

**Regular Meeting of the Board of Directors of the  
Peninsula Clean Energy Authority (PCEA)****AGENDA****Thursday, February 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](mailto: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](mailto: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 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 (Action)

### **REGULAR AGENDA**

6. Chair Report (Discussion)
7. CEO Report (Discussion)
8. Citizens Advisory Committee Report (Discussion)
9. Selection of Chair and Vice Chair of Peninsula Clean Energy Board of Directors (Action)
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)
11. Peninsula Clean Energy Labor Policy (Discussion)
12. Update on DEAI Process (Discussion)
13. Board Members' Reports (Discussion)

### **INFORMATIONAL REPORTS**

14. Update on Marketing, Outreach Activities, and Customer Care
15. Update on Regulatory Policy Activities
16. Update on Legislative Activities
17. Update on Community Energy Programs
18. Update on Energy Supply Procurement
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
- If possible, utilize headphones or ear buds to minimize audio feedback
- If participating via videoconference, audio quality is often better if you use the dial-in option (Option 2 below) rather than your computer audio

### Options for Joining

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

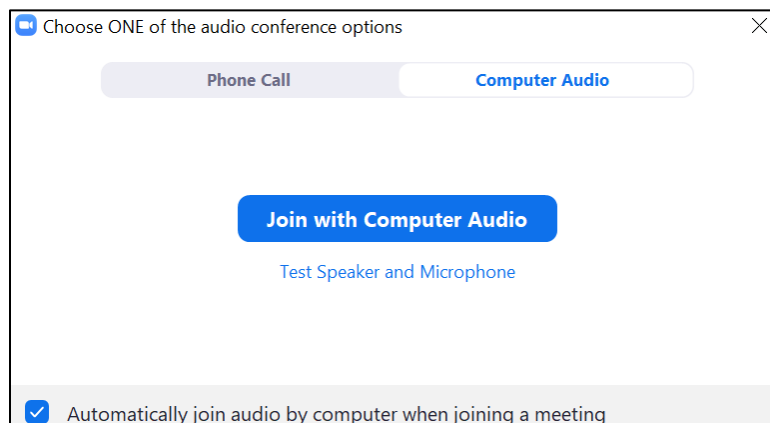
### Videoconference Options:

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

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### **Option 1 Videoconference with Computer Audio:**

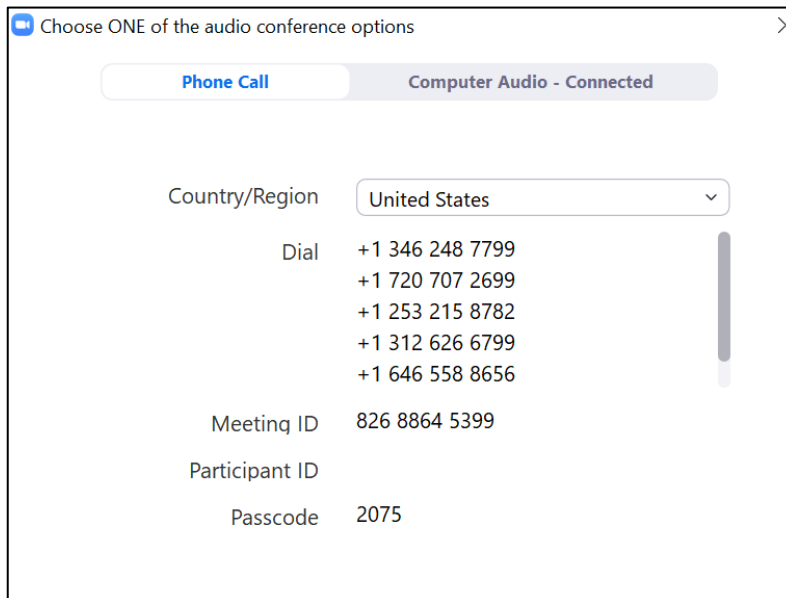
1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation: <https://pencleanenergy.zoom.us/j/82688645399>
2. The Zoom application will open on its own or you will be instructed to open Zoom.
3. After the application opens, the pop-up screen below will 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:** February 15, 2022  
**BOARD MEETING DATE:** February 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.

#### **DISCUSSION:**

Because local rates of transmission of COVID-19 are in the "high transmission" 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**

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**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 “High Transmission” which is the most serious of the tiers; and,

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

**WHEREAS**, on September 25, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361. Out of an abundance of caution given AB 361’s narrative that describes each legislative body’s responsibility to reauthorize remote meetings, staff and counsel bring this resolution to the attention of the Board of Directors, and;

**WHEREAS**, 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**, 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, January 27, 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, arrived at 6:50 p.m.  
Roderick Daus-Magbual, Daly City  
Carlos Romero, East Palo Alto arrived at 6:41 p.m.  
Harvey Rarback, Half Moon Bay  
Laurence May, Hillsborough  
Tom Faria, Los Banos  
Betsy Nash, Menlo Park  
Ann Schneider, Millbrae  
Mary Bier, Pacifica  
Jeff Aalfs, Portola Valley  
Giselle Hale, Redwood City  
Marty Medina, San Bruno  
Laura Parmer-Lohan, San Carlos  
Rick Bonilla, San Mateo  
Flor Nicolas, South San Francisco  
Jennifer Wall, Woodside

Pradeep Gupta, Director Emeritus  
John Keener, Director Emeritus

**Absent:**

Warren Slocum, San Mateo County  
Sam Hindi, Foster City

**A quorum was established.**

**PUBLIC COMMENT**

None



Jan Pepper, CEO, asked the Board to add an item to the Agenda that came up in the last 24 hours and was not able to be included in the Agenda when it was originally published. Jan explained the proposed Agenda item was to rescind the Resolution for Agenda Item 7 passed at the December 16, 2021 Board of Directors meeting. By rescinding this Resolution the Board would continue with the employment of Andy Stern as CFO.

**MOTION:** Director Bonilla moved, seconded by Director Parmer-Lohan to add to the Consent Calendar as item 2A, the inclusion of Staff's proposed additional Agenda item entitled, "Rescind approval of the Resolution passed by the Board on December 16, 2021, identified as Agenda Item 7 on that Agenda, which will result in Andy Stern continuing as Chief Financial Officer and Treasurer".

**MOTION PASSED:** 19-0 (Absent: San Mateo County, Colma, East Palo Alto, Foster City)

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 Hale	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 Wall	X			
	Totals	19			4

### **ACTION TO SET THE AGENDA AND APPROVE REMAINING CONSENT AGENDA ITEMS**

**MOTION:** Director Mates moved, seconded by Director Hale to set the Agenda, and approve Agenda Item Numbers 1-2A.

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 December 16, 2021 and January 18, 2022 Board of Directors Meetings.**
- 2A. **Rescind approval of the Resolution passed by the Board on December 16, 2021, identified as Agenda Item 7 on that Agenda, which will result in Andy Stern as Chief Financial Officer and Treasurer.**

**MOTION PASSED:** 20-0 (Absent: San Mateo County, Colma, Foster City)

<b>JURISDICTION</b>	<b>BOARD MEMBER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
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 Bigstych	X			
Portola Valley	Director Aalfs	X			
Redwood City	Director Hale	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 Wall	X			
	<b>Totals</b>	<b>20</b>			<b>3</b>

### **REGULAR AGENDA**

#### **3. Chair Report**

None

#### 4. Appointment of Ad-hoc Chair and Vice Chair Nominating Committee

Chair DeGolia appointed to the ad-hoc Chair and Vice Chair Nominating Committee: Julia Mates as Chair, Jeff Aalfs and Laura Parmer-Lohan.

