence described in Section 8.8(z)), as applicable, to deliver substitute Performance Security.

8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in,

and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

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

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

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

8.10 **Financial Statements**. In the event a Guaranty is provided as Performance Security in lieu of cash, Surety Bond, or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, within sixty (60) days of the end of Guarantor's first, second, and third fiscal quarters, and within one hundred twenty (120) days of the end of the Guarantor's fiscal year, as applicable, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N 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 or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 Definition.

(a) “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of 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; [REDACTED] landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (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; (iv) a Curtailment Order, unless 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, including the lack of

steam, water or other fuel source of an inherently intermittent nature, 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) any action or inaction by Transmission Provider or any third party other than a Governmental Authority (not including the CAISO) that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event; or (ix) Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or Commercial Operation following the Guaranteed Commercial Operation Date unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability expeditiously. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. 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. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) 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.

10.3 Notice. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, however, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 Termination Following Force Majeure Event.

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clauses 3(b) or 3(c) in Exhibit B) equal or exceed one hundred eighty (180) days, and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's actions or failure to take commercially reasonable actions, then Seller may terminate this Agreement upon written Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations

specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the earlier of the Commercial Operation Date and the Conditional Commercial Operation Date, as applicable, that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations 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 Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11

DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days 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 Article 14; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such

consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

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

(i) if at any time, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated by the Facility;

(ii) the failure by Seller to achieve the Construction Start Date within [REDACTED]s after the Guaranteed Construction Start Date; or the failure by Seller to achieve Commercial Operation or Conditional Commercial Operation within the Remaining Extension Period after the Guaranteed Commercial Operation Date; or if Seller achieved Conditional Commercial Operation but not Commercial Operation by the Guaranteed Commercial Operation Date, Seller's failure to achieve Commercial Operation prior to the expiration of the Conditional COD Cure Period;

(iii) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least [REDACTED] of the 6-month pro-rated amount of Expected Energy for such period adjusted for seasonality proportionately to the monthly forecast provided annually by Seller under Section 4.3(a), and Seller fails to (x) deliver to Buyer within fifteen (15) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the [REDACTED] threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (a "Cure Plan"), and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein;

(v) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, or (4) a Surety Bond meeting the requirements in the definition thereof, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

(vi) 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, (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, (3) a Surety Bond meeting the requirements in the definition thereof, or (4) a Guaranty from a Guarantor meeting the criteria set forth in the definition of Guarantor, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of the event set forth in clause (D) below or within ten (10) Business Days after Seller receives Notice of the occurrence of any of the other 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; or

(vii) with respect to any outstanding Surety Bond 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 Surety Bond from a different issuer, (3) a replacement Guaranty from a Guarantor meeting the criteria set forth in the definition of Guarantor, or (4) 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 seven (7) Business Days after Seller receives Notice of the occurrence of the event set forth in clause (C) below or within fifteen (15) Business Days after Seller receives Notice of the occurrence of any of the other following events:

(A) the issuer of such Surety Bond becomes Bankrupt;

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

(C) the issuer of the outstanding Surety Bond shall fail to honor a properly documented request to draw on such Surety Bond;

(D) the issuer of the outstanding Surety Bond shall fail to meet the criteria for an acceptable issuer of a Surety Bond as set forth in the definition of Surety Bond

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

(F) such Surety Bond 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 Surety Bond on a timely basis as provided in the relevant Surety Bond and as provided in accordance with this Agreement, and in no event less than forty-five (45) days prior to the expiration of the outstanding Surety Bond.

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

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that

terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the earlier of the Commercial Operation Date and the Conditional Commercial Operation Date, as applicable, including an Event of Default 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; or

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

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

11.3 **Termination Payment.** The termination payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any and 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 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. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) 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 the Damage Payment or Termination Payment (as applicable) as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party

of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

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

ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, 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 CREDITS, 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 UNDER SECTIONS 4.7, 4.9, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G, 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.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE

BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and 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.

(f) As between Buyer and Seller, Seller will be responsible for obtaining all permits necessary to construct and operate the Facility, including to the extent applicable, Seller will be the applicant on any CEQA documents.

(g) Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Construction Start Date to be

later than the Guaranteed Construction Start Date or the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed;

[REDACTED]. Any assignment made without the required written consent or in violation of the conditions to assignment set out below shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys' fees. **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to execute a consent to collateral

assignment of this Agreement substantially in the form attached hereto as Exhibit M, with such changes as are reasonably acceptable to the parties thereto.

14.3 **Permitted Assignment by Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or [REDACTED] if, and only if:

[REDACTED]

(ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(iii) to the extent that an assignment is not a Change of Control of Seller, Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, to the extent that an assignment is not a Change of Control of Seller, any assignment by Seller, 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 Buyer.

14.4 **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 14.4 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

14.5 **Shared Facilities; Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a portfolio financing together with other energy generation or storage facilities, which may include cross-collateralization or similar arrangements ("**Portfolio Financing**"). In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be

reasonable and necessary to facilitate such transactions; provided, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Venue**. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California.

15.2 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then 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.

15.3 **Attorneys' Fees**. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16 INDEMNIFICATION

16.1 **Indemnity**. Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party, its Affiliates, directors, officers, agents, attorneys, employees and representatives (each an "**Indemnified Party**" and collectively, the "**Indemnified Group**") from and against all claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees, (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees or agents, or (ii) resulting from violations of applicable Laws (collectively, "**Indemnifiable Losses**").

(b) Nothing in this Section 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 obligations to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Notice of Claim.** Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly Notify the Indemnifying Party in writing of any damage, claim, loss, liability or expense which Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 (“**Claim**”). The Notice is referred to as a “**Notice of Claim**”. A Notice of Claim will specify, in reasonable detail, the facts known to Indemnified Party regarding the Indemnifiable Loss.

16.3 **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.4 **Defense of Claims.** If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; provided, however, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnifying Party that Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid

or incurred by Indemnified Party up to the date of such Notice.

16.5 **Subrogation of Rights.** Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such third party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party's rights against such third party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.6 **Rights and Remedies are Cumulative.** Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, 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 insurable indemnity obligations under this Agreement. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

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

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

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

(e) Excess Umbrella Insurance. Seller shall maintain an umbrella insurance policy (or following form excess) in a minimum limit of liability of Five Million Dollars (\$5,000,000) over the General Liability, Auto Liability, and Employer's Liability.

(f) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(g) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Five Million Dollars (\$5,000,000) per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(h) Subcontractor Insurance. Seller shall endeavor to require all of its subcontractors to carry similar insurance as Seller with limits that are appropriate taking into account the work or services to be performed by such subcontractors. All subcontractors shall include Seller as an additional insured to (i) commercial general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(i) 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. It is hereby understood and agreed that buyer will be added as additional insureds but only to the extent of Seller's insurable indemnity obligations under this Agreement. Sellers insurance is primary, and any other insurance maintained by buyer shall be secondary and not responsible for any defense or indemnity until the additional insurance primary insurance is exhausted; notwithstanding any "other insurance" clauses to the contrary. Such certificates shall provide buyer with 45 days' notice in case of cancellation or non-renewal, except 10 days for non-payment of premium. Such certificates shall contain a waiver of subrogation in favor of the buyer.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available

through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Except as provided in this Article 18, each Party shall not disclose Confidential Information received from the other Party. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. 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. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.).

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth in this Article 18. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Article 18 or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed (a) by a Party to any financing provider (including, in the case of Seller, any Lender) or investor or any of its Affiliates, agents, consultants, contractors, or trustees, and (b) by Seller to any potential Lender that is a financial institution or investment fund, in the case of either (a) or (b) so long as the Person to whom Confidential Information is disclosed agrees to be bound by the confidentiality provisions of this Article 18 to

the same extent as if it were a Party.

18.5 **Press Releases.** 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 public statement.

18.6 **Disclosure to Credit Rating Agency.** Notwithstanding anything to the contrary in this Article 18, 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.

ARTICLE 19 MISCELLANEOUS

19.1 **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 Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; provided, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement or, to the extent set forth herein, any Lender or Indemnified Party).

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force

and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party 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). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts; Electronic Signatures.** 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. The Parties may rely on electronic, facsimile or scanned signatures as originals. Delivery of an executed signature page of this Agreement by electronic transmission (including facsimile and email transmission of a PDF image) shall be the same as delivery of an original executed signature page.

19.8 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.9 **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.

19.10 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.11 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party

may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. 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, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.12 **Further Assurances**. Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

**SECOND IMPERIAL
GEOTHERMAL COMPANY, a
CALIFORNIA LIMITED
PARTNERSHIP**

By: _____
Name: _____
Title: _____

**PENINSULA CLEAN ENERGY
AUTHORITY, a CALIFORNIA JOINT
POWERS AUTHORITY**

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name: Heber 2

Site includes all or some of the following APNs: APN: 054-250-031-000

GPS Coordinates: 32.714185°, -115.536565°

County: Imperial County

Site Map:



CEQA Lead Agency: Imperial County Planning Department

Type of Facility: Geothermal Generating Facility

Contract Capacity: 26 MW annual average

Delivery Point: Mirage 230 kV

Participating Transmission Owner: Imperial Irrigation District (IID)

Generation Technology: Organic Rankine Cycle

Description of Interconnection Facilities and Metering: The Facility will utilize existing Interconnection Facilities. The scope of the new Interconnection Facilities will be limited to: new SEL-735 metering units, and IID will require Phasor Measurement Unit telemetry from Heber 2 to comply with NERC Standard MOD-033.

One-Line Diagram: *(follows on next page)*

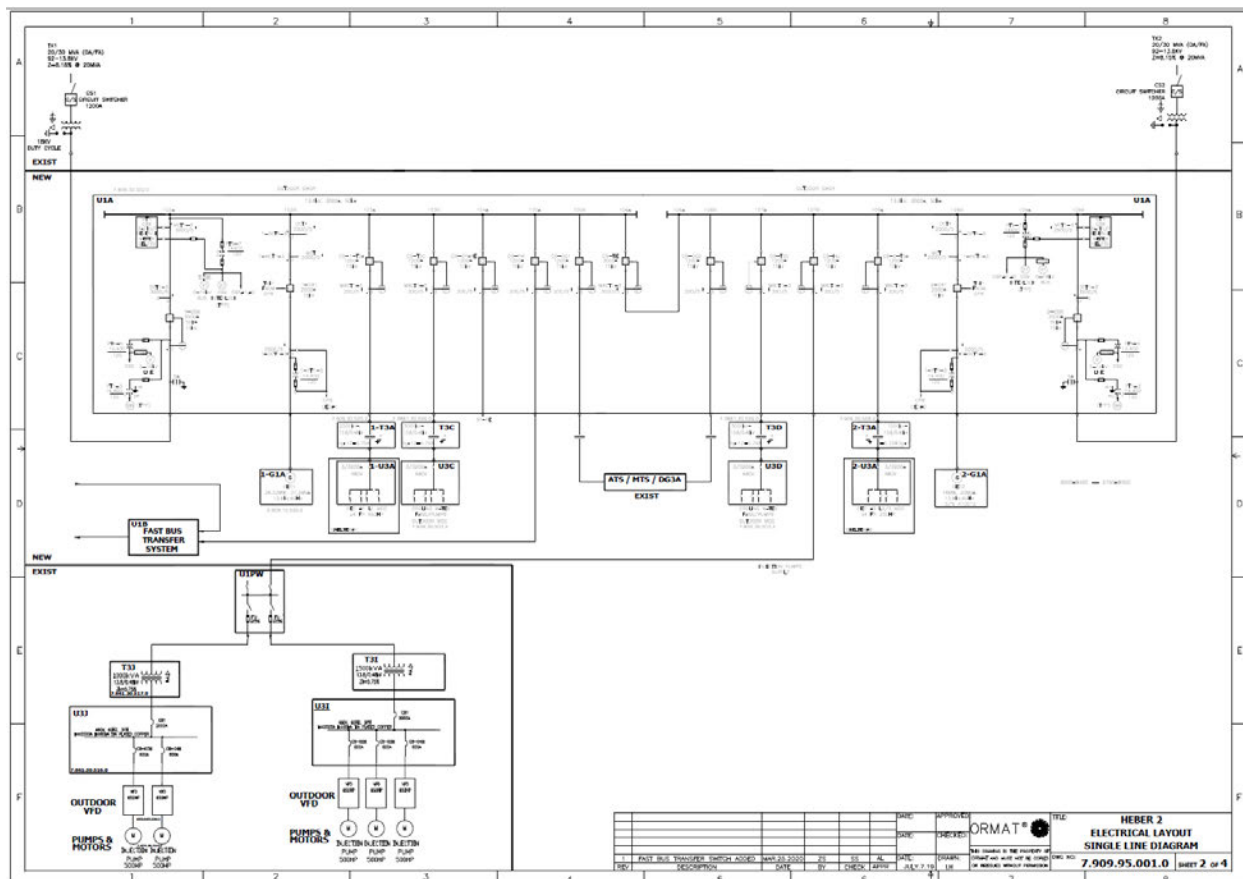


EXHIBIT B

COMMERCIAL OPERATION

1. Construction of the Facility.

- a. Seller shall cause construction to begin on the Facility by the Guaranteed Construction Start Date. Seller shall demonstrate the beginning of construction through execution of Seller's engineering, procurement and construction contract, Seller's issuance of a notice to proceed under such contract, mobilization to site by Seller and/or its designees, and includes the physical movement of soil at the Site ("**Construction Start**"). On the date of the beginning of construction (the "**Construction Start Date**"), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit F 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 earlier of [REDACTED] days after the Guaranteed Construction Start Date, or 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 (and any disputed invoiced amounts shall be resolved in accordance with Article 15 of the Agreement and, if determined not to have been due to Buyer, refunded from Buyer to Seller with interest calculated at the Interest Rate accruing from the date paid by Seller until the date that the refunded amount is received by Seller). Seller's payment of Daily Delay Damages shall extend the Guaranteed Commercial Operation Date on a day-for-day basis; provided, however, that if Seller achieves Commercial Operation by a date that is no later than the Expected Commercial Operation Date set forth on the Cover Sheet plus the Development Cure Period, then Buyer shall refund to Seller all Daily Delay Damages paid to Buyer within ten (10) Business Days following Seller's delivery to Buyer of an invoice therefor. The Parties agree that Buyer's receipt of Daily Delay Damages shall be Buyer's sole and exclusive remedy for the first [REDACTED] of the delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment

2. Commercial Operation of the Facility. "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H-1 (the "**COD Certificate**"), and (ii) Seller has notified Buyer in writing that it has provided the

required documentation to Buyer and met the conditions for achieving Commercial Operation. The “**Commercial Operation Date**” shall be the later of (x) the date specified in the Seller’s COD Certificate, and (y) January 1, 2023. Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date upon request.