**MOTION:** Director Bonilla moved, seconded by Director Romero to approve the three appointed Board Members to the Ad-hoc Chair and Vice Chair Nominating Committee.

**MOTION PASSED:** 20-0 (Absent: San Mateo County, Colma, Foster City)

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 Hale	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 Wall	X			
	Totals	20			3

#### 5. Appointment of Ad-hoc Citizens Advisory Committee (CAC) Nominating Committee

Kirsten Andrews-Schwind explained the role of committee members and asked for volunteers for the ad-hoc CAC Nominating Committee. Donna Colson, Marty Medina, Rick Bonilla, and Jeff Aalfs volunteered.

## 6. CEO Report

Jan Pepper, CEO, gave an update on the search for a COO and CFO, PG&E Generation Rate and Power Charge Indifference Adjustment (PCIA) Rate changes, the impact of Covid-19 on Peninsula Clean Energy's load, and Reach Code adoption.

Director Aalfs inquired about the rate change and the effects on the financial model. Jan explained that this would likely have a positive effect for Peninsula Clean Energy.

## 7. Citizens Advisory Committee Report

Morgan Chaknova, Citizens Advisory Committee (CAC) Chair, reported that the CAC is striving to align efforts with Peninsula Clean Energy's Strategic Goals including 100% renewable energy on a 24/7 basis by 2025, 100% GHG free by 2045 in all sectors, and supporting efforts around Reach Codes and Electric Vehicle charging. The CAC is currently interested in reviewing financial models to support these goals. Morgan also stressed equity and diverse representation from the ad-hoc nominating committee for new CAC members.

## 8. Approval of the 2022 Policy Platform (Action)

Marc Hershman, Director of Government Affairs, presented the 2022 Policy Platform to identify opportunities that further Peninsula Clean Energy's mission and strategic plan priorities.

Director Bonilla identified two proposed changes under section VII of the 2022 Policy Platform. Creating a new Section a.i. which state "Oppose policies that are not consistent with Peninsula Clean Energy's commitment to a sustainable workforce", and creating a new Section f. to read, "Assert Peninsula Clean Energy's Inclusive and Sustainable Workforce Policy wherever no such policy is present".

Vice Chair Colson suggested the addition of the phrasing, "including but not limited to" under item c.

Director Aalfs suggested that Director Bonilla's points could be added to Section a. so that it reads, "Support policies that are consistent **and oppose policies that are not consistent** with Peninsula Clean Energy's commitment to a sustainable workforce and **assert Peninsula Clean Energy's Inclusive and Sustainable Workforce Policy wherever no such policy is present.**"

Marc asked for clarification on how the second addition, "assert Peninsula Clean Energy's Inclusive and Sustainable Workforce Policy wherever no such policy is present" would fit into this policy.

Chair DeGolia elaborated that it would not be advisable for Peninsula Clean Energy to proactively oppose any bill in the legislature that was not consistent with Peninsula Clean Energy's commitment to a sustainable workforce.

Public Comment: Mark Roest

**MOTION:** Director Bonilla moved, seconded by Director Coleman to approve and adopt the Peninsula Clean Energy Authority Policy Platform for Calendar Year 2022 with the following proposed changes:

#### Section VII - Local Economic Development

- a. "Support policies that are consistent **and oppose policies that are not consistent** with Peninsula Clean Energy's commitment to a sustainable workforce and **assert Peninsula Clean Energy's Inclusive and Sustainable Workforce Policy wherever no such policy is present.**"
- c. "Support efforts to enhance the development of local and regional sources of renewable energy, **including but not limited to** solar, wind, offshore wind, small hydro, and geothermal energy."

Director Bigstyk asked for more insight on the legislative process and how this language guides Peninsula Clean Energy's efforts. Marc explained that Policy 10 in Peninsula Clean Energy's Policy handbook guides how we filter legislation, and that additional section may lead to an expanded portfolio of legislation Peninsula Clean Energy needs to engage with.

Jan Pepper, CEO, cautioned against asserting our policies where no such policy is present as this goes beyond Peninsula Clean Energy's capabilities as an energy company.

Director Mackin expressed support of the language changes.

Vice Chair Colson expressed concerns with the workload involved with expanding our purview to include labor. She suggested that the focus remain on the energy sector. Director Bonilla clarified that he was only speaking to the labor within energy bills.

Director Hale suggested that the language change could be used only when evaluating legislation in energy and that this may influence those in other energy fields to move to clean energy.

Director Bonilla decided that his first amendment, to oppose policies that are not consistent with Peninsula Clean Energy's commitment to a sustainable workforce, could be removed from the motion.

**AMENDED MOTION** to remove "Assert Peninsula Clean Energy's Inclusive and Sustainable Workforce Policy wherever no such policy is present" from Section VII, section a.

**MOTION:** Director Bonilla moved, seconded by Director Coleman to approve and adopt the Peninsula Clean Energy Authority Policy Platform for Calendar Year (CY) 2022 with the following proposed changes:

#### Section VII - Local Economic Development

- a. "Support policies that are consistent **and oppose policies that are not consistent** with Peninsula Clean Energy's commitment to a sustainable workforce."
- c. "Support efforts to enhance the development of local and regional sources of renewable energy, **including but not limited to** solar, wind, offshore wind, small hydro, and geothermal energy."

**MOTION PASSED: 21-0 (Absent: San Mateo County, Foster City)**

<b>JURISDICTION</b>	<b>BOARD MEMBER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
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 Hale	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 Wall	X			
	Totals	21			2

**9. Update on the California Community Power (CC Power) Long Duration Storage Project Vote on January 19, 2022 (Discussion)**

Jan Pepper, CEO, gave an update on the CC Power Long Duration Storage Project including a unanimous vote by the CC Power board approving the Long Duration Storage Project at the January 19, 2022 Board Meeting. The participating CCA's will have to bring this item to their respective boards for approval within the next 90 days; Peninsula Clean Energy completed approval of this item at the January 18, 2022 Special Meeting.

**10. Approval of E-Bikes Update and Additional Budget (Action)**

Phillip Kobernick, Programs Manager, gave a presentation on the E-Bikes for Everyone Program including history on the program, the growth of E-Bike usage, key metrics from rebate recipients, and potential program challenges.

Director Nash asked about ways to support local bike shops and the influence of partnering with Ride Panda, which is an online retailer. Phillip explained that in-person bike shops have low

inventory of affordable bikes. The increase in Ride Panda is based on expectations from the first round of this program but leaves room for local purchasing options as well.

Director Mates offered her support of the program updates which includes supporting offline applications through affordable housing partnerships.

Director Daus-Magbual, Director Rarback and Director Hale offered their support of this program.

Director Romero asked for clarification on how income is certified and the reliability of mileage data. Phillip explained that a number of options are accepted for income verification including enrollment in numerous community programs or a filed tax return. He also explained that Peninsula Clean Energy is collaborating with UC Davis, who is evaluating the effectiveness of various E-Bike rebate programs across the state, and that the survey used is a template that they provided. Data is generated from self-reporting and odometer readings.

Director Romero suggested a lottery system to pick rebate recipients since the E-Bikes for Everyone program was oversubscribed very quickly in the first round. Chair DeGolia supported slowing down the application period to allow everyone who is interested in applying for a rebate, and then selecting via a lottery system. He also supported contacting those who were not selected in the first round of this program to re-apply.

Vice Chair Colson offered suggestions on scalability including offering a smaller rebate for all who are interested, regardless of income, and offering an e-bike rental opportunity through the library system. Director Parmer-Lohan offered the suggestion of additional funding to support a local retailer program and to target communities where there are gaps in alternate transportation options. Director Fung offered the suggestion of reaching out to local businesses for deliveries or to non-profits providing deliveries to senior citizens.

**MOTION:** Director Bonilla moved, seconded by Director Daus-Magbual to approve a Resolution approving a \$300,000 budget increase for the E-bikes for Everyone program and a contract increase Not-to-Exceed \$450,600 with Elektra Mobility Inc. dba "RidePanda".

**MOTION PASSED:** 21-0 (Absent: San Mateo County, Foster City)

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 Hale	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 Wall				X
Totals					4

### 11. Report on Outreach Grants (Discussion)

Kirsten Andrews-Schwind, Senior Manager of Community Relations, gave a report on the fourth round of Community Outreach Grants including background and desired outcomes of the Outreach Grant Program.

Vanessa Shin, Community Outreach Associate, gave a report detailing the 2021 and 2022 applicants.

Chair DeGolia expressed gratitude for the presentation and suggested these community partners as potential sources of new members for the Citizens Advisory Committee.

### 12. Board Members' Reports

None

### **ADJOURNMENT**

Meeting was adjourned at 8:43 p.m.



**PENINSULA CLEAN ENERGY AUTHORITY  
Board Correspondence**

**DATE:** February 11, 2022  
**BOARD MEETING DATE:** February 24, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority Present

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** Leslie Brown, Director of Account Services, Peninsula Clean Energy Authority

**SUBJECT:** JPA (Joint Powers Authority) Weighted Voting Shares Allocation

**RECOMMENDATION:**

Approve recalculated weighted voting shares based on 2021 annual energy consumption.

**BACKGROUND:**

As the Board is aware, the Joint Powers Authority (JPA) Agreement creating Peninsula Clean Energy includes a “weighted” voting option. The voting procedure is as follows: votes are first taken by simple majority vote. Voting automatically ends if the majority votes against an agenda item. However, if there is a majority vote for approval of an agenda item, a “weighted” vote by shares can be called by any Board member. Weighted votes are covered by Section 3.7 of the Joint Powers Authority:

3.7 Voting In general, as described below in Section 3.7.3, action by the Authority Board will be taken solely by a majority vote of the Directors present. However, as described below in Section 3.7.4, upon request of a Director, a weighted vote by shares will also be conducted. When such a request is made, an action must be approved by both a majority vote of Directors present and a majority of the weighted vote by shares present. No action may be approved solely by a vote by shares.

Specifically, sections 3.7.1, 3.7.2, 3.7.3 and 3.7.4 state the following:

**3.7.1 Voting Shares**

Each Director shall have a voting share as determined by the following formula: (Annual Energy Use/Total Annual Energy) multiplied by 100.

3.7.2. Exhibit Showing Voting Shares. The initial voting shares will be set forth in Exhibit D. Exhibit D shall be revised no less than annually as necessary to account for changes in the number of Parties and changes in the Parties' Annual Energy Use. Exhibit D and adjustments shall be approved by the Board.

3.7.3. Approval Requirements Relating to CCA Program. Except as provided in Sections 3.7.4 and 3.7.5 below, action of the Board shall require the affirmative vote of a majority of Directors present at the meeting.

3.7.4. Option for Approval by Voting Shares. Notwithstanding Section 3.7.3, any Director present at a meeting may demand that approval of any matter related to the CCA Program be determined on the basis of both voting shares and by the affirmative vote of a majority of Directors present at the meeting. If a Director makes such a demand with respect to approval of any such matter, then approval of such matter shall require the affirmative vote of a majority of Directors present at the meeting and the affirmative vote of Directors having a majority of voting shares present, as determined by Section 3.7.1 except as provided in Section 3.7.5.

If, pursuant to the weighted vote of the present members, the item is rejected or approved, the weighted vote prevails. In other words, the weighted vote can serve as a possible veto of the simple majority vote.

## **DISCUSSION:**

Staff has recalculated the weighted shares based on usage from 2021 and prepared revised Exhibits C and D to be attached to the Joint Powers Authority Agreement. The JPA states that the values for Annual Energy Use will be designated in Exhibit C and shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year. These adjustments shall be approved by the Board. The Exhibits C and D Annual Energy Use and Voting Shares were last updated and approved by the Board on February 25, 2021.

The table below includes the weighted shares for each service territory or member of the JPA based on data sourced from billing data provided by PCE's Data Management Provider, Calpine Energy Solutions, based on billing records for 2021. Staff is requesting Board approval of this revised schedule:

2021 Peninsula Clean Energy Voting Shares Distribution	
Service Territory	Distribution Weight (%)
SO SAN FRANCISCO INC	13.60%
REDWOOD CITY INC	12.43%
SAN MATEO INC	11.86%
MENLO PARK INC	7.38%
DALY CITY INC	7.09%
UNINC SAN MATEO CO	6.43%
FOSTER CITY INC	5.20%
BURLINGAME INC	4.90%
SAN CARLOS INC	4.39%
SAN BRUNO INC	3.59%
PACIFICA INC	2.62%
BELMONT INC	2.51%
MILLBRAE INC	2.20%
EAST PALO ALTO INC	1.83%
BRISBANE INC	1.75%
ATHERTON INC	1.63%
HILLSBOROUGH INC	1.63%
HALF MOON BAY INC	1.59%
WOODSIDE INC	1.16%
PORTOLA VALLEY INC	0.62%
COLMA INC	0.53%
LOS BANOS INC	5.06%
<b>Total</b>	<b>100.00%</b>

**RESOLUTION NO. \_\_\_\_\_**

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

\* \* \* \* \*

**RESOLUTION ADOPTING AN UPDATED WEIGHTED VOTING SHARES  
ALLOCATION FOR EXHIBITS C AND D TO THE JOINT POWERS AUTHORITY  
(JPA) AGREEMENT BASED ON 2021 ENERGY USAGE**

---

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

**WHEREAS**, the JPA creating Peninsula Clean Energy Authority includes a weighted voting option; and

**WHEREAS**, the voting share allocation shall be updated annually based on energy usage: and

**WHEREAS**, Peninsula Clean Energy Authority staff has re-calculated the weighted voting allocation based on 2021 energy usage.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the Board adopt the updated voting shares allocation and replace the existing Exhibits C and D to the Joint Powers Authority (JPA) Agreement with the revised Exhibits C and D prepared by Peninsula Clean Energy staff.