- a. Seller shall cause [REDACTED] Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve [REDACTED] Commercial Operation at least thirty (30) days before the anticipated [REDACTED] Commercial Operation Date, as applicable.
- b. If Seller does not achieve [REDACTED] Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the earlier of the Commercial Operation Date and [REDACTED]. Commercial Operation Delay Damages shall be paid on a monthly basis by Seller to Buyer after each month of delay until Commercial Operation or Conditional Commercial Operation is achieved. 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, and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Commercial Operation Delay Damages set forth in such invoice (and any disputed invoiced amounts shall be resolved in accordance with Article 15 of the Agreement and, if determined not to have been due to Buyer, refunded from Buyer to Seller with interest calculated at the Interest Rate accruing from the date paid by Seller until the date that the refunded amount is received by Seller). The aggregate amount of Commercial

Operation Delay Damages payable by Seller hereunder, together with the amount of Daily Delay Damages previously paid by Seller hereunder, shall not exceed the amount of [REDACTED]. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Conditional Commercial Operation Date or 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 11.2(b)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

- c. If Seller achieves Conditional Commercial Operation by the Guaranteed Commercial Operation Date but does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, then Seller shall have up to [REDACTED] after the Guaranteed Commercial Date ("**Conditional COD Cure Period**") to install additional capacity or Network Upgrades to increase the Installed Capacity and deliver to Buyer (i) the COD Certificate and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-2 setting forth the Installed Capacity on the Commercial Operation Date; provided, however, that for each day including and after the Conditional Commercial Operation Date to, but not including, the Commercial Operation Date, Seller shall pay to Buyer liquidated damages in an amount equal to (x) the Commercial Operation Delay Damages amount, *multiplied by* (y) [the Contract Capacity *minus* the Conditional COD Capacity], *divided by* (z) the Contract Capacity, (the result of such calculation, the "**Conditional COD Damages**"). Conditional COD Damages shall be paid on a monthly basis by Seller to Buyer after each month of delay until Commercial Operation is achieved. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Conditional COD 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 Conditional COD Damages set forth in such invoice (and any disputed invoiced amounts shall be resolved in accordance with Article 15 of the Agreement and, if determined not to have been due to Buyer, refunded from Buyer to Seller with interest calculated at the Interest Rate accruing from the date paid by Seller until the date that the refunded amount is received by Seller). The Parties agree that Buyer's receipt of Conditional COD Damages shall be Buyer's sole and exclusive remedy for Seller's failure to cause the Facility to have an Installed Capacity greater than or equal to at least [REDACTED] the Contract Capacity as of 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 11.2(b)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

3. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the

“Development Cure Period”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:

- a. a Force Majeure Event occurs; or
- b. [REDACTED]
- c. Buyer has not made all necessary arrangements to receive the Delivered Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, (i) the cumulative extensions granted under Section 3(a) and 3(b) above under the Development Cure Period shall not exceed [REDACTED], for any reason, including a Force Majeure Event, and no extension shall be given if the delay was the result of Seller’s failure to take all reasonable actions to meet its requirements and deadlines, and (ii) the cumulative extensions to the Guaranteed Commercial Operation Date obtained by the payment of Daily Delay Damages in accordance with Section 1(b) above and/or by the payment of Commercial Operation Delay Damages in accordance with Section 2(b) above, and any Development Cure Period(s), other than the extensions granted pursuant to clause 3(c) above, shall not exceed [REDACTED]. 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 reasonable actions.

Seller shall give Buyer notice promptly following Seller’s receipt of notice of any delays with respect to the Interconnection Facilities and/or the Network Upgrades that would reasonably be expected to lead to a Development Cure Period.

- 4. **Failure to Reach Contract Capacity.** For Seller to achieve Commercial Operation, the Installed Capacity, as set forth in the certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-2, may be no lower than [REDACTED] of the Contract Capacity and no higher than the Nameplate Capacity. If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) [REDACTED] of the Contract Capacity, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to the product of (a) [REDACTED] multiplied by (b) the result of the Contract Capacity *minus* the Installed Capacity. Upon Seller’s payment of the Capacity Damages, the Contract Capacity shall be adjusted to be equal to the Installed Capacity, and the Expected Energy and other applicable portions of this Agreement (including the amount of Performance Security required to be provided by Seller) shall be adjusted proportionately. To the extent the amount of Performance Security is adjusted in accordance with this Section 4, Buyer shall cooperate

with Seller to facilitate such reduction in the Performance Security then held by Buyer within thirty (30) days after the Commercial Operation Date.

5. **Buyer's Right to Draw on Development Security or Performance Security.** If Seller fails to pay any Daily Delay Damages or Commercial Operation Delay Damages timely, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof in accordance with Section 8.7 of the Agreement. If Seller fails to pay any Conditional COD Damages timely, Buyer may draw upon the Performance Security to satisfy Seller's payment obligation thereof in accordance with Section 8.8 of the Agreement.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Delivered Energy. For each MWh of Delivered Energy in each Settlement Period, Buyer shall pay Seller the difference of: (i) the Contract Price; minus (ii) the Day-Ahead Market LMP applicable to the Delivery Point for such Settlement Period; provided, however, that (A) if the Day-Ahead Market LMP applicable to the Delivery Point for such Settlement Period is less than the Negative LMP Strike Price, then such Day-Ahead Market LMP value will be deemed to be the Negative LMP Strike Price for purposes of this Exhibit C, and (B) if the result of the difference of (i) minus (ii) above results in a negative value, then Seller shall pay Buyer the absolute value of such result (which payment may be applied as a credit to Buyer on Seller's monthly invoice).

(b) Deemed Delivered Energy. For each Settlement Period, Buyer shall pay Seller the Contract Price for each MWh of Deemed Delivered Energy; provided, however, that there shall be no payment for Deemed Delivered Energy amounts accrued during a Market Curtailment Period for energy that the Facility was forecasted to generate in the Day-Ahead Forecast provided under Section 4.4(c) if the Day-Ahead Market LMP corresponding to such Day-Ahead Forecast was greater than the Negative LMP Strike Price.

(c) Excess Contract Year Deliveries; Limitation on Instantaneous Deliveries. If, at any point in any Contract Year, the amount of Delivered Energy for such Contract Year exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, then, notwithstanding anything to the contrary in this Agreement, the Contract Price applicable to any additional energy produced in such Contract Year shall be [REDACTED]. In no event shall instantaneous deliveries of Energy to the Delivery Point exceed 30 MW in any Settlement Interval; provided, however, that upon the date that the solar photovoltaic generating system serving the Facility's Parasitic Load becomes operational, such cap on instantaneous deliveries shall be automatically increased to 36 MW in any Settlement Interval.

(d) Negative LMP Strike Price. Buyer may change the Negative LMP Strike Price by providing written notice to Seller at least five (5) Business Days prior to the effective date of such change, which notice must identify the new Negative LMP Strike Price and the effective date for the new Negative LMP Strike Price; provided, however, that the Negative LMP Strike Price identified by Buyer must be less than or equal to zero dollars per MWh (\$0/MWh).

(e) Curtailment Payments. Buyer shall pay for Deemed Delivered Energy during Market Curtailment Periods as provided in paragraph (b), above. To the extent of any overlap between a Curtailment Period and a Market Curtailment Period, Seller shall receive no compensation from Buyer for Deemed Delivered Energy during any Curtailment Period.

(f) Test Energy. Test Energy is compensated at the Test Energy Rate in accordance with Section 3.6.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(a) Seller as Scheduling Coordinator for the Facility. Seller 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 Test Energy and the Product at the Delivery Point, and bid the Delivered Energy into the Day-Ahead Market and the Real-Time Market consistent with Prudent Operating Practice. Each Party shall perform all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement. The Delivered Energy will be scheduled with the CAISO by Seller (or Seller's designated Scheduling Coordinator) for Buyer's account.

(b) CAISO Costs and Revenues. As Scheduling Coordinator for the Facility, Seller shall be responsible for all CAISO Costs, including without limitation, all penalties, Imbalance Energy charges, and other charges, and shall be entitled to all CAISO Revenues, including without limitation, credits, Imbalance Energy payments, and revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement. The Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of 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, the cost of such sanctions or penalties arising from the scheduling, outage reporting, or generator operation of the Facility shall be the Seller's responsibility.

(c) CAISO Settlements. Seller (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility.

EXHIBIT E
PROGRESS REPORTING FORM

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. 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.

EXHIBIT F

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification ("**Certification**") of the Construction Start Date is delivered by [SELLER ENTITY] ("**Seller**") to PENINSULA CLEAN ENERGY ("**Buyer**") in accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. the EPC Contract related to the Facility was executed on _____;
2. the Final Notice to Proceed with the construction of the Facility was issued on _____ (attached);
3. the Construction Start Date has occurred;
4. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

(such description shall amend the description of the Site in Exhibit A).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ____ day of _____.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

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

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

where:

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

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

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, [REDACTED]

D = the Contract Price, 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 Contract Year, 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.

As used above:

“Adjusted Energy Production” shall mean the sum of the following: Delivered Energy + Deemed Delivered Energy + Lost Output.

“Deemed Delivered Energy” has the meaning given in the Agreement.

“Lost Output” has the meaning given in Section 4.7 of the Agreement. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

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

EXHIBIT H-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____ [*licensed professional engineer*] ("**Engineer**") to _____ ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Second Imperial Geothermal Company 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.

As of _____ [DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than _____ of the Contract Capacity.
3. The Facility's testing included a performance test demonstrating peak electrical output of no less than _____ of the Contract Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT H-2

FORM OF CONDITIONAL COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____ [*licensed professional engineer*] ("**Engineer**") to _____ ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Second Imperial Geothermal Company 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.

As of _____ [DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than _____ of the Contract Capacity.
3. The Facility's testing included a performance test demonstrating peak electrical output of no less than _____ of the Contract Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-1

INSTALLED CAPACITY AMBIENT CONDITIONS CRITERIA

WBT	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	20.0	21.0	22.0	23.0	24.0
Jan	45.7	45.2	44.7	44.0	44.0	43.5	43.0	43.3	45.4	47.9	49.6	50.6	51.4	51.8	52.1	51.9	51.7	51.3	50.2	49.4	48.6	48.0	47.6	47.0
Feb	47.3	46.6	46.4	45.3	44.6	44.2	43.9	44.7	47.8	50.0	51.6	52.9	53.3	53.9	54.2	54.3	54.7	54.1	53.1	52.0	51.1	50.3	49.9	48.8
Mar	51.7	51.8	51.0	50.5	49.6	49.5	49.0	49.4	51.9	53.4	54.6	55.6	55.9	56.4	56.6	56.3	56.3	56.2	55.8	55.3	54.4	53.8	53.2	52.8
Apr	55.0	54.7	54.3	53.8	53.2	52.8	52.4	53.2	54.8	56.1	57.0	57.7	58.2	58.6	58.9	59.2	59.3	59.1	58.8	58.2	57.4	56.7	56.4	55.7
May	58.2	57.4	57.3	57.2	56.9	56.3	56.4	57.9	59.2	60.5	61.7	61.9	62.1	62.0	62.4	62.3	62.3	62.4	61.9	61.1	60.2	59.6	59.0	58.6
Jun	66.0	65.2	64.6	66.1	66.1	65.4	65.2	66.6	68.2	69.6	68.9	69.6	70.1	69.8	69.9	70.5	70.2	70.1	68.9	68.1	67.7	67.0	66.6	66.5
Jul	71.2	70.9	71.2	71.0	71.3	71.2	70.9	71.6	72.8	73.6	73.5	73.5	72.9	72.6	72.8	73.1	73.2	73.1	72.9	72.3	72.1	72.0	71.5	71.1
Aug	72.4	72.2	72.3	72.5	72.4	72.6	72.1	73.0	75.0	75.8	75.3	74.2	73.9	74.6	74.9	74.3	74.0	73.5	73.4	73.0	72.5	72.5	72.2	72.3
Sep	64.1	64.0	64.4	63.5	63.7	63.1	62.8	63.3	64.2	65.5	66.6	66.8	67.1	67.2	67.4	67.4	67.3	66.9	66.5	65.5	65.4	65.1	64.5	64.0
Oct	60.3	59.3	59.0	58.9	58.0	58.2	57.8	57.8	59.8	61.1	63.1	63.9	63.5	63.9	64.0	64.1	64.0	64.0	63.7	61.2	62.3	61.5	59.9	59.9
Nov	50.6	50.9	50.2	49.9	49.0	48.6	48.6	49.1	51.2	52.9	54.5	55.6	56.1	56.4	56.4	57.0	56.7	56.1	55.4	54.7	54.0	53.5	52.6	51.7
Dec	48.7	48.6	47.9	47.5	46.8	46.3	46.2	46.5	48.7	50.6	52.3	53.4	54.1	54.5	54.5	54.8	54.7	53.9	53.2	52.5	51.7	51.2	50.5	49.8