\* \* \* \* \*

**Exhibits C and D**  
**Annual Energy Use and Voting Shares**

<b>ANNUAL ENERGY USE WITHIN PENINSULA CLEAN ENERGY JURISDICTIONS AND VOTING SHARES</b>	
Twelve Months Ended December 2021	
<u>Party</u>	<u>Voting Share</u>
SO SAN FRANCISCO INC	13.60%
REDWOOD CITY INC	12.43%
SAN MATEO INC	11.86%
MENLO PARK INC	7.38%
DALY CITY INC	7.09%
UNINC SAN MATEO CO	6.43%
FOSTER CITY INC	5.20%
LOS BANOS INC	5.06%
BURLINGAME INC	4.90%
SAN CARLOS INC	4.39%
SAN BRUNO INC	3.59%
PACIFICA INC	2.62%
BELMONT INC	2.51%
MILLBRAE INC	2.20%
EAST PALO ALTO INC	1.83%
BRISBANE INC	1.75%
ATHERTON INC	1.63%
HILLSBOROUGH INC	1.63%
HALF MOON BAY INC	1.59%
WOODSIDE INC	1.16%
PORTOLA VALLEY INC	0.62%
COLMA INC	0.53%
<b>Total</b>	<b>100.00%</b>

**PENINSULA CLEAN ENERGY  
JPA Board Correspondence**

**DATE:** Feb. 11, 2022  
**BOARD MEETING DATE:** Feb. 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:** Reach Code Assistance Extension Approval (Action)

**RECOMMENDATION**

Approve the proposed two-year extension of the reach codes technical assistance contract beginning July 30, 2022 and additional budget of \$750,000 for a total not to exceed amount of \$1.6 million, with \$400,000 of that amount to be covered by PCE.

**BACKGROUND**

In September 2018, the Board approved the PCE Program Roadmap, which identifies programs for 2019 and beyond to include transportation measures on EV Infrastructure as well as Building Electrification. Building codes provide effective support for building decarbonization and EV readiness. In January 2019 the Board approved a contract with TRC Engineers to provide technical assistance to local governments for the development of enhancements to local building codes, known as “reach codes”, to deliver increased EV readiness and all-electric buildings. This program is in partnership with Silicon Valley Clean Energy (SVCE) and the San Mateo County Office of Sustainability. SVCE is sharing the costs. The initial TRC contract covered the period January 25, 2019 to June 30, 2020 and was for \$300,000 with approximately \$144,000 covered by SVCE. The contract has been amended twice to extend the contract term to July 30, 2022 and enhance the program with developers’ technical assistance, contractor training and support for development of existing building code resources. The first amendment was approved by the Board in January 2020 for an additional \$450,000 which is ongoing and being shared roughly evenly with SVCE. The second amendment was for \$100,000 was specific to Peninsula Clean Energy and focused on analysis and code model development for prospective existing building codes in partnership with Menlo Park. With the third amendment proposed here the total value of the contract would be \$1.6 million. Peninsula Clean Energy net expenses are projected to be approximately \$900,000 under the contract. The allocation of costs are determined in part by the amount of technical assistance requested within each jurisdiction.

The program has been highly successful and is unique nationally. To date, 13 local governments in San Mateo County have adopted some form of new construction reach code covering over 75% of the County population. In SVCE territory, 12 agencies adopted reach codes and 15 local governments overall in Santa Clara County. Finally, other regions piggybacked on the PCE

approach including East Bay Clean Energy, covering Alameda County, where an additional 6 agencies adopted similar codes. Nearly all of these adopting agencies' reach codes were based on the Peninsula Clean Energy/SVCE model codes.

The adoption by local governments in San Mateo and Santa Clara Counties account for nearly half the reach codes adopted in the state (54). In addition, the adoption of local codes has played a significant role in developers committing to all-electric construction in the state and for the state code becoming more oriented towards all-electric construction in the new 2022 code cycle.

These model codes are highly innovative and developed with extensive community input. The building electrification new construction model code was based on the approach developed by the City of Menlo Park and provides for all-electric new construction across most building types. The model codes for electric vehicle (EV) readiness provided very high EV readiness including ensuring all multifamily residents in new buildings have immediate access to EV charging. In both cases, individual jurisdiction have adapted the models based on specific local needs.

As part of the ongoing Reach Codes program the following services are being provided:

- a) a public process for development of model reach codes,
- b) model codes for agencies to consider refining and adopting,
- c) technical assistance and tools to agencies for adoption and implementation,
- d) technical assistance for developers to meet reach code requirements, and
- e) grants of \$10,000 for cities and counties considering reach codes.

The current contract for the lead consultant, TRC, expires July 30, 2022.

## **DISCUSSION**

California adopts updated building codes every three years and has entered into the 2022 code cycle. Cities and counties are required to update their building codes with the new state code this year. Jurisdictions may adopt code enhancements at any time but it is practical to do so at the time as part of the state code cycle. The updated state codes take effect January 1, 2023.

The 2022 state codes increase the level of electrification and EV readiness compared to the 2019 state code. This includes requiring new homes to have either electric space heating or electric water heating. In addition, EV charging requirements have been increased. However, neither the electric building nor EV readiness provide the same level of decarbonization provided by the locally adopted reach codes.

To support local governments in the 2022 code cycle, Peninsula Clean Energy and SVCE are working with TRC to develop updated model codes appropriate for the new code cycle. In addition, some agencies have expressed interest in exploring opportunities for existing building codes. The draft model codes are intended to sustain the benefits of the new construction codes adopted in the last three years and provide options for potential existing building codes. East Bay Community Energy has joined the effort to provide a common set of codes across the majority of the Bay Area. The draft model codes are being published on an updated website now at [BayAreaReachCodes.org](http://BayAreaReachCodes.org) and local government and community feedback is being solicited through a series of workshops occurring this month. The draft model codes will be refined based on the feedback received.

However, adoption of the state code will occur in the third and fourth quarters of the year due to the timing of release of materials by the state. Reach codes may be adopted concurrently but

many adopting agencies also adopted in the subsequent year or beyond. This is expected to be true again in this cycle, especially for any agencies considering existing building codes. Because the adoption process will extend beyond the summer, a contract extension is proposed to ensure local governments can continue to receive support. In addition, the proposed extension would address some current program needs.

Overall the extension includes:

1. **2022 New Construction Codes:** support for local government reach code renewals and new adopters
2. **Existing Building Reach Codes:** refinement of code models, resources, and support for early adopters
3. **Developer Technical Assistance:** continued support for designers and developers to meet requirements
4. **Building Characterization and Cost Study:** analysis of local building types and costs for replacement, especially important for existing building programs and codes
5. **Permitting Improvements:** SVCE specific task to support permitting process improvements in their jurisdiction

Based on preliminary indications received from city and county staff via the County Office of Sustainability, Peninsula Clean Energy anticipates that all agencies with reach codes currently anticipate bringing renewals to their Councils. In addition, several other cities within the service territory have begun processes to do so.