NET PLANT POWER [kW]																								
Net Plant	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	20.0	21.0	22.0	23.0	24.0
Jan	37,396	37,480	37,595	37,726	37,728	37,831	37,919	37,870	37,445	36,940	36,599	36,378	36,209	36,128	36,074	36,112	36,147	36,233	36,471	36,627	36,806	36,913	37,012	37,127
Feb	37,074	37,203	37,248	37,472	37,610	37,693	37,750	37,582	36,960	36,514	36,175	35,891	35,807	35,668	35,609	35,599	35,500	35,634	35,845	36,077	36,275	36,437	36,536	36,755
Mar	36,162	36,140	36,293	36,393	36,597	36,611	36,721	36,638	36,111	35,785	35,523	35,305	35,248	35,126	35,082	35,148	35,148	35,181	35,257	35,369	35,565	35,700	35,836	35,916
Apr	35,449	35,507	35,593	35,698	35,824	35,920	36,000	35,821	35,474	35,187	35,004	34,840	34,729	34,633	34,572	34,500	34,476	34,515	34,589	34,732	34,904	35,054	35,136	35,292
May	34,717	34,900	34,930	34,958	35,016	35,140	35,125	34,797	34,491	34,153	33,796	33,730	33,657	33,700	33,570	33,604	33,606	33,586	33,736	33,980	34,234	34,403	34,548	34,624
Jun	32,474	32,704	32,881	32,435	32,415	32,634	32,724	32,274	31,785	31,314	31,561	31,331	31,172	31,281	31,230	31,005	31,111	31,170	31,539	31,810	31,934	32,131	32,262	32,299
Jul	30,728	30,654	30,754	30,800	30,708	30,724	30,842	30,598	30,139	29,823	29,847	29,876	30,102	30,202	30,134	30,031	29,969	30,012	30,086	30,327	30,399	30,439	30,630	30,770
Aug	30,276	30,360	30,322	30,251	30,296	30,214	30,384	30,049	29,311	29,013	29,190	29,580	29,713	29,459	29,348	29,575	29,660	29,849	29,899	30,068	30,247	30,242	30,345	30,323
Sep	33,041	33,076	32,966	33,229	33,175	33,366	33,463	33,315	33,014	32,608	32,265	32,199	32,124	32,085	32,023	32,017	32,046	32,166	32,314	32,601	32,647	32,752	32,927	33,077
Oct	34,222	34,483	34,553	34,577	34,768	34,729	34,812	34,810	34,341	33,968	33,348	33,110	33,231	33,116	33,093	33,057	33,084	33,070	33,178	33,932	33,607	33,846	34,328	34,323
Nov	36,371	36,312	36,472	36,539	36,723	36,793	36,793	36,705	36,266	35,903	35,547	35,300	35,205	35,129	35,120	35,005	35,052	35,200	35,368	35,510	35,660	35,755	35,955	36,153
Dec	36,770	36,799	36,948	37,033	37,168	37,260	37,287	37,226	36,769	36,381	36,021	35,785	35,646	35,556	35,558	35,478	35,512	35,674	35,820	35,990	36,159	36,264	36,405	36,545

Note: The above table does not net out Parasitic Load; rather, it includes total production, including Energy used for serving the Facility's Parasitic Load.

HEBER 2 REPOWER
GEOTHERMAL POWER PLANT
Cooling Water Correction Curve

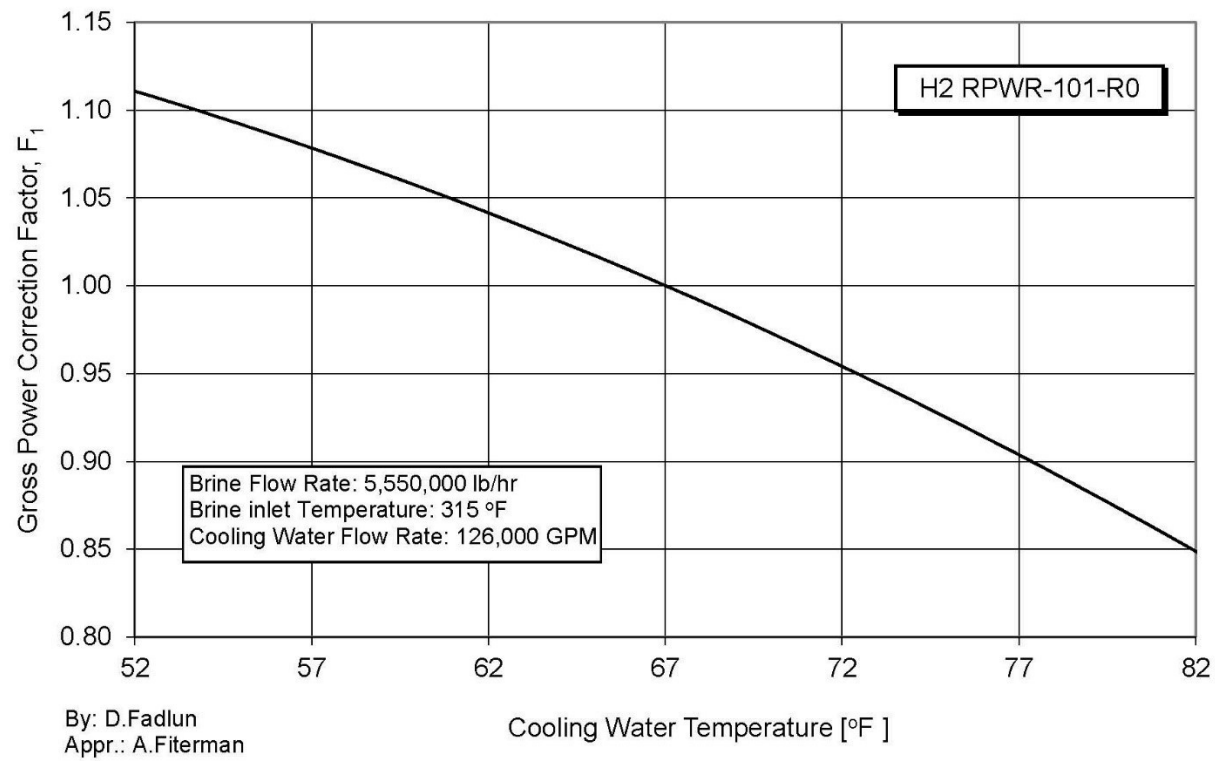


EXHIBIT I-2

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to _____ ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Second Imperial Geothermal Company 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.

I hereby certify the following:

The performance test for the Facility demonstrated peak electrical output of __ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test in accordance with the criteria set forth in Exhibit I-1 to the Agreement ("**Installed Capacity**");

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J
[RESERVED]

EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:
Bank Ref.:
Amount: US\$[XXXXXXXX]
Expiry Date:

Beneficiary:

[Buyer Contact Info TBD]

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of [Buyer] (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a 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, referencing our Letter of Credit No. [XXXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]] Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the

Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration 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 Articles 14(b) and 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 Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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

[Bank Name]

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [Buyer], 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 _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because an Event of Default of Seller (as such terms are defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

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 Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [Buyer] 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 [Buyer] by wire transfer in immediately available funds to the following account:

[Specify account information]

[Buyer]

Name and Title of Authorized Representative

Date _____

EXHIBIT L

FORM OF GUARANTY

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

Recitals

- A. Buyer and [SELLER ENTITY], a _____ (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 20____.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

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

2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such

failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

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

- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;
- (iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

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

6. **Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*][*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's

organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

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

If delivered to Buyer, to it at

[]

Attn: []

Fax: []

If delivered to Guarantor, to it at

[]

Attn: []

Fax: []

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

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to

reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

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

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT M

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this “Consent”) is entered into among (i) *[Name of Buyer]*, a *[Legal Status of Buyer]* (“[BUYER SHORT NAME]”), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (the “Project Company”), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). [BUYER], Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the PPA (as defined below).

RECITALS

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and [BUYER] have entered into that certain Renewable Power Purchase Agreement, dated as of *[Date]* *[List all amendments as contemplated by Section 3.4]* (“PPA”), pursuant to which Project Company will develop, construct, commission, test and operate the Storage Units (the “Project”) and sell the Product to [BUYER], and [BUYER] will purchase the Product from Project Company;
- B. As collateral for Project Company’s obligations under the PPA, Project Company has agreed to provide to [BUYER] certain collateral, which may include Performance Security and Development Security and other collateral described in the PPA (collectively, the “PPA Collateral”);
- C. Project Company has entered into that certain *[Insert description of financing arrangements with Lender]*, dated as of *[Date]*, among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
- D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the PPA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and
- E. It is a requirement under the Financing Agreement and the PPA that [BUYER] and the other Parties hereto shall have executed and delivered this Consent.

AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and

adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

[BUYER] hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the PPA (subject to [BUYER]'s rights and defenses under the PPA and the terms of this Consent) and accepts any such exercise; provided, insofar as the Collateral Agent exercises any such rights under the PPA or makes any claims with respect to payments or other obligations under the PPA, the terms and conditions of the PPA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that [BUYER] is authorized to act in accordance with Collateral Agent's instructions, and that [BUYER] shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable [BUYER] to terminate or suspend its performance under the PPA (a "PPA Default"), [BUYER] will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives [BUYER] written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent's intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of sixty (60) days (or, if such PPA Default is for failure by the Project Company to pay an amount to [BUYER] which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent's receipt of the notice of such PPA Default from [BUYER] to cure such PPA Default; provided, (a) if

possession of the Project is necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide [BUYER] with reports concerning the status of efforts to cure a PPA Default upon [BUYER]'s reasonable request.

1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a "Financing Document Default Notice") [BUYER] that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the PPA, and, subject to Sections 1.7(b) and 1.7(c) below, [BUYER] and Substitute Owner will recognize each other as counterparties under the PPA and will continue to perform their respective obligations (including those obligations accruing to [BUYER] and the Project Company prior to the existence of the Substitute Owner) under the PPA in favor of each other in accordance with the terms thereof; provided, before [BUYER] is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to [BUYER]'s reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience [TBD] (a "Permitted Transferee"). For purposes of the foregoing, [BUYER] shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the PPA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) ("Replacement Owner"), [BUYER] shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term ("Replacement PPA"); provided, before [BUYER] is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to [BUYER]'s reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, [BUYER] is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement

Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent [BUYER] is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, [BUYER] may suspend performance of its obligations under such Replacement PPA, unless and until all PPA Defaults of Project Company under the PPA or Replacement PPA have been cured.

1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the PPA and a Replacement PPA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Project is transferred; provided, the proposed transferee shall have demonstrated to [BUYER]’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

1.7 Assumption of Obligations.

(a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to [BUYER] all of the obligations of Project Company, Substitute Owner or Replacement Owner under the PPA or Replacement PPA, as applicable, including posting and collateral assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding PPA Default, and payment of all other amounts due and payable to [BUYER] in respect of the PPA or such Replacement PPA, the transferor shall be released from any further liability under the PPA or Replacement PPA, as applicable.

(b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the PPA, including posting and collateral assignment of the PPA Collateral; provided, the obligations of such Substitute Owner shall be no more than those of Project Company under the PPA.

(c) No Liability.

[BUYER] acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the PPA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company’s obligations under the PPA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement PPA, Collateral Agent shall not have any personal liability to [BUYER] under the

PPA or Replacement PPA and the sole recourse of [BUYER] in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; provided, such limited recourse shall not limit [BUYER]'s right to seek equitable or injunctive relief against Collateral Agent, or [BUYER]'s rights with respect to any offset rights expressly allowed under the PPA, a Replacement PPA or the PPA Collateral.

1.8 Delivery of Notices.

[BUYER] shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by [BUYER] to Project Company pursuant to the PPA relating to (a) a PPA Default by Project Company under the PPA, (b) any claim regarding Force Majeure by [BUYER] under the PPA, (c) any notice of dispute under the PPA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy [BUYER]'s obligation to give Collateral Agent a notice of PPA Default under Section 1.3. Collateral Agent shall deliver to [BUYER], concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

1.9 Confirmations.

[BUYER] will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the PPA (including the performance of same by Project Company); provided, such confirmation may be limited to matters of which [BUYER] is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of [BUYER] under the PPA as between [BUYER] and Project Company.

1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until [BUYER] receives a Financing Document Default Notice, [BUYER] shall deal exclusively with Project Company in connection with the performance of [BUYER]'s obligations under the PPA. From and after such time as [BUYER] receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement PPA is entered into or the PPA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, [BUYER] shall, until Collateral Agent confirms to [BUYER] in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of [BUYER]'s obligations under the PPA, and [BUYER] may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

1.11 No Amendments.

To the extent permitted by Laws, [BUYER] agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any

material supplement, restatement, novation, extension, amendment or modification of the PPA (b) terminate or suspend its performance under the PPA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the PPA by Project Company.

SECTION 2. PAYMENTS UNDER THE PPA

2.1 Payments.

Unless and until [BUYER] receives written notice to the contrary from Collateral Agent, [BUYER] will make all payments to be made by it to Project Company under or by reason of the PPA directly to Project Company. [BUYER], Project Company, and Collateral Agent acknowledge that [BUYER] will be deemed to be in compliance with the payment terms of the PPA to the extent that [BUYER] makes payments in accordance with Collateral Agent's instructions.

2.2 No Offset, Etc.

All payments required to be made by [BUYER] under the PPA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF [BUYER]

[BUYER] makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

3.1 Organization.

[BUYER] is a joint powers authority and community choice aggregator duly organized and validly existing 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. [BUYER] has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

3.2 Authorization.

The execution, delivery and performance by [BUYER] of this Consent and the PPA have been duly authorized by all necessary corporate or other action on the part of [BUYER] and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of [BUYER] which, if not obtained, will prevent [BUYER] from performing its obligations hereunder or under the PPA except approvals or consents which have previously been obtained and which are in full force and effect.

3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the PPA is in full force and effect, have been duly executed and delivered on behalf of [BUYER] by the appropriate officers of [BUYER], and constitute the legal, valid and

binding obligation of [BUYER], enforceable against [BUYER] in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither [BUYER] nor, to [BUYER]'s actual knowledge, Project Company, is in default of any of its obligations under the PPA; (b) [BUYER] and, to [BUYER]'s actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to [BUYER]'s actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either [BUYER] or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

3.5 No Previous Assignments.

[BUYER] has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the PPA, except as previously disclosed in writing and consented to by [BUYER].

SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and [BUYER]:

4.1 Organization.

Project Company is a *[Legal Status of Seller]* duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the PPA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, [BUYER], is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, [BUYER], has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either [BUYER] or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the PPA.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of [BUYER] and Project Company:

5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

SECTION 6. MISCELLANEOUS

6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the PPA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to [BUYER] or Project Company, in accordance with *[Notice Section of the PPA]* of the PPA, (b) if to Collateral Agent, to *[Collateral Agent Name]*, *[Collateral Agent Address]*, Attn: *[Collateral Agent Contact Information]*, Telephone: *[]*, Fax: *[]*, and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the PPA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by [BUYER], Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party's obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until [BUYER] has been notified by Collateral Agent that all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the PPA or any Replacement PPA, its obligations under such PPA or Replacement PPA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

[BUYER] hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict

between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

[Remainder of Page Left Intentionally Blank.]



IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

<i>[NAME OF PROJECT COMPANY],</i> <i>[Legal Status of Project Company].</i>	<i>[BUYER],</i> <i>[Legal Status of Buyer].</i>
By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____	By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____
<i>[NAME OF COLLATERAL AGENT],</i> <i>[Legal Status of Collateral Agent].</i> By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____	

SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

EXHIBIT N**NOTICES**

Second Imperial Geothermal Company ("Seller")	Peninsula Clean Energy Authority ("Buyer")
All Notices: Street: 6140 Plumas Street City: Reno Attn: CEO Phone: (775) 356-9029 Facsimile: (775) 356-039 Email: assetmanager@ormat.com With a copy to: Street: 6140 Plumas Street City: Reno Attn: Asset Manager Phone: (775) 356-9029 Facsimile: (775) 356-9039 Email: assetmanager@ormat.com	All Notices: Street: 2075 Woodside Road City: Redwood City, CA Zip: 94061 Attn: CEO Phone: (650) 260-0005 Email: jpepper@peninsulacleanenergy.com With a copy to: Street: 2075 Woodside Road City: Redwood City, CA 94061 Attn: Director of Power Resources Phone: (650) 260-0005 Facsimile: N/A Email: contracts@peninsulacleanenergy.com
Reference Numbers: 	Reference Numbers: 
Invoices: Attn: Asset Manager Phone: (775) 356-9029 Facsimile: (775) 356-9039 E-mail: assetmanager@ormat.com	Invoices: Attn: Finance Department Phone: (650) 260-0005 Email: finance@peninsulacleanenergy.com
Scheduling: Attn: Asset Manager Phone: (775) 356-9029 Facsimile: (775) 356-9039 E-mail: assetmanager@ormat.com	Scheduling: Attn: Director of Power Resources Phone: (650) 260-0005 Email: contracts@peninsulacleanenergy.com
Confirmations: Attn: Asset Manager Phone: (775) 356-9029 Facsimile: (775) 356-9039 E-mail: assetmanager@ormat.com	Confirmations: Attn: Director of Power Resources Phone: (650) 260-0005 Facsimile: N/A E-mail: contracts@peninsulacleanenergy.com

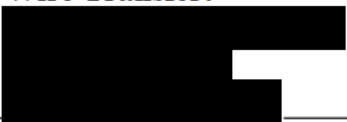
Second Imperial Geothermal Company ("Seller")	Peninsula Clean Energy Authority ("Buyer")
Payments: Attn: Asset Manager Phone: (775) 356-9029 Facsimile: (775) 356-9039 E-mail: assetmanager@ormat.com	Payments: Attn: Finance Department Phone: (650) 260-0005 Email: finance@peninsulacleanenergy.com
Wire Transfer: BNK: ABA: ACCT:	Wire Transfer: 
With additional Notices of an Event of Default to: Attn: Director, Business Development Phone: (775) 356-9029 E-mail: KMoore@ormat.com With a copy to: PThomsen@ormat.com	With additional Notices of an Event of Default to: Attn: Janis Pepper, CEO Phone: (650) 260-0005 E-mail: jpepper@peninsulacleanenergy.com Peninsula Clean Energy Authority 400 County Center, 6 th Floor Redwood City, CA 94063 Attention: David Silberman, General Counsel Fax No.: (650) 363-4034 Phone No.: (650) 363-4749 Email: dsilberman@smcgov.org
Emergency Contact: Attn: Asset Manager Phone: (775) 356-9029 Facsimile: (775) 356-9039 E-mail: assetmanager@ormat.com	Emergency Contact: Attn: Director of Power Resources Phone: (650) 260-0005 Facsimile: N/A E-mail: contracts@peninsulacleanenergy.com

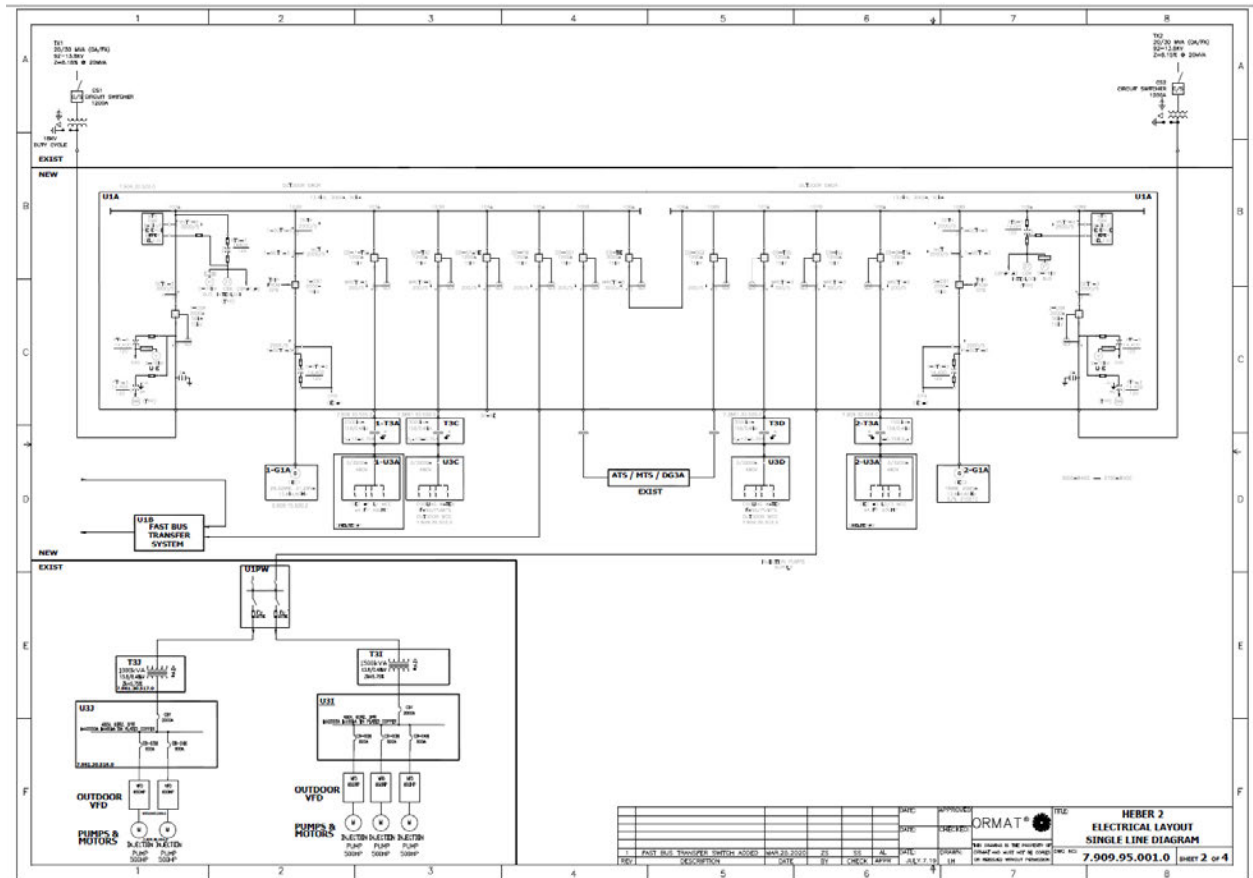
EXHIBIT O
OPERATING RESTRICTIONS

- Nameplate capacity of the Project: 41.52 MW
- Ramp rate: 1 MW/minute

EXHIBIT P

METERING DIAGRAM

Metering Configuration is driven by the Imperial Irrigation District; the current configuration is included in Ormat's SLD below.



**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: Mar. 14, 2022

BOARD MEETING DATE: Mar. 24, 2022

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Yes

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: Approval of Local Government Solar and Storage Program Including \$600,000 for Technical Assistance and up to \$8 Million in Capital for System Installations to be Repaid Over 20 Years (Action)

RECOMMENDATION

Recommend to the Board approval of the Local Government Solar and Storage Program.

BACKGROUND

Peninsula Clean Energy's mission is to reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions. This mission includes a goal of developing 20 megawatts (MW) of local power in the service territory. To this end, during this last year we have developed a local government solar and storage program which would aggregate purchasing to lower costs of installation and reduce complexity for local governments to install systems.

Solar technology is mature and solar projects can provide bill savings and provide insulation against rising utility rates while providing 100% renewable energy. Furthermore, when paired with an energy storage system, a solar + storage system can be configured to provide backup power in the case of a power outage and potentially to shift solar energy usage from off-peak to peak grid periods.

However, local governments often do not have the available staff time, financial resources, or technical expertise to advance these types of projects. In addition, government facilities generally support only relatively small systems resulting in comparatively higher costs. Recognizing these barriers, the Local Government Solar Program was developed with the following goals:

1. **Reducing the burden and associated costs for local governments for site identification, evaluation, and design work** by providing up-front technical assistance for these needs using an established solar engineering firm
2. **Reducing equipment, procurement and contracting costs** by aggregating sites into a larger portfolio for higher volume purchasing and a single-source buyer for the entire portfolio
3. **Reducing financing costs** by leveraging Peninsula Clean Energy's financial strength and non-profit status

The genesis of this initiative was a grant from Bay Area Air Quality Management District (BAAQMD) secured jointly with East Bay Community Energy in 2018. Peninsula Clean Energy worked with the consultancy ARUP to assess sites for clean resiliency projects. Working with local governments, over 140 facilities were identified, which were then screened for a number of suitability criteria including age/condition of facility, near-term planned renovations, seismic zone concerns, customer level of interest, and others. Eventually, 32 strong candidates were identified, and the project completed its scope with ARUP analyzing the potential solar production and battery sizing for each of the 32 facilities.

Peninsula Clean Energy then conducted a competitive solicitation for a solar engineering and design firm to provide on-site evaluations and associated electrical, structural, solar production and technical analyses to develop high quality system designs.

In October 2020, McCalmont Engineering was selected and awarded a contract for up to \$267,000 for site design during the pilot phase. Of the 32 facilities, municipalities and the county were asked to prioritize their individual candidate sites. In total, 21 sites were assessed. Some sites were deemed not viable, two additional sites in Los Banos and one in Atherton were added, and the current portfolio stands at 14 sites listed below. Sites without existing backup generation included full battery backup designs and other sites had "battery ready" designs.

As of this date, staff has presented to and received approval from nearly all city councils and County senior staff for the proposed systems. The presentations covered the system designs, prospective financial benefits, and details on the program process. The council approvals authorize each city's participation in a competitive aggregate RFP run by Peninsula Clean Energy for the specified solar and storage systems and delegate to respective city managers the authority to execute a Power Purchase Agreement (PPA) with Peninsula Clean Energy if financial and/or community benefits can be provided.

The portfolio of projects is as follows. "Approved" indicates that the respective city council or County senior staff have approved including these systems in the aggregate RFP:

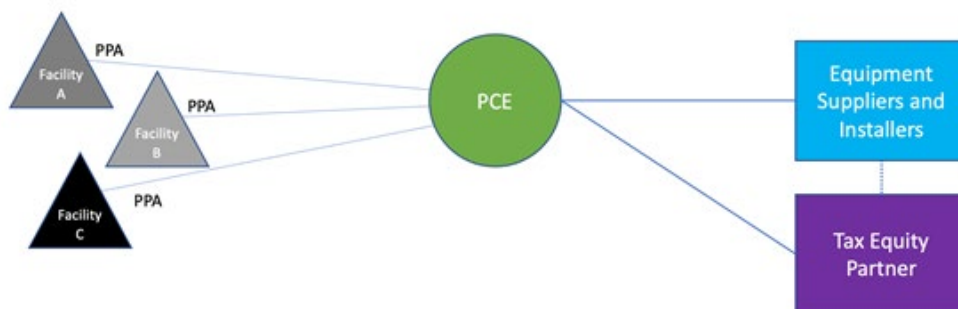
Agency	Site(s)	Solar (kW)	Design With Battery?	Status
Atherton	Town Hall	113.5	No	Approved
Belmont	City Hall	88.5	No	Approved
Brisbane	Mission Blue Center	11	Yes	Approved
Colma	Community Center	61.5	Yes	Approved
San Mateo County	HSA Building	126	No	Approved
Hillsborough	Public Works Yard	41.8	No	Approved
Los Banos	Community Center	152 ¹	No	Pending
Los Banos	Wastewater Treatment Plant	287 ²	No	Pending
Millbrae	Recreation Center	155	No	Approved
Millbrae	Chetcuti Complex	412	No	Approved
Pacifica	Community Center	77	Yes	Approved
Redwood City	Fair Oaks Community Center	89	Yes	Approved
San Carlos	San Carlos Youth Center	30	No	Approved
San Mateo	San Mateo Police Building	170	No	Approved
	TOTAL	1.8 MW		

Under the proposed PPA structure, Peninsula Clean Energy, rather than the participating agencies, would contract with equipment vendors for the installation and maintenance of the systems. Peninsula Clean Energy would, in conjunction, execute a PPA with the agencies that would enable them to deploy the systems with no upfront cost while still retaining some of the electric bill savings. Participating agencies would pay to Peninsula Clean Energy the monthly PPA price for the solar power reflecting the costs of installing the systems for 20-year terms. At the end of the PPA term, the systems could revert to full ownership by the respective agencies³. The diagram below illustrates the relationships between the parties, with Peninsula Clean Energy “in the middle” of the contracting agreements.