### **FISCAL IMPACT**

The existing Reach Code Technical Assistance contract would be extended until July 2024 for a total budget of \$750,000, shared with SVCE. SVCE is estimated to cover approximately \$350,000 with the amount to be covered by Peninsula Clean Energy as \$400,000. The exact balance between Peninsula Clean Energy and SVCE will be based on actual utilization of the technical assistance between the service territories.

### **STRATEGIC PLAN**

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

Goal 3 – Community Energy Programs, Objective A:

- Key Tactic 3: Ensure nearly all new construction is all-electric and EV ready
- Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders



**RESOLUTION NO. \_\_\_\_\_**

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

**\* \* \* \* \***

**RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER  
TO EXTEND AN AGREEMENT WITH TRC ADVANCED ENERGY TO PROVIDE  
BUILDING REACH CODE CONSULTING SERVICES, IN AN AMOUNT NOT TO  
EXCEED \$750,000, FOR A TOTAL NOT TO EXCEED AMOUNT OF \$1.6 MILLION,  
WITH \$400,000 OF THAT AMOUNT TO BE COVERED BY PENINSULA CLEAN  
ENERGY OVER TWO YEARS, BEGINNING JULY 30, 2022, AND 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**, PCE was formed on February 29, 2016; and

**WHEREAS**, assisting local governments in adopting and implementing building  
reach codes to reduce greenhouse gasses is part of PCE's program roadmap approved  
by the Board; and

**WHEREAS**, PCE issued an RFP on November 26, 2018, and received six  
proposals to provide these services; and

**WHEREAS**, TRC Advanced Energy was selected for their experience with the State of California building codes, building code development, and working with local governments; and

**WHEREAS**, PCE staff and TRC Advanced Energy executed an agreement on January 25, 2019, subsequently extended, whose funding will expire in July 2022; and

**WHEREAS**, PCE has determined that additional technical assistance for local governments, developers and contractors is required for successful adoption and implementation of reach codes in new construction; and

**WHEREAS**, PCE and Silicon Valley Clean Energy jointly funded the contract with TRC Advanced Energy and Silicon Valley Clean Energy has expressed interest in continuing to fund the extension in the amount of approximately \$350,000; and

**WHEREAS**, the Board wishes to delegate to the Chief Executive Officer authority to update the scope and execute the aforementioned extension Agreement in an amount not to exceed \$750,000 over two years which includes an estimated \$350,000 funded by Silicon Valley Clean Energy for services in its territory.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the Board delegates authority to the Chief Executive Officer to: Finalize and execute an extension Agreement with the Contractor in an amount not to exceed \$750,000 over two years and in a form approved by the General Counsel in a form approved by the General Counsel.

\* \* \* \* \*

**AMENDMENT NO. 2 TO AGREEMENT BETWEEN PENINSULA CLEAN ENERGY AND TRC Engineers,  
Inc. \_\_\_\_\_**

THIS AMENDMENT TO THE AGREEMENT, entered into this March 16, 2022, by and between PENINUSLA CLEAN ENERGY, a California joint powers authority, hereinafter called "PCE," and TRC Engineers, Inc., hereinafter called "Contractor";

**W I T N E S S E T H:**

WHEREAS, the parties entered into an Agreement on January 25, 2019, for the purpose of Contractor's delivery of Reach Code adoption assistance to San Mateo County and its municipalities ("Agreement"); and

WHEREAS, PCE has determined that additional technical assistance for local governments, developers, and contractors is required for successful adoption and implementation of Reach Codes in new construction; and

WHEREAS, PCE has determined that development of local policies to advance building electrification and electric vehicle readiness is instrumental to achieving its decarbonization goals;

WHEREAS, the parties wish to amend the Agreement to increase the maximum amount by   \$750,000   to an amount not to exceed \$1,600,000 for the purpose of providing additional policy development support and replicable tools for existing building decarbonization as described in the amended scope of work.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. The contract schedule is extended, and paragraph 3 "Term" shall be amended to include a contract end date of July 30, 2024. The parties understand that all contract tasks shall be completed by that date.
2. The text of "Exhibit A" shall be revised to append 2.5.3, append 2.6.3, and replace Section 5 as described in this amendment Attachment A.
3. The text of "Exhibit B" shall be deleted and replaced in their entirety with the updated Attachment B as attached to this amendment.
4. Except as expressly amended herein, all other provisions of the Agreement shall remain in full force and effect.
5. This Amendment No. 3 shall take effect upon the date of execution by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as set forth below.

Peninsula Clean Energy Authority

By: \_\_\_\_\_  
Janis C. Pepper, CEO

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

## **Attachment A**

Ongoing tasks specified in tasks 1 through 4 of the contract remain required unless completed or otherwise directed by PCEA.

### **2.5.3 Municipal Readoption Technical Assistance**

Consultant will work with local governments to provide support for readoption of reach codes as appropriate.

### **2.6.3 Municipal Readoption Implementation Technical Assistance**

Consultant will work with local governments to provide support for implementation of updated and readopted reach codes as appropriate.

## **5 Model Code Updates**

### **5.1 Updates to 2022 Model Codes**

Consultant will work with PCEA, the San Mateo County Office of Sustainability (OOS), and Silicon Valley Clean Energy (SVCE and their member agencies to refine Model Reach Codes as-needed. Model Reach Codes for the 2022 cycle have already been developed, and should be substantially final before the initiation of the contract.

Model code options will include:

1. New Construction all-electric municipal ordinance
2. New Construction all-electric Chapter 11 (CalGreen) Reach Code
3. New Construction EV Ready zoning code amendment
4. Existing Building Electrification and EV Readiness Reach Code

#### **Deliverables:**

1. Refine and maintain up to date the model codes as needed based on stakeholder input with approval from PCE

## **6 Update Tools and Processes for Adoption and Implementation**

Consultant shall update tools from previous code cycle, and create new tools if required, to facilitate adoption or readoption and implementation of Reach Codes. This task includes identifying tools and process improvements to consider for 2.5 and 2.6. This may include but is not limited to:

### **6.1.1 Adoption tools**

This includes template staff reports, findings for local governments to use when submitting Building codes to the California Building Standards Commission for acceptance (if required,) and/or other tools needed to move forward with the code adoption process at the local government and State level. This includes developing a proposed reach code template presentation for municipality staff use in presenting to their city councils.

**Deliverable:** List of Adoption Tools to develop with descriptions

**6.1.2 *Implementation tools***

This includes building department training, permit and inspection processes streamlining (including documenting all process efficiencies and benefits enabled by a suite of proposed streamlined permitting processes), educating builder community, and/or other tools needed to move forward with the code implementation process.

Recommendations and deliverables will be developed with and vetted by the interested municipalities, development community, and other key stakeholders.