¹ Current estimate: design still in process

² Current estimate: design still in process

³ Battery storage may be a separate agreement and structure, since it is expected that solar + storage systems will not result in net bill savings and require additional funding and likely further iteration with customers once current pricing is solicited.



In summary, this pilot has two primary innovations it is exploring that have the potential to facilitate and accelerate the deployment of solar and solar + storage systems in Peninsula Clean Energy territory:

1. Peninsula Clean Energy acts as a project developer in conjunction with and on behalf of interested customers to evaluate, design, de-risk, and aggregate projects
2. Peninsula Clean Energy offers a PPA to customers directly, procures equipment and services directly, and manages the PPAs over their term.

We expect these activities can lower direct and indirect costs to both customers and equipment providers and help overcome existing barriers in the marketplace.

DISCUSSION

The majority of pilot sites have completed designs with Council approval to move forward. The next step is running an aggregate procurement for equipment. The procurement will include a “Project Package” for each site that will contain a system design, site plan, single line diagram, detailed solar production estimate, and structural engineering report. The advance design work, securing of customer commitments and aggregating smaller projects into a larger portfolio, should enable equipment contractors to bid lower pricing since they will have reduced customer acquisition and project development costs.

However, a key financial value in solar projects is the tax benefits – the Investment Tax Credit (ITC) and depreciation – which combined can reduce the total costs of a project by approximately one-third. Peninsula Clean Energy cannot directly monetize these benefits due to its tax-exempt status. For its wholesale procurements, Peninsula Clean Energy is able to capture the tax benefits indirectly by signing a PPA with a project developer that is bundled with a tax equity partner, who together can capture the tax benefits and share a portion back via a reduced PPA price.

This program is different in that Peninsula Clean Energy will itself be providing a PPA to customers, while also procuring the equipment and services to do so. This puts Peninsula Clean Energy into a different position from a legal and contracting perspective and has required the engagement of specialized legal and deal structure expertise to navigate the complexities it presents.

Currently, staff are considering two possible models:

- **Model 1 – Tax Benefit Partnership:** PCE partners with an entity (“tax benefits partner”) that can itself or in partnership with a third-party tax equity provider monetize the tax benefits and share a portion back with Peninsula Clean Energy. In this model, Peninsula Clean Energy would solicit for and engage an Engineering, Procurement, and Construction (EPC) firm to procure, install, and maintain equipment and would provide some or all of the upfront capital, paid back over time by customers via their respective PPA agreements.
- **Model 2 – Bundled PPA:** Peninsula Clean Energy solicits a PPA from a bundled EPC + tax equity partnership (“bundled provider”), similar to our existing wholesale contracts, for the aggregate portfolio. In this model, Peninsula Clean Energy is the buyer for a master PPA from the bundled provider for the procurement, installation, and maintenance of systems and the seller for individual PPAs to customers for the energy dispatched by those systems.

Staff see advantages of Tax Benefit Partnership (Model 1) in that it opens the field of EPC contractors to smaller and more local firms that may not have tax equity partnerships in place. Furthermore, the aggregate portfolio size is still relatively small and may not be of high interest to the bundled providers in Model 2 which generally prefer larger scale, in the tens of megawatts. Staff also hypothesizes that Model 1 may enable PCE to provide customers with a lower PPA than Model 2, especially if PCE can utilize its capital. However, Model 1 requires a tax equity provider willing to both engage on a very small portfolio (typically tax equity providers require a minimum 20 MW project size, and our aggregate portfolio will be less than 2 MW) as well as one willing to explore the novel legal complexities that this specific deal structure will create.

Peninsula Clean Energy is continuing to explore both of these models in conversations with potential partners and legal counsel and to refine the specific approach to the PPA structure and tax benefits. At the same time, staff is working to complete project development activities for the outstanding sites in Atherton and Los Banos. Once all portfolio sites are designed and Council-approved, staff will run an RFP for firms that could fit into one or both models described above. This competitive solicitation will comply with internal, municipal, and county procurement requirements. We expect the responses and bids from the RFP will ultimately inform which model is pursued, and that we cannot know which is the best model until seeing those results.

Finally, there is some time sensitivity to initiating the pilot procurement. The California Public Utilities Commission (CPUC) is currently considering significant changes to formulas which govern the solar “net energy metering” (NEM). NEM rules determine how solar energy generated “behind the meter” is valued. It is very likely that the new NEM rules could substantially reduce the value of solar energy. For this reason, Peninsula Clean Energy is aiming to execute promptly, minimizing complexity, so the pilot systems will operate under the current, more favorable, NEM rules.

The expected timeline for the pilot portfolio deployment is as follows:

- Spring 2022: Complete all portfolio Project Packages and obtain Council approval

- Late Spring 2022: Run competitive solicitation per above
- Summer 2022: Execute agreements with equipment provider and tax benefits partner(s) (if relevant)
- Fall 2022: Kickoff for system installations
- Late 2023: All systems installed and operational

The program is envisioned to have cohorts assembled as frequently as yearly and for the program to play a major role in achieving Peninsula Clean Energy's goal of 20 MW by 2025. As such, intake for a second round of sites would begin in parallel with above.

Capital Funds

The proposed program authorization includes two financial elements:

1. \$8 million in prospective capital funds for use if Model 1 is selected
2. \$600,000 in program funds to organize the second round.

The capital funds may or may not be utilized depending on the economic assessment of the bids received. The total funds are derived from the project scopes and estimates on the costs of rooftop and carport solar systems inclusive of prevailing wage requirements. These costs are then multiplied by the total rooftop and carport solar as designed in the portfolio. Based on the current portfolio, we estimate the cost of the solar installations to be between \$6.5 million and \$8 million, with a medium level of confidence. Energy storage costs are not included as pricing is substantially more uncertain and pricing will affect system sizing and possible cost participation.

Second Round Funds

The second round is envisioned to begin recruiting promptly following the execution of the RFP for the first round. This second round would incorporate lessons learned from this first pilot round and is intended to target any public agency in the service territory including not only cities but also school districts and other agencies. The second round may include not-for-profit organizations as well. To begin the process on the next round, authorization of \$600,000 is also proposed with the intention of accommodating 20 to 40 sites. These costs go towards direct costs for the following primary activities:

- Engineering services for project development, including site evaluation, design, solar production estimation, structural engineering review, and engineering support/consultation as needed. (\$300,000 - \$400,000)
- Engineering services for procurement support and construction oversight acting in the capacity of owner's engineer. (\$50,000 - \$100,000)
- Project development and program management support.

Some additional miscellaneous costs may also be incurred. Specific contracts would be brought to the Board for approval as needed.

FISCAL IMPACT

The \$600,000 in technical assistance would be within the existing Programs budget primarily in FY2023.

The capital for installation, if utilized, is estimated at a maximum of \$8 million. Capital funds would be expended for the procurement, installation, and maintenance of equipment, with capital recovered via participating agencies' monthly PPA payments over the 20-year term of the PPAs. Capital funds would be treated as an asset on the agency's balance sheet.

STRATEGIC PLAN

The proposed program supports the following elements of the strategic plan:

- Local Power Sources: Create a minimum of 20 MW of new power sources in San Mateo County by 2025

RESOLUTION NO. _____

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

* * * * *

**RESOLUTION APPROVING LOCAL GOVERNMENT SOLAR AND STORAGE
PROGRAM INCLUDING \$600,000 FOR TECHNICAL ASSISTANCE AND UP
TO \$8 MILLION IN CAPITAL FOR SYSTEM INSTALLATIONS TO BE REPAID
OVER 20 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, the Board of Directors of Peninsula Clean Energy approved a deployment target of 20 MW of new local power in Peninsula Clean Energy territory; and

WHEREAS, Peninsula Clean Energy has been approached by the County of San Mateo and other cities for support in developing solar and storage systems at public facilities, and site evaluation is a vital enabling step for the deployment of local power; and

WHEREAS, Peninsula Clean Energy has assessed over 20 sites to develop a portfolio of sites with approximately 2 MW of solar potential including prospective sites for storage systems; and

WHEREAS, these systems are expected to deliver substantial energy cost savings to participating agencies; and

WHEREAS, Peninsula Clean Energy has developed an innovative model for delivering systems to participating agencies at lower cost than alternative installation options.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board approves (1) the use of up to \$8 million in funds to pay for equipment, installation and maintenance services for the systems to be repaid by participating agencies over 20 years and (2) an additional budget of up to \$600,000 to be used for technical assistance for additional solar and storage systems.

* * * * *



PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: March 18, 2022
BOARD MEETING DATE: March 24, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Siobhan Doherty, Director of Power Resources

SUBJECT: Update on Results of the 2021 RFO for Renewable Energy +
Storage (Discussion)

BACKGROUND:

Staff will provide an update on the results of the 2021 Request for Offers (RFO) for Renewable Energy + Storage. Details on the RFO are available at: <https://www.peninsulacleanenergy.com/solicitation/2021-rfo-for-renewable-energy-storage/>. The RFO was released in November 2021 and bids were due January 14, 2022.



PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: March 15, 2022

BOARD MEETING DATE: March 24, 2022

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: KJ Janowski, Director of Marketing and Community Relations &
Leslie Brown, Director of Account Services

SUBJECT: Update on Marketing, Outreach Activities, and Account Services

BACKGROUND

The Marketing, Community Relations, and Account Services Teams are responsible for enhancing Peninsula Clean Energy's brand reputation, educating and engaging customers, driving participation in programs, and ensuring customer satisfaction and retention. Tactics include community outreach, content creation and storytelling through owned (e.g. online, social media), earned (e.g. public relations), and paid media (advertising), school engagement programs, and customer care.

DISCUSSION

The following is an update of activities that are currently underway. See "Strategic Plan" section below for how these activities support Peninsula Clean Energy's strategic plan objectives.

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 March 11, 2022, we have had more than 20K unique visitors to the HPWH incentive page through owned media (email), earned media and paid digital advertising.

Electrification Messaging Project

Marketing is developing new messaging centered on encouraging electrification. The first steps in this project are to conduct research among residents to understand how they view the consequences of electrifying their homes and transportation, how they prioritize perceived benefits and penalties, and which words and phrases are most likely

to resonate with them. The qualitative phase of this research, which consists of individual in-depth interviews, has been completed. The next research phase, which consists of quantitative research among a larger sample, aims to define, size and characterize customer segments and to prioritize the messages that are most impactful. Emailed invitations to participate in the quantitative phase of this research began to go out on March 8. The development of a marketing campaign will follow.

Electric Vehicle (EV) Campaign

A search advertising campaign addressing barriers and benefits of electric vehicles has been underway since November 8, 2021. Through February 10, 2022, the campaign has achieved over 277,000 impressions and engaged about 13,600 users. This has been an efficient paid search campaign with an overall average cost-per-click of \$1.02, and recent costs as low as \$0.89, far lower than industry averages (which are ~\$3.50 across industries and \$2.30-3.20 for automotive related paid search).

We are preparing email and website communications to promote changes to the Used EV rebate program, which includes an increase in the maximum rebate from Peninsula Clean Energy to \$6,000 for income qualified residents.

Building Electrification Awareness Program

Award winners in the second annual [All-Electric Awards](#) program have been notified. Winning projects 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. Winning projects will be recognized at the Sustainable San Mateo County Annual Awards event scheduled for May 16. Selected award winners will be featured in virtual later in Q2.

Our [induction cooking web page](#) is now live and includes a recording of the Learn to Love Induction Cooking webinar held on February 3.

Los Banos Update

Our local Los Banos representative Sandra Benetti is very active providing additional information and answering questions as Los Banos customers receive their enrollment notices. Two general hybrid (virtual and in-person at the Los Banos Community Center) workshops on Peninsula Clean Energy will take place in March, one in Spanish on March 15 and one in English on March 31. A second NEM workshop for solar customers will be held on April 21. These workshops are being extensively promoted in both English and Spanish through emails to customers, fliers, tabling, NextDoor, Facebook, and Eventbrite, an announcement on the cover of the Los Banos Spring Recreation Guide (mailed to all customers), and through other local organizations.

Additional recent and upcoming outreach and marketing includes:

- Radio ad on Spanish-language Radio Lobo
- Announcement on digital street sign in prominent downtown location
- Peninsula Clean Energy insert in water bill sent to all Los Banos water customers
- Tabling in City Hall on bill pay dates for those water bills

- Tabling at Los Banos Arbor Day, Easter Egg Hunt, Spring Street Fair, and May Day Fair
- Presentations in English to Rotary, Veterans of Foreign Wars, the Salvation Army, and the Los Banos High School Career Fair
- Presentations in Spanish to Los Banos Cultiva la Salud promotoras

We are reaching out to additional community groups to arrange presentations. Sandra is also active in local social media forums addressing questions and providing correct information.

CAC Recruitment

We have begun the process of recruiting CAC members to fill expected vacancies. The [application](#) is available on our website and applications are due by the end of March. The Board subcommittee for CAC selection is expected to recommend a slate of appointees to the full Board in May.

News & Media

A joint press release with Harvest Thermal announcing the demonstrations of their all-electric space and water heating system was issued on March 15, 2022.

On February 8, 2022, Peninsula Clean Energy Director of Energy Programs, Rafael Reyes, was [interviewed for KHMB 100.9 radio](#).

Jan Pepper was featured in the story “Cloudy Outlook for Rooftop Solar” in the March issue of [Climate Online Redwood City](#).

An OpEd, “Electricity provider offering ‘greener’ energy to Los Banos customers,” with the byline of Sandra Benetti was published by the Merced Sun Star on March 4, 2022.

Full coverage of Peninsula Clean Energy in the news can be found on our [News & Media](#) webpage.

ENROLLMENT UPDATE

ECO100 Statistics (since February report)

Total ECO100 accounts at end of February:	6,364
ECO100 accounts added in February:	22
ECO100 accounts dropped in February:	29
Total ECO100 accounts at the end of January:	6,371

Enrollment Statistics

Opt-outs during the month of February were 171, 138 more than the previous month of January (33). This includes 112 opt outs in our new service territory of Los Banos during the month of February, and 59 from San Mateo County during this month. In March, there has been an additional 63 opt outs from Los Banos as of March 14th, 2022, bringing the total opt out numbers so far in Los Banos to 175. Total participation rate across all of San Mateo County at the end of February was 97.18%.

In addition to the County of San Mateo, there are a total of 15 ECO100 cities. The ECO100 towns and cities as of March 11th, 2022, include: Atherton, Belmont, Brisbane, Burlingame, Colma, Foster City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Portola Valley, Redwood City, San Carlos, San Mateo, and Woodside.

The opt-up rates below include municipal accounts, which may noticeably increase the rate in smaller jurisdictions.

Active Accounts as of February 28th							
TOT	RES Count	COM Count	Active Count	Eligible Count	Participation Percent	ECO100 Count	ECO100 Percent
ATHERTON INC	2422	223	2645	2720	97.24%	58	2.19%
BELMONT INC	10708	928	11636	11938	97.47%	196	1.68%
BRISBANE INC	1970	500	2470	2528	97.71%	86	3.48%
BURLINGAME INC	13291	1986	15277	15617	97.82%	347	2.27%
COLMA INC	584	292	876	887	98.76%	32	3.65%
DALY CITY INC	31081	2009	33090	34143	96.92%	107	0.32%
EAST PALO ALTO INC	7082	444	7526	7847	95.91%	27	0.36%
FOSTER CITY INC	13672	853	14525	14794	98.18%	334	2.30%
HALF MOON BAY INC	4202	636	4838	4978	97.19%	114	2.36%
HILLSBOROUGH INC	3809	138	3947	4061	97.19%	71	1.80%
MENLO PARK INC	13863	1700	15563	15822	98.36%	518	3.33%
MILLBRAE INC	8406	648	9054	9479	95.52%	106	1.17%
PACIFICA INC	14029	863	14892	15443	96.43%	175	1.18%
PORTOLA VALLEY INC	1464	132	1596	1695	94.16%	1500	93.98%
REDWOOD CITY INC	31432	3321	34753	35534	97.80%	730	2.10%
SAN BRUNO INC	14750	1065	15815	16438	96.21%	94	0.59%
SAN CARLOS INC	12220	2100	14320	14693	97.46%	336	2.35%
SAN MATEO INC	39769	3891	43660	44738	97.59%	690	1.58%
SO SAN FRANCISCO INC	21454	3213	24667	25570	96.47%	121	0.49%
UNINC SAN MATEO CO	20816	2994	23810	24601	96.78%	639	2.68%
WOODSIDE INC	2013	219	2232	2282	97.81%	58	2.60%

Table reflects data as of February 28th, 2021

Los Banos Enrollment Notices

The first set of Los Banos enrollment notices were mailed to customers February 14th, 2022, and the second set of enrollment notices were mailed March 8th, 2022. Four sets of enrollment notices are required to be mailed to our future customers in the City of Los Banos; two must be sent pre-enrollment (60 days before and 30 days before), and the other two must be sent post-enrollment (30 days after and 60 days after). Peninsula Clean Energy staff created separate pre-enrollment notices for standard customers, NEM customers, and DAC-GT customers in the City of Los Banos. Our standard welcome postcard will be used as the two required post-enrollment notices.

STRATEGIC PLAN

This section describes how the above Marketing and Community Care activities, and enrollment statistics relate to the overall goal and objectives laid out in the strategic plan. The table indicates which objectives and particular Key Tactics are supported by each of the Items/Projects discussed in this memo. The strategic goal for Marketing and Customer Care is: Develop a strong brand reputation that drives participation in Peninsula Clean Energy's programs and ensures customer satisfaction and retention.

Item/Project	Objective A: Elevate Peninsula Clean Energy's brand reputation as a trusted leader in the community and the industry	Objective B: Educate and engage stakeholders in order to gather input, inspire action and drive program participation	Objective C: Ensure high customer satisfaction and retention
HPWH Incentive		KT6: Promote programs and services, including community energy programs and premium energy services	
Electrification Messaging Project		KT5: Provide inspirational, informative content that spurs action to reduce emissions.	
EV Campaign		KT6 (see above)	
Building Electrification Awareness Program		KT6 (see above)	
Los Banos Update	KT4: Engage community through participation in local events		
CAC Recruitment		KT4: Support the Citizens Advisory Committee	
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 Enrollment Statistics			Reports on main objective C

* "KT" refers to Key Tactic

**PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence**

DATE: March 11, 2022
BOARD MEETING DATE: March 24, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

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

FROM: Jeremy Waen, Director of Regulatory Policy
Doug Karpa, Senior Regulatory Analyst
Matthew Rutherford, Senior Regulatory Analyst

SUBJECT: Update Regarding February 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 others matters. Doug has been particularly heavily focused on work to reform the California Public Utilities Commission's (CPUC) Resource Adequacy construct. Matthew has continued his work in supporting PCE's programmatic efforts through Transportation Electrification, Building Decarbonization, Resiliency, Supplier Diversity, and DAC-Green Tariff matters.

DEEPER DIVE

Commissioner Meet and Greet

Starting with our first meeting on March 11, 2020, Jeremy Waen and Jan Pepper (along with members of our board) will be conducting "meet and greet" sessions with the five CPUC and five California Energy Commission (CEC) Commissioners. These meetings happen on an annual cadence. They provide us with the chance to introduce our agency and ourselves to the newly appointed Commissioners or to update those that we have met previously. In both cases, these meetings provide a valuable opportunity to educate these decisionmakers about all the tremendous success that we are having in achieving our agency's goals and the State's goals. These meetings also provide PCE staff and board with an opportunity to better understand the primary interests and motivations of each Commissioner.

(Public Policy Objective A, Key Tactic 3)

Transportation Electrification

Matthew continues to lead PCE's policy advocacy to support PCE's programmatic objectives to enable electrification. The CPUC's Transportation Electrification Framework proceeding had remained dormant for some time while the verdict on whether CCAs can administer ratepayer funded programs under this framework remains pending.

On February 25, 2022, the CPUC issued a new Energy Division staff proposal which may prove to be a foundational shift away from the TE planning and program implementation model that was previously considered in this docket. Originally, the docket was intended to develop a Transportation Electrification Framework (TEF) which would guide the overall strategy, development, and review of TE programs regulated by the CPUC. The new Staff Proposal instead posits that, starting in 2025, incentives for behind the meter, customer-facing TE investments such as charging equipment and electric panel upgrades (*i.e.*, not distribution grid work) would be run through a single statewide program. Administration of this program would be handled by a single entity, as would the marketing, administration, and outreach (ME&O). The Proposal also directs all incentives to be provided as rebates, and only for TE programs targeting multiunit dwellings and medium- and heavy-duty fleets.

The CCAs engaged in this docket are concerned this new structure would not only preclude CCAs from serving as administrators of their own programs in their service territories, but also it would lead to program designs that are too general in nature and therefore fail to adequately account for local context. That local context is what makes CCA TE programs more effective at reaching customer segments that are less able to adopt TE and therefore need more assistance, such as older MUD housing stock in San Mateo County that make retrofit projects more challenging. The CCAs plan to file comments on this new staff proposal to suggest ways that the new structure could better incorporate CCA input to increase the program's ability to reach underserved communities and help California achieve its aggressive TE goals.

(Public Policy Objective A, Key Tactic 1 and Key Tactic 2)

Integrated Resource Planning & Resource Adequacy

Doug Karpa 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.

The CPUC Working Group on resource adequacy reform released its final report on February 28, 2022. Dr. Karpa has worked intensively with stakeholders within the CCA community and across the energy sector to develop transactability frameworks that

should facilitate meeting a proposed 24-hour load requirement, as well as analyses of an alternative proposal which would all but eliminate RA value for solar and wind.

In addition, Dr. Karpa has been involved with the CalCCA team working on the Commission's efforts to improve the procedures of the Central Procurement Entity for local RA, which has largely shown major deficiencies to date. In comments on the Proposed Decision, CalCCA supported converting the current contracting framework with an attestation for self-shown resources but recommended corrections to improve incentives for self-showing resources to address the major shortcomings of the Central Procurement Entity framework.

The CPUC has also released a more analytically sound analysis of planning reserve margins based on a loss of load expectation (LOLE) framework, which suggests that current planning reserve margins are too low to deliver an adequate level of reliability. Although significant vetting and further analysis is still required, this is the first rigorous analysis to indicate that higher RA requirements may be needed going forward.

(Public Policy Objective A, Key Tactic 1, and Key Tactic 2; Public Policy Objective C, Key Tactic 3)

Stakeholder Outreach

Doug continues to host the regular call with staff from CCAs and environmental and environmental justice stakeholders. He hosted a February 23 call to focus on how the Central Procurement Entity framework disincentivizes local resources. Dr. Karpa has also engaged with significant stakeholder conversation on legislative proposals.

(Public Policy Objective A, Key Tactic 2)

FISCAL IMPACT

Not applicable.

**PENINSULA CLEAN ENERGY AUTHORITY
Board Correspondence**

DATE: March 21, 2022
BOARD MEETING DATE: March 24, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors
FROM: Marc Hershman, Director of Government Affairs
SUBJECT: Update on Peninsula Clean Energy's Legislative Activities

SACRAMENTO SUMMARY:

Although the 2022 session of the California Legislature, which convened on January 3, began much the same way the 2021 session ended with many of the pandemic restrictions continuing in place, recent changes suggest the Capitol is on the path to pre-pandemic opening levels of access.

The state Assembly has begun policy committee hearings. During the height of the pandemic, witnesses appearing before Assembly committees were permitted to testify from remote locations. For the first time in two years, lead witnesses are required to appear in person when testifying before committees. The state Senate is still allowing remote testimony.

Also, during the height of the pandemic, both houses of the Legislature limited the number of bills that could be introduced by legislators. This was done in large part due to the limited number of committee hearing rooms that were available when accounting for the need to socially distance one person from another. That is no longer the case, and it appears that the pandemic limits on the number of bills and hearings are no longer being followed.

It should be noted that the annex building that connected to the capitol and which held most of the offices of legislators and their staff and some committee hearing rooms has been closed for removal and new construction. During the construction period legislators' offices and some hearing rooms will be located down the street from the capitol building.

The number of legislators who have announced they will be running for a different office or have announced that they will not be seeking re-election in 2022 continued to climb this past month.

Previously noted and of particular importance to Peninsula Clean Energy, Assemblymember Lorena Gonzalez, chair of the Committee on Appropriations, resigned from the Assembly in January to become head of the state labor federation. The chair of the Assembly Committee on Utilities and Energy, Chris Holden, was named as the new chair of Appropriations. Assemblymember Eduardo Garcia is the new chair of the Assembly Committee on Utilities and Energy. Assemblymember Garcia's legislative district includes the entirety of Imperial County and portions of Riverside and San Bernardino counties.

On January 10 Governor Newsom unveiled his initial 2022-23 budget at \$286.4 billion, a 9% increase from last year. This includes a \$21 billion discretionary surplus, plus billions more for schools, pension payments and reserve accounts.

The revenue projection that underlies the January budget proposal was made before the rise of the omicron variant. While the numbers could change dramatically by the time the annual revision to the budget will be made public in May, initial tax returns arriving in Sacramento suggest that the budget surplus is likely to grow. The legislature will have its say on the budget and the final version will need to be adopted in June.

LEGISLATIVE ADVOCACY AND OUTREACH:

A bill introduced this year that is of interest to Peninsula Clean Energy and the CCA community is **SB 881 (Min)**. The bill is sponsored by the Union of Concerned Scientists and Senator Becker is the principal coauthor.

Every Load Serving Entity (LSE), including Peninsula Clean Energy and the Investor-Owned Utilities, must submit an integrated resource plan (IRP) to the California Public Utilities Commission (CPUC). The IRP outlines how the LSE plans to meet future electricity demand, ensure grid reliability, maintain affordability, and achieve the state's environmental justice and clean energy goals. The CPUC aggregates this information and determines whether the state will achieve its clean energy goals. The CPUC also uses the information to implement new policies and authorize the development of new clean energy projects.