**Deliverable:** List of Implementation Tools to develop with descriptions

## **7 Segmentation & Costs Study**

### **7.1 Perform buildings characterization and market segmentation study**

Consultant shall work with PCE and SVCE to determine the existing makeup of buildings types, occupants, businesses, and gas-fired systems in each territory. The data will be used in conjunction with Existing Buildings Reach Codes efforts, as well as long-range Programs planning by each CCA. Expected data sources include, but are not limited to: Census, American Community Survey, Residential Appliance Saturation Survey, Commercial End Use Survey, Urban Footprint, tax assessor database, permit databases, planning documents, Urban Footprint, Zillow, Loopnet, Costar, etc.

Information shall be saved such that different specific segments can be analyzed against one another for more granular detail and insights. Information to be gathered includes:

Provide a list of data sources mapped to each requested item.

#### **Deliverables:**

1. Proposed data sources and methodologies - A table showing all proposed data sources and methodologies to be used for each portion of the segmentation study.
2. Residential building segmentation study for San Mateo County & Los Banos – analysis of and summary of data needs outlined in 7.1.1
3. Residential building segmentation study for SVCE Territory - analysis of and summary of data needs outlined in 7.1.1
4. Commercial building segmentation study for San Mateo County & Los Banos - analysis of and summary of data needs outlined in 7.1.2
5. Commercial building segmentation study for SVCE Territory - analysis of and summary of data needs outlined in 7.1.2

#### **7.1.1 Residential building segmentation study data needs**

1. What Buildings Do We Have? Residential units broken down by:
  - a. Type (single-family, multi-family of various configurations, etc)
  - b. Size
  - c. Vintage
2. Who is in them? (possible source – US census)
  - a. Income-level by each building type
  - b. Owner vs. Renter occupied
3. What equipment is in them? (possible source – RASS)
  - a. Air conditioning saturation
  - b. Type of equipment
    - i. Space heating
    - ii. Water heating
    - iii. Cooking
    - iv. Clothes drying
  - c. Pools and spas
    - i. Pool saturation
    - ii. Gas-fired spa saturation

- iii. Electrically-heated spa saturation
  - d. Fireplaces (if available in RASS)
    - i. Gas fireplace saturation
    - ii. Propane fireplace saturation
    - iii. Wood fireplace saturation
    - iv. Electric fireplace saturation
  - e. Hard-piped BBQs (if available in RASS)
    - i. Gas BBQ saturation
    - ii. Propane BBQ saturation
    - iii. Electric BBQ saturation
- 4. When will that equipment be replaced?
  - a. Replacement rate for each type of equipment per year
  - b. Useful life of each type of equipment

### **7.1.2 Commercial building segmentation study**

- 5. What Buildings Do We Have? Commercial buildings broken down by:
  - a. Type (single-tenancy, multi-tenancy)
  - b. Size
  - c. Number of floors
  - d. Occupancy type
- 6. Who is in them?
  - a. Commercial
    - i. Owned or rented
    - ii. Company type
- 7. What equipment is in them? (focusing only on small commercial building segment)
  - a. Air conditioning saturation
  - b. Types of equipment
    - i. Space heating
    - ii. Water heating
    - iii. Cooking
    - iv. Clothes drying
  - c. Pools and spas
    - i. Pool saturation
    - ii. Gas-fired spa saturation
    - iii. Electrically-heated spa saturation
- 8. When will that equipment be replaced?
  - a. Replacement rate for each type of equipment per year
  - b. Useful life of each type of equipment

## **7.2 Determine regionally-specific costs of existing building electrification measures**

Consultant shall determine regionally-specific costs of existing building electrification measures. The goal of this task is to provide fully defensible and robust cost capital costs and energy costs to better inform constituents, building owners, council, city staff, and CCA staff. Locally-specific costs rooted in real-world installation examples are preferred (where available.)

### **Deliverables:**

- 1. Proposed data sources and methodologies - A table showing all proposed data sources and methodologies to be used for each portion of the costs study.

2. Residential equipment and installation costs – residential equipment costs as outlined in 7.2.1
3. Commercial equipment and installation costs – commercial equipment costs for specific building types as outlined in 7.2.2
4. Benchmark energy use for key building types – as outlined in 7.2.3

#### **7.2.1 Equipment and Installation Costs**

Consultant shall identify available data sources for each of the following measures and vet the level of trust of that data source with PCE & SVCE. Consultant will then summarize the average, median, low, and high total installed replacement cost for each equipment type. If high costs range by more than 75% from median, consultant will list the particular driving factor of cost ranges for that equipment replacement. Consultant shall focus on replacing gas systems, as opposed to electric-to-electric conversions. In-kind replacement costs for all equipment shall also be provided. PCE is planning to analyze costs for single-family water heating, cooking, and clothes drying outside of this contract.

1. Single-family residential equipment
  - a. Space heating
    - i. Ducted split heat pump (single zone for entire house)
    - ii. Ducted split system heat pump (one zone for each floor in two-story house)
    - iii. Ductless split heat pump (1, 2, 3, and 4 head configurations)
    - iv. Mini ducted split system (2, 3, and 4 head configurations)
  - b. Pool
    - i. Heat pump pool heater
2. Commercial Equipment
  - a. Space heating
    - i. Rooftop packaged heat pumps
    - ii. VAV boiler to heat pump conversion
  - b. Water heating
    - i. Unitary heat pump water heater
    - ii. Central heat pump hot water domestic hot water systems
  - c. Pools
    - i. Heat pump pool heater

#### **7.2.2 Benchmark annual energy use and cost by end use**

Consultant shall provide the estimated annual gas use and annual associated energy costs for each piece of equipment for the building types listed below. Energy use and costs will be provided both for the baseline gas appliances and for the proposed electrified replacements.

1. Single-family residential
2. Manufactured home
3. Multi-family residential
4. Small office
5. Medium office
6. Large office
7. Small retail (store)



## 8 Permitting Support

Collect permit cost data for each of SVCE's thirteen member jurisdictions for the following electric appliances and their fossil fuel counterparts: heatpump water heater, heatpump HVAC, induction cooktop/range, electric vehicle charging (L2 and L3) and develop a comparative analysis.

Based on findings of analysis provide consultation to SVCE staff on potential elements of a future permitting simplification incentive program.

### Deliverables

1. Comparison table of permit costs by type and jurisdiction
2. Slide deck summarizing incentive recommendations
3. Three advisory meetings with SVCE staff

## 9 Schedule

Task	Due Date(s)
5 Model Code updates	Ongoing
6.1.1 Adoption Tools	August 1, 2022
6.1.2 Implementation Tools	November 30, 2022
7.1 Segmentation: Proposed data sources and methodologies	March 8, 2022
7.1 Residential building segmentation analysis for San Mateo County and Los Banos	April 30, 2022
7.1 Commercial building segmentation analysis for San Mateo County and Los Banos	June 1, 2022
7.1 Residential and Commercial building segmentation analysis for SVCE territory	June 30, 2022
7.2 Costs: Proposed data sources and methodologies	March 20, 2022
7.2 Residential equipment and installation costs	May 15, 2022
7.2. Commercial equipment and installation costs	May 15, 2022
7.2 Benchmark energy use and costs	May 30, 2022

The schedule is subject to revision as mutually determined by PCE and TRC.

## **Attachment B**

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, PCEA shall pay Contractor based on the following fee schedule and terms:

1. Time and materials up to \$126,000 cost for administration, model code development and cost-effectiveness analysis (Task 1, Task 2.1 through 2.4, inclusive).
2. Time and materials up to \$174,000 adoption and implementation support (Task 2.5 and 2.6). These costs are not to exceed \$10,000 per municipality unless approved by PCE.
3. The contract fee amount added by the March 20, 2020 amendment shall not exceed \$450,000 for all the tasks as described below:

Task 2.5 and 2.6	\$60,000
Task 3.1	\$343,500
Task 3.2	\$46,500
Total	\$450,000

The individual task amount as described above may be reassigned with prior PCE approval.

4. The contract fee amount added by the March 2022 amendment shall not exceed \$750,000 for all the tasks as described below:

Task #	Task	Budget
1	Administration	\$100,000
5	Model Code Updates	\$20,000
2.6.2	NC Reach Code Implementation	\$100,000
2.6.2	EB Reach Code Implementation	\$75,000
6	Implementation Tools	\$30,000
3.1.2	Developer Technical Assistance	\$250,000
7	Characterization & Costs Study	\$150,000
8	Permitting Support	\$25,000
	<b>Total</b>	<b>\$750,000</b>

The individual task amount as described above may be reassigned with prior PCE approval.

5. Billings will utilize the rate schedules below as fully loaded rates. Non-labor expenses are not to exceed \$13,500.
6. Invoices may be submitted no more than monthly, with hours identified by staff, rate and sub-task (ex: 2.1, 2.2, etc.). Invoices for tasks 2.5 and 2.6 must also be sub-totaled by municipality served. Invoices for task 3.1.2 must also be sub-totaled by developer served and for task 3.2 by training.

### **TRC Rate Schedule**

Title	Hourly Rate	Staff
Vice President	\$275	Cathy Chappell, Abhijeet Pande
Associate Vice President	\$230	Katie Wilson
Engineering Director	\$210	Gwelen Paliaga, Colman Snaith, Dhananjay Mangalekar
Associate Director	\$190	Michael Mutmanskys, Marian Goebes
Senior Project Manager	\$175	Nicholas Dunfee, Michael Maroney, Daniel Wildenhaus, Farhad Farahmand, Dove Feng
Project Manager	\$160	Rupam Singla, Siobhan McCabe, Ritesh Nayyar, Pratap Jadhav
Associate Project Manager II	\$145	Mayra Vega, Matt Jones
Associate Project Manager	\$115	Avani Goyal, Yamini Arab, Parul Gulati, Kristin Bellows
Research Associate	\$105	Neil Perry, Mia Nakajima, Yolanda Beesemyer, Richard Williams

#### DNV GL Rate Schedule

Title	Hourly Rate
Project Lead	\$210
Senior Engineer	\$185
Analyst	\$155
SME	\$205

#### Sub-Contractor Rate Schedule

TRC has assembled a list of potential sub-contractors to engage. TRC will engage with subcontractors for the top four areas of expertise and contract, with at least one per area of expertise, within 15 days of PCE contract execution. TRC will provide resumes/CVs of each experts to PCE and SVCE for review prior to executing subcontracts, and execute subcontracts within 60 days of PCE contract execution. Additional sub-contractors may be enrolled with PCE approval. Rates are not to exceed: \$280 per hour.

#	Expertise	Organization	Staff	Status	Hourly Rate	Resumes
1	Affordable Housing Expert(s)	Redwood Energy	Sean Armstrong	Confirmed	\$175	Yes
		Association for Energy Affordability	Nick Young, Andy Brooks, Nick Dirr, John Neal, Sheetal Chitnis, Jack Aitchison	Confirmed	\$175	Yes
2	Central Water Heating Expert(s)	Ecotope	Shawn Oram, Colin Grist, Kristine Adamich, Katie Glore	Confirmed	\$220, \$180, \$170, \$165	Yes
3	Food Service Equipment/ Commercial Kitchens	Frontier Energy	David Zabrowski, Richard Young, Todd Bell, Denis Livchck	Confirmed	\$280, \$265, \$189, \$189	Yes

#	Expertise	Organization	Staff	Status	Hourly Rate	Resumes
4	Commercial All-electric Design Expert	Integral Group	Andrea Traber, John Andary, Daniel Castro, Jared Landsman, Brenden McEaney, Eric Soladay Solrain	Confirmed	\$280	Yes
		Western Allied Mechanical	Todd Gottshall, Laurens Vaneveld	Confirmed	\$150	Yes
		Smith Group	Stet Sanborn	Confirmed	\$280	Yes
		Guttman Blaevoet	Ted Tiffany, Steve Guttman, Jeff Blaevoet	Confirmed	\$280	Yes
		Meyer+	Paul McGrath, Susie See, Adam Kyle	Confirmed	\$280, \$250	Yes
		EHDD	Scott Shell	Confirmed	\$280	Yes
		CRB	Jeff Wegner	Confirmed	\$250	Yes
5	Electric Vehicle Charging Design Expert	EV Charging Pros	John Kalb	Confirmed	\$250	Yes
6	Single family Design Expert	IDeAs Consulting	David Kaneda	Confirmed	\$275	Yes
7	Financing Strategies	ARUP	TBD	TBD	TBD	TBD

**PENINSULA CLEAN ENERGY AUTHORITY  
JPA Board Correspondence**

**DATE:** February 11, 2022  
**BOARD MEETING DATE:** February 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 Direction on CC Power Board Meeting Action (Action)

**RECOMMENDATION:**

Approve resolution directing the Chief Executive Officer to vote as a director on the California Community Power (CC Power) Board to approve the Energy Storage Services Agreement between California Community Power and Goal Line BESS 1, LLC and any necessary ancillary documents for a long duration energy storage (LDS) project with a delivery term of 15 years starting at the Commercial Operation Date on or about June 1, 2025

**BACKGROUND:**

CC Power has negotiated an energy storage services agreement for the Onward Goal Line project. This is the second project to be selected by CC Power through the 2020 LDS RFO. Peninsula Clean Energy chose not to participate in this project to allow room in its portfolio for non-Lithium long duration storage options. As a member of the CC Power Board of Directors, Peninsula Clean Energy's CEO will be asked to vote to approve this contract for CC Power.

***Formation of CC Power***

In 2020, a group of CCAs came together to discuss forming a joint powers authority (JPA) called California Community Power (CC Power) to leverage their combined buying power to provide cost effective joint services, programs, and procurement of energy resources and products. In January 2021, Peninsula Clean Energy's Board voted for Peninsula Clean Energy to become a member of CC Power. The other CCAs that are members of CC Power include MCE, 3CE, SVCE, SJCE, RCEA, VCE, SCP, EBCE, and CPSF.

### ***Joint CCA Request for Information and Offers***

In June 2020, Peninsula Clean Energy along with 10 other CCAs issued a request for information (RFI) from LDS technology providers and project developers. The information collected through the RFI was used to develop a request for offers (RFO). This RFO was issued on October 15, 2020, and bids were due on December 1, 2020.