According to the bill's author, **SB 881** changes the nature of the IRP process. Under **SB 881**, an LSE's IRP would describe how it will meet certain GHG reduction targets. It provides new authority to the CPUC to order an LSE to procure appropriate clean energy to meet its emission reductions target and the CPUC could order another LSE to make that procurement on behalf of the deficient LSE. It also authorizes the CPUC to assess penalties against an LSE for its failure to meet their IRP requirements.

AB 1944 (Lee, Christina Garcia) would amend the Brown Act to specify that if a member of a legislative body elects to teleconference from a location that is not public, the address of that location need not be identified in the meeting notice and agenda, or be accessible to the public, when the legislative body has elected to allow members to

participate via teleconferencing. Peninsula Clean Energy has submitted a letter of support for AB 1944.

CalCCA 2022 Legislative Initiative

AB 1814 was introduced by Assemblymember Tim Grayson (D-Concord). This bill is sponsored by CalCCA. It explicitly authorizes community choice aggregators (CCAs), including Peninsula Clean Energy, to access transportation electrification program funding and administer those funds in their service area.

Currently, CCAs have statutory authority to administer energy efficiency programs. This has resulted in tailored programs that serve customers and businesses located in hard-to-reach communities, and innovative programs that more holistically address customer energy needs by incorporating demand response and electrification.

Peninsula Clean Energy has filed a letter of support for **AB 1814**. Staff has sent a request to each Peninsula Clean Energy member jurisdiction and is reaching out to legislators, local agencies and local organizations seeking additional letters of support for **AB 1814**.

CalCCA Legislative Committee and Board Activity in 2021 – Continued to 2022

Unfinished Business

SB 612 (Portantino) PCIA Reform, was CalCCA's priority bill for the 2021 legislative session and the first bill CalCCA sponsored. **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.

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. Peninsula Clean Energy continues to advocate for **SB 612**. This bill can move ahead in 2022 as a 2-year bill and could be heard and passed by the Assembly Committee on Utilities and Energy as late as the spring of 2022. As noted above, the Assembly Committee on Utilities and Energy has a new chair this year.

(Public Policy Objective B, Key Tactic 1)



PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: March 10, 2022
BOARD MEETING DATE: March 24, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy
Rafael Reyes, Director of Energy Programs

SUBJECT: Community Programs Report

SUMMARY

The following programs are in progress, and detailed information is provided below:

1. Building and EV Reach Codes
2. Buildings Programs
 - 2.1. Appliance Rebates
 - 2.2. Low-Income Home Upgrades & Electrification
 - 2.3. Building Pilots
3. Distributed Energy Programs
 - 3.1. Local Government Solar Project Development
 - 3.2. Power On Peninsula – Homeowner
4. Transportation Programs
 - 4.1. “EV Ready” Charging Incentive Program
 - 4.2. Used EV Rebate Program
 - 4.3. EV Ride & Drives/EV Rental Rebate
 - 4.4. E-Bikes for Everyone Rebate Program
 - 4.5. Municipal Fleets Program
 - 4.6. Transportation Pilots
5. 2035 Decarbonization Feasibility and Plan

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 publicly available at www.AllElectricDesign.org. 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 Peninsula Clean Energy territory, Burlingame, Brisbane, Colma, Daly City, E. Palo Alto, Half Moon Bay 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, Portola Valley and San Bruno. Across San Mateo and Santa Clara Counties, 27 agencies have adopted some kind of all-electric reach code. Peninsula Clean Energy is providing support to Atherton, Belmont, San Bruno and Hillsborough, who plan to pass Reach Codes in 2022. Draft new model codes are available. Multiple jurisdictions have requested model existing building reach codes. Stakeholder workshops were held on January 26, February 15, 16 and 17th with approximately 200 attendees excluding program staff. The first drafts of the model codes were presented and initial feedback received.
- **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. An existing building model code is being developed with stakeholder feedback. During a poll at the City Staff workshop, 64% of respondents stated that they were interested in exploring an existing building reach code. A City Staff workshop specific to existing buildings is planned for April. In addition, SVCE and Joint Venture Silicon Valley are planning an existing building workshop/webinar specifically for elected officials and have offered that elected officials in San Mateo County may also attend.
- **Lead Consultant Contract:** As the reach code effort is continuing and the TRC contract expires in July a 2-yr contract extension will likely be signed this month.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 3: Ensure nearly all new construction is all-electric and EV ready

- Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

2. Buildings Programs

2.1. Appliance Rebates

Background: In May 2020, the Board approved a 4-year, \$6.1 million for electrifying existing buildings. This included \$2.8 million for implementing an appliance rebate program. Peninsula Clean Energy successfully launched the heat pump water heater rebates on January 01, 2021 for San Mateo residents. Peninsula Clean Energy rebates are offered in partnership with BayREN's Home+ program. BayREN offers a rebate of \$1,000 and Peninsula Clean Energy offers an additional rebate of \$1,000 for methane gas to HPWH or \$500 for electric resistance to heat pump water heater (HPWH). Peninsula Clean Energy 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 HPWH rebate program was launched on January 01, 2021 and to date we have received 187 applications and an additional 1 is pending. All but 3 were installed in 2021. Overall, the Peninsula Clean Energy program accounts for approximately 40% of the HPWHs installed across the 9-county Bay Area. Currently five San Mateo County contractors and 21 contractors outside the county are enrolled in the program. Peninsula Clean Energy has been promoting the incentive through digital ads, email outreach and other channels.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

2.2. (Low-Income) Home Upgrade Program

Background: In May 2020, The Board approved \$2 million for implementing a turn-key low-income home upgrade program. 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 stove with an electric induction stove. The contract with the administration and implementation firm, Richard Heath & Associates (RHA), was executed after being approved by the Board in the March 2021 meeting.

Status: The program was announced on September 28, 2021.. Approximately 275 homes have already expressed interest in the program through Peninsula Clean Energy outreach, the program's outreach partner El Concilio, and other community-based organizations and cities. RHA has been screening the eligibility of the homes and scheduling in-person home assessments for those that meet the criteria. As of February 28, 2022, 69 homes have been fully enrolled in the program. Of those, 2 have had their installations complete and 32 more have installations in progress.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities
- Key Tactic 3: Support workforce development programs in the County

2.3. Building Pilots

Background: In May 2020, The Board approved \$300,000 for piloting a new innovative technology from Harvest Thermal Inc., a Bay Area-based startup, that combines residential space and water heating into a unified heat pump electric system with a single water storage tank. Through this project, this technology will be installed in 3-5 homes within the San Mateo County to assess its performance and demonstrate its effectiveness for emission reductions.

Status: The home recruitment process began in late April 2021 and the project received 290 applications. Homes were selected based on technical criteria (home characteristics, energy usage patterns, and technical feasible of the upgrade within budget). The top 8 homes were identified but 3 of them dropped out of the process due to various reasons. Contractors bid on the remaining 5 homes and Harvest selected 4 homes that will receive the system based on costs. The four pilot homes are located in Daly City, South San Francisco, Redwood City, and Menlo Park. As of March 10, the Daly City and South San Francisco homes have had their system installed, the Redwood City home is under construction, and the Menlo Park home is awaiting the city permit and expected to be installed in April/May. . TRC has been contracted to provide independent measurement and verification services for the project and have installed metering equipment in the homes that have had their system installed Lastly, the Technical Advisory Committee (TAC) met September 30, 2021 to review and provided feedback on the project. TAC members include former building officials, former contractor, city commissioner, peer CCA program managers, CPUC staff, CAC member and Board member Jeff Aalfs.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective C: Innovation and Scale: Leverage leadership, innovation, and regulatory action for scaled impact

- Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

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 Solar Project

Background: In October 2020, the Board approved a Solar Site Evaluation Services contract with McCalmont Engineering for Solar site evaluation and designs for County and municipal facilities identified as candidates for solar-only non-resilience or solar + storage resilience projects.

We completed site visits and solar designs for fourteen (14) facilities across 13 agencies including in Los Banos. We began seeking commitments from cities and the County to participate in an aggregate procurement process from which we would offer a 20-year Power Purchase Agreement (PPA) for the solar installation at no upfront cost. The requested commitment is that if we can offer a PPA price that will result in net electric bill savings or deliver other identified community benefits, they will move forward to installation. We have now received commitments from 12 of 13 agencies, with an aggregate portfolio size of approximately 1.5-2 MW.

Status:

We have finalized a site design for Atherton Town Hall and are in final stages of site designs for two sites in Los Banos. The latter will require city council approval similar to that obtained for other portfolio cities. We have had promising discussions with a potential tax benefits partner for the portfolio. This partner would be able to capture the tax benefits of the solar projects and share them with Peninsula Clean Energy, and by extension portfolio customers. Peninsula Clean Energy is unable to capture those benefits directly due to its tax-exempt status. We believe developing such a relationship and contracting structure could enable Peninsula Clean Energy to obtain the most competitive pricing on equipment and installation. Our fallback, if this pathway runs into insurmountable obstacles, is to seek a master PPA for the portfolio from an entity that can share tax benefits, similar to Peninsula Clean Energy's wholesale procurements. Details will be coming to the Board in an upcoming meeting.

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: The program has commenced and participants' batteries are dispatching later in the evening to help reduce Peninsula Clean Energy's net peak. The program is being impacted by supply chain issues including contractor, materials, and product supply and cost. However, program promotion has been ongoing. The incentive of \$1,250 is planned to drop to \$500 after March 31 2022. Staff launched a customer satisfaction survey for program participants in December 2021. 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. The program includes a \$25,000

vehicle price cap and local dealership network with point-of-sale rebate. In February 2021, Peninsula Clean Energy executed a competitively bid contract with GRID Alternatives (“GRID”) to administer the expanded program. The ‘old’ program incentivized 105 rebates from March 2019 through August 2021. In August 2021, the program was officially re-launched.

Status: Since the re-launch of the program, 44 rebates have been provided under the new program and 200+ customers are actively in the pipeline (customers must apply prior to purchase). Because vehicle supplies are extremely tight due to global supply chain issues in the market currently and pricing is high, staff will be making some temporary modifications to the program to adjust to market conditions. In 2021, average used vehicle prices were 30% higher than 2020, and 40-50% higher than pre-pandemic levels. In 2021, the average used vehicle price in the U.S. was \$28,000.

As a result, staff will be making the following changes:

Current	Change
To be eligible for rebate, vehicle purchase price (before rebates) cannot exceed \$25,000.	Increase price cap from \$25,000 to \$35,000
Current incentive levels are as follows: <ul style="list-style-type: none"> • All residents: \$700 PHEV, \$1,000 BEV • Income-qualifying residents <ul style="list-style-type: none"> ○ If they combine Peninsula Clean Energy incentive with other EV incentive programs: \$1,700 PHEV, \$2,000 PHEV ○ If they do not combine Peninsula Clean Energy incentive with any other EV incentive program: \$3,700 PHEV, \$4,000 	Increase incentive by \$2,000 for income-qualifying residents. New incentive levels would be as follows: <ul style="list-style-type: none"> • All residents: \$700 PHEV, \$1,000 BEV • Income-qualifying residents <ul style="list-style-type: none"> ○ If they combine Peninsula Clean Energy incentive with other EV incentive programs: \$2,700 PHEV, \$4,000 PHEV ○ If they do not combine Peninsula Clean Energy incentive with any other EV incentive program: \$5,700 PHEV, \$6,000

Staff expects to roll out these changes by the end of March. Staff will assess changes in 6 months and determine if to keep them or adjust them again. Lastly, these changes will not require any new budget allocation to the program and uptake in the program has been slower than expected and thus there are enough funds in the existing budget to support these changes.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 1: Drive personal electrified transportation to majority adoption

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities

4.2. “EV Ready” Charging Incentive Program (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, Peninsula Clean Energy successfully applied to the California Energy Commission (CEC) for the CEC to invest an additional \$12 million in San Mateo County for EV charging infrastructure. Of Peninsula Clean Energy’s \$12 million in incentives, \$8 million will be administered under the CEC’s California Electric Vehicle Incentive Project (CALeVIP) and \$4 million under a dedicated, complementary Peninsula Clean Energy incentive fund. The dedicated Peninsula Clean Energy incentives 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: The program is being impacted by supply chain issues including contractor, materials, and product supply and cost. This is resulting in installation delays. Staff is engaging directly with Trade Allies to understand installation delay issues and implement solutions. Peninsula Clean Energy’s technical assistance and outreach is ongoing. Summary of program metrics is outlined in the table below:

	Sites/ Applications	Ports	Incentive Amount
# of sites in Technical Assistance	119	834	-
# of site evaluations delivered	58	1,631	-
# of applications received in Peninsula Clean Energy incentive program	29	432	\$1,008,500
# of applications approved in Peninsula Clean Energy incentive program	17	363	\$741,000
# of CALeVIP applications approved in Year 1*	108	1,046	\$15,282,500
# of CALeVIP applications anticipated in Year 2 & Year 3	56	652	\$3,666,500
# of ports installed	3	30	\$133,180

*Includes DCFC and L2 ports: 298 DCFC, 748 L2 ports

CALeVIP provided extensions to Year 1 applications that experienced project delays due supply chain impacts. CALeVIP surveyed 122 applicants in San Mateo and Santa Clara Counties that requested an extension due to project delays and reported the 75% of

respondents (n=25) require additional extensions to complete their project. In direct discussions a major vendor also signaled the expectation of a very high attrition rate among customers participating in CALeVIP due to pandemic and supply chain issues.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 1: Drive personal electrified transportation to majority adoption
- Key Tactic 5: Support local government initiatives to advance decarbonization

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 3: Support workforce development programs in the County

4.3. EV Ride & Drives / EV Rental Rebate

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. The Virtual EV Forums in partnership with large San Mateo County employers continued through the end of FY20-21. Four EV Forums were held. The EV Rental Rebate is all that currently remains.

Status: The EV Rental Rebate, which offers a rebate up to \$200 on the rental of an EV, has issued 149 rebates as of February 28, 2021. Staff sent surveys to participants 6 months after the rental and of 34 respondents, 8 of them (8%) have purchased an EV since the rental. Most of the FY21-22 EV Ride & Drive/Engagement budget will be dedicated to the EV Rental Rebate. Staff has considered re-starting ride & drive events again this year, however the vehicle supply shortage also means dealership do not have cars available for ride & drive events and thus it is not feasible to re-start the program again at this time. Staff will reassess restarting events in 2023 if vehicle inventory is not an issue at that point.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 1: Drive personal electrified transportation towards majority adoption

4.4. **E-Bikes for Everyone Rebate Program**

Background: The Board initially approved the E-Bikes Rebate program in July 2020 with a budget of \$300,000 and approved an increase of an additional \$300,000 in December 2022, bringing the total program budget to \$600,000. The first phase of the program launched in May 2021 and sold out immediately and provided 276 rebates. The second phase will occur in spring 2022 and provide approximately 320 rebates. The program is available to residents with low to moderate incomes. Silicon Valley Bicycle Coalition is under contract to Peninsula Clean Energy as an outreach and promotional partner and local bike shops are under contract to provide the rebate as a point-of-sale discount to customers. Enrolled bike shops include Summit Bicycles, Mike's Bikes, Sports Basement, and RidePanda (as an online retail partner).

Status: The second launch of the program will occur in spring 2022.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 1: Drive personal electrified transportation to majority adoption

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities

4.5. **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: Staff are currently reviewing RFP responses to hire a consulting team and expects the program to become available by mid-2022.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation and initiate the transition to clean energy buildings

- Key Tactic 2: Bolster electrification of fleets and shared transportation
- Key Tactic 5: Support local government initiatives to advance decarbonization

Objective C: Innovation and Scale: Leverage leadership, innovation, and regulatory action for scaled impact

- Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

4.6. Transportation Pilots

Ride-Hail Electrification Pilot

Background: This pilot, approved by the Board in March 2020, is Peninsula Clean Energy's first program for the electrification of new mobility options. The project partners with Lyft and FlexDrive, its rental-car partner, to test strategies that encourage the adoption of all-electric vehicles in ride-hailing applications.

Status: The pilot formally kicked off in December 2020 and Peninsula Clean Energy staff are coordinating with Lyft on development. Vehicles are anticipated to start becoming available in Q2 2022.

EV Managed Charging Pilot

Background: Peninsula Clean Energy ran a proof-of-concept pilot for EV managed charging with startup FlexCharging to test timing of EV charging through vehicle-based telematics. The system utilizes existing Connected Car Apps and allows Peninsula Clean Energy to manage EV charging via algorithms as a non-hardware-based approach to shift more charging to occur during off-peak hours. The pilot 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 in contract negotiations. The contract for the recommended winner will be brought to the Board for approval in Q2 2022. Peninsula Clean Energy 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 Peninsula Clean Energy's Managed Charging Program design. A Technical Advisory Committee is also informing the pilot and held its first meeting mid-February.

Strategic Plan:

Goal 3 – Community Energy Programs

Community Benefits: Deliver tangible benefits throughout our diverse communities
Key Tactic 1: Invest in programs that benefit underserved communities

Innovation and Scale: Leverage leadership, innovation and regulatory action for scaled impact

Key Tactic 1. Identify, pilot, and develop innovative solutions for decarbonization

Pilot and scale EV load shaping programs to ensure that 50% of energy for EV charging takes places in non-peak hours

5. 2035 Decarbonization Feasibility and Plan

Background: In September 2021 the Board adopted a resolution accelerating its goal of reaching carbon neutrality from 2045 to 2035 as follows “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.”

Status: Subsequent to the Board action, a Board sub-committee was established including Chair DeGolia and directors Pine, Aalfs, Nash, Parmer-Lohan. Staff met with the sub-committee on December 16th and received approval for the project deliverables and schedule as follows:

Q1: Schedule, scope, market conditions analysis

Q2: Market & state influence, segment characterization & costs

Q3: Overall strategy, investment and capital strategy, marketing, roadmap

Sept. Retreat: Present draft analysis & plan

Q4: Confirm and align budget forecast and finalize plan

The final deliverable is to be a slide deck for the retreat and potentially a white paper to follow. In addition, Peninsula Clean Energy’s primary scope for decarbonization was approved:

- Transportation: private passenger vehicles, local fleets, ride-hailing
- Buildings: single-family residential, office, small commercial

It is envisioned that Peninsula Clean Energy may engage beyond these segments on a limited basis.

- **Current Focus:** The two deliverables staff are working on at the moment are:
 - Market conditions – an outline of assumptions of the market conditions, and how those impact the scope of Peninsula Clean Energy’s effort
 - Market segmentation – A detailed breakdown of building and vehicle stock in Peninsula Clean Energy’s primary scope to understand the appropriate policymaking, targeting, and investment for different customers and constituents.

Strategic Plan:

Goal 3 – Community Energy Programs

Decarbonization Programs: Develop market momentum for electric transportation and initiate the transition to clean energy buildings

Innovation and Scale: Leverage leadership, innovation and regulatory action for scaled impact

Key Tactic 1. Identify, pilot, and develop innovative solutions for decarbonization
Develop strategy for supporting decarbonization by 2035 (updated 2022)

**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: March 11, 2022
BOARD MEETING DATE: March 24, 2022
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors
FROM: Jan Pepper, Chief Executive Officer
SUBJECT: Energy Supply Procurement Report – March 2022

BACKGROUND

This memo summarizes energy procurement agreements entered into by the Chief Executive Officer since the last regular Board meeting in February. This summary is provided to the Board for information purposes only.

DISCUSSION

Execution Month	Purpose	Counterparty	Term
March	Purchase of Resource Adequacy	Pilot Power Group, LLC	1 Month
March	Sale of Resource Adequacy	Shell Energy North America (US), L.P.	1 Month
March			
March			
March			
March			
March			
March			
March			

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 November 31 st of the prior year	Up to 36 months
System Resource Adequacy	In year 1, must demonstrate capacity to meet 90% of system obligation for summer months (May – September) by November 31 st of the prior year	Up to 12 months
Flexible Resource Adequacy	In year 1, must demonstrate capacity to meet 90% of monthly flexible obligation by November 31 st 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 November 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:** 3/17/2022
FROM: Tim Haines – Interim General Manager
SUBJECT: **Report on CC Power Board of Directors Meeting – March 16, 2022**

The CC Power Board of Directors held its regularly scheduled meeting on Wednesday, March 16, 2022, via Zoom. Details on the Board packet, presentation materials, and public comment letters can be found under the Meetings tab at the CC Power website: <https://cacommunitypower.org>

Highlights of the meeting included the following:

- **Matters subsequent to posting the Agenda.** None.
- **Public Comment.** None.
- **Consent Calendar** - The Board unanimously approved the following items:
 - Minutes of the Regular Board Meeting held on January 19, 2022
 - Minutes of the Special Board Meeting held on February 25, 2022
 - Resolution 22-03-01 Reconsideration 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
- **General Manager's Report.**
 - **Update on LDS/FCR Projects:** Interim GM Haines provided the Board with the schedule to complete final execution of the Board approved agreements and the statue of Participant approvals.
 - **Update on FPPC Conflict of Interest Code:** Interim GM Haines informed the Board that CC Power General Counsel is reviewing FPPC feedback to the proposed code and expects to have a 45-day public review version available at the next Board meeting.
- **Update on Firm Clean Resources Request for Offers:** Interim General Manager presented the staff recommendations to accept the 2021 Treasurer's Report, to fund CC Power insurance, and reallocate the budgeted charges incurred in the negotiations of the Long Duration Storage contracts with Onward and Tumbleweed. Following the presentation, the Board considered and approved:
 - Resolution 22-03-02 Acknowledgement of Receipt and Review of the 2021 Treasurer's Report and
 - Resolution 22-03-03 Approval of Updated 2022 Budget Allocation Adjustments.

A Joint Powers Agency whose members are:

Central Coast Community Energy | CleanPowerSF | East Bay Community Energy | MCE | Peninsula Clean Energy |
Redwood Coast Energy Authority | San José Clean Energy | Silicon Valley Clean Energy | Sonoma Clean Power |
Valley Clean Energy



COMMONLY USED ACRONYMS AND KEY TERMS

AB xx – Assembly Bill xx
ALJ – Administrative Law Judge
AMP- Arrears Management Plans
AQM – Air Quality Management
BAAQMD – Bay Area Air Quality Management District
BLPTA – Buyer Liability Pass Through Agreement
CAC – Citizens Advisory Committee
CAISO – California Independent System Operator
CalCCA – California Community Choice Association
CAM – Cost Allocation Mechanism
CAP – Climate Action Plan
CAPP – California Arrearage Payment Program
CARB – California Air Resources Board, or California ARB
CARE- California Alternative Rates for Energy Program
CBA – California Balancing Authority
3CE- Central Coast Community Energy (Formerly Monterey Bay Community Power-MBCP)
CCA – Community Choice Aggregation (aka Community Choice Programs (CCP) or
CCE – Community Choice Energy (CCE)
CCP – Community Choice Programs
CEC – California Energy Commission
CPP- Critical Peak Pricing
CPSF – Clean Power San Francisco
CPUC – California Public Utility Commission (Regulator for state utilities) (Also PUC)
CSD – California Department of Community Services and Development
CSGT - Community Solar Green Tariff
DA – Direct Access
DAC-GT - Disadvantaged Communities Green Tariff
DER – Distributed Energy Resources
DG – Distributed Generation
DOE – Department of Energy
DR – Demand Response
DRP – Demand Response Provider
DRP/IDER – Distribution Resources Planning / Integrated Distributed Energy Resources
EBCE – East Bay Community Energy
ECOplus – PCE's default electricity product, 50% renewable and 50% carbon-free (in 2021)
ECO100 – PCE's 100% renewable energy product
EDR – Economic Development Rate
EE – Energy Efficiency
EEI – Edison Electric Institute; Standard contract to procure energy & RA
EIR – Environmental Impact Report
ELCC – Effective Load Carrying Capability
ESP – Electric Service Provider

ESS – Energy Storage Systems
ESSA – Energy Storage Services Agreement
ERRA – Energy Resource Recovery Account
EV – Electric Vehicle
EVSE – Electric Vehicle Supply Equipment (Charging Station)
FERA- Family Electric Rate Assistance Program
FERC – Federal Energy Regulatory Commission
FFS – Franchise Fee Surcharge
GHG – Greenhouse gas
GHG-Free – Greenhouse gas free
GTSR – Green Tariff Shared Renewables
GWh – Gigawatt Hours (Energy) = 1000 MWh
IDER – Integrated Distributed Energy Resources
IOU – Investor-Owned Utility (e.g. PG&E, SCE, SDG&E)
IRP – Integrated Resource Plan
IVR – Interactive Voice Response
ITC – Investment Tax Credit (it's a solar tax credit)
JCC – Joint Cost Comparison
JPA – Joint Powers Authority
JRC – Joint Rate Comparison
JRM – Joint Rate Mailer
kW – kilowatt (Power)
kWh – Kilowatt-hour (Energy)
LDS – Long Duration Storage
LDES – Long Duration Energy Storage
LIHEAP- Low Income Home Energy Assistance Program
Load Shaping – changing when grid energy is used
LSE – Load Serving Entity
MCE – Marin Clean Energy
Methane Gas - formerly known as 'natural gas'
Microgrid – building or community energy system
MW – Megawatt (Power) = 1000 kW
MWh – Megawatt-hour (Energy) = 1000 kWh
MUD – Multi-unit Dwelling
NBCs – non-bypassable charges
NEM – Net Energy Metering
NERC – North American Electric Reliability Corporation
NDA – Non-Disclosure Agreement
NG – Natural Gas
OBF – On-bill Financing
OBR – On-bill Repayment
OES – Office of Emergency Services
OIR – Order Instituting Rulemaking
PACE – Property Assessed Clean Energy
PCC – Portfolio Content Category (aka "buckets") – categories for RPS compliance
PCC1 – Portfolio Content Category 1 REC (also called bucket 1 REC)
PCC2 – Portfolio Content Category 2 REC (also called bucket 2 REC)
PCC3 – Portfolio Content Category 3 REC (also called bucket 3 REC or unbundled REC)

PCE – Peninsula Clean Energy Authority
PCIA – Power Charge Indifference Adjustment
PCL – Power Content Label
PLA – Project Labor Agreement
POU – Publicly Owned Utility
PPA – Power Purchase Agreement
PPSA – Project Participation Share Agreement (CC Power)
PSPS – Public Safety Power Shutoff
PV – Photovoltaics (solar panels)
RA – Resource Adequacy
RE – Renewable Energy
REC – Renewable Energy Credit/Certificate
RICAPS - Regionally Integrated Climate Action Planning Suite
RPS – California Renewable Portfolio Standard
SB xx – Senate Bill xx
SCP – Sonoma Clean Power
SJCE – San Jose Clean Energy
SJVAPCD - San Joaquin Valley Air Pollution Control District
SMD – Share My Data, interval meter data
SQMD – Settlement Quality Meter Data
SVCE – Silicon Valley Clean Energy
TEF – Transportation Electrification Framework (CPUC Proceeding)
TNCs – Transportation Network Companies (ridesharing companies)
TOB – Tariff on Bill
TOU RATES – Time of Use Rates
VGI – Vehicle-Grid Integration
V2G – Vehicle-to-Grid
VPP – Virtual Power Plant
WECC – Western Energy Coordinating Council
WREGIS – Western Renewable Energy Generation Information System
WSPP – Western Systems Power Pool; standard contract to procure energy and RA