The joint CCAs received a robust response with 51 entities submitting offers representing over 9,000 MW. In collaboration with staff from the participating CCAs, these projects were evaluated through a two round evaluation process. Projects were scored based on value to the CCAs, locational value, development status, project viability and ability to meet resource adequacy requirements, technology viability, project team experience, compliance with workforce policy and environmental impact. Once CC Power was formed, CC Power as an organization took over the LDS RFO work that had been underway.

### ***CPUC MTR Procurement Mandate***

On June 24, 2021, the California Public Utilities Commission (CPUC) adopted D.21-06-035. This decision is commonly known as the mid-term reliability (MTR) procurement mandate. It directs load serving entities (LSEs) to collectively procure 11,500 MW<sup>1</sup> of new resources between 2023 to 2026 to meet mid-term grid reliability needs. The decision requires that contracts have a term of at least 10 years and that resources be zero-emission or eligible under the California renewable portfolio standard (RPS).

Specific category requirements were assigned to 4,500 MW of the requirement. One of the categories identified in the decision was long duration energy storage. Once this decision was issued, the CCAs focused the RFO negotiations to ensure that the identified project and contract terms would allow the project to count toward each of the CCAs obligations under this decision.

### ***Shortlist and Negotiations***

Staff conducted an extensive analysis of projects submitted through the LDS RFO to identify a shortlist of projects. The Onward Goal Line project was determined to be in the top tier of projects that would provide the most value to the CCAs. This shortlist was identified in June 2021 and at that time CC Power entered exclusivity with shortlisted projects and began negotiations.

CC Power conducted a solicitation process to identify counsel and a key negotiator to represent CC Power in its negotiations with counterparties identified through the LDS RFO process. CC Power retained Keyes and Fox and Gridwell Consulting to conduct the

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<sup>1</sup> Requirement measured as net qualifying capacity (NQC) rather than nameplate capacity. The CPUC issued a report identifying what percent of a technology's nameplate capacity would count toward this requirement. This means that each LSE's nameplate capacity is higher than the requirement identified in the decision.

ESSA negotiations.

Representatives from each of the participating CCAs met with the CC Power General Manager and the negotiating team on a weekly basis to receive updates on negotiating status and provide input to the negotiating process.

### ***Overview of Project***

<b>Project Name</b>	Goal Line BESS 1, LLC
<b>Technology</b>	Li-Ion Storage
<b>Storage Capacity</b>	50 MW / 400 MWh
<b>Commercial Operation Date</b>	6/1/2025
<b>Developer</b>	Southwest Generation Operating Company
<b>Location</b>	Escondido, San Diego County, CA

The Goal Line project is a 50 MW / 400 MWh lithium-ion battery storage facility located in Escondido, CA in San Diego County. The Commercial Operation Date is June 1, 2025.

Under the contract, CC Power will pay for the use of the storage project at a fixed-price rate per kW-month, with no escalation, for the full term of the contract (15 years). CC Power is entitled to all product attributes from the facility, including energy arbitrage, ancillary services, and resource adequacy.

### ***Environmental Review***

Peninsula Clean Energy staff worked with several environmental non-profits to develop a system for evaluating the environmental impact of projects for our RFOs and we carried this into the LDS RFO. 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 Database<sup>2</sup> (PAD-US). Additionally, the project is not located in an area not suitable for renewable energy development as identified by the Renewable Energy Transmission Initiative (RETI)<sup>3</sup>. The project is located in an urban area adjacent to an existing methane gas power plant.

### ***Workforce Requirements***

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

### ***Participating CCAs***

Six of the CC Power CCAs are participating in this contract – CPSF, RCEA, SJCE, SVCE, SCPA, and VCE. The project's capacity was allocated to the CCAs based on their obligation under the CPUC MTR procurement mandate. Peninsula Clean Energy chose not to participate in this project.

### ***Contract Structure***

CC Power will enter into the Energy Storage Services Agreement (ESSA) directly with the project company, Goal Line BESS 1, LLC. This agreement covers standard terms, including, among others, timing for construction start, commercial operation, payment timelines, Seller security requirements, default provisions, operating parameters and guarantees and operations and maintenance requirements.

The CC Power Board meeting agenda for February 25, 2022, includes an action item to approve the Onward ESSA. The ESSA gives CC Power 90 days to secure approval from each of the participating CCAs governing Boards.

### **DISCUSSION:**

Peninsula Clean Energy chose not to participate in the Onward project. This is the second LDS project based on Lithium-ion technologies that CC Power is executing. Peninsula Clean Energy's share of the Tumbleweed project, which was executed in January 2022 is equivalent to 13.59 MW nameplate capacity or 10.62 MW NQC. This will satisfy approximately 56% of the LDS mandate assigned to Peninsula Clean Energy. Staff sees benefits in securing the remainder of its required LDS mandate from non-Lithium-ion technologies for diversification and risk mitigation reasons.

Staff is asking the Board to approve the resolution directing the CEO to vote to approve

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

<sup>3</sup> RETI: <https://reti.databasin.org/>



this contract as a member of CC Power's Board.

**FISCAL IMPACT:**

None

**STRATEGIC PLAN:**

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

- Power Resources Objective D: Support innovative sources and solutions for clean energy

**ATTACHMENTS:**

- Onward Energy Services Storage Agreement (Redacted Version)

RESOLUTION NO. \_\_\_\_\_

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

\* \* \* \* \*

RESOLUTION DIRECTING THE CHIEF EXECUTIVE OFFICER TO VOTE AS A  
DIRECTOR ON THE CALIFORNIA COMMUNITY POWER BOARD TO APPROVE THE  
ENERGY STORAGE SERVICES AGREEMENT BETWEEN CALIFORNIA  
COMMUNITY POWER AND GOAL LINE BESS 1, LLC AND ANY NECESSARY  
ANCILLARY DOCUMENTS FOR A LONG DURATION ENERGY STORAGE PROJECT  
WITH A DELIVERY TERM OF 15 YEARS STARTING AT THE COMMERCIAL  
OPERATION DATE ON OR ABOUT JUNE 1, 2025.

---

**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, resource adequacy and related products and services (the  
"Products") to supply its customers; and

**WHEREAS**, Peninsula Clean Energy is a member of the California Community Power (CC Power) joint powers authority; and

**WHEREAS**, Peninsula Clean Energy in coordination with CC Power conducted a request for offers for long duration energy storage (LDS) projects and engaged in negotiations for the Onward project; and

**WHEREAS**, CC Power seeks to execute agreements to effectuate its purchase of its of storage resource from the Onward energy storage project based on the project's desirable offering of products, pricing, and terms; and

**WHEREAS**, the Onward project will contribute to the regulatory requirement to procure LDS for each of the CCAs that are participating in this project through CC Power by providing energy storage resources for a term of fifteen years starting on or about June 1, 2025; and;

**WHEREAS**, staff is presenting to the Board for its review the Energy Storage Services Agreement reference to which should be made for further particulars; and

**WHEREAS**, the Board wishes to direct the Chief Executive Officer to vote as a director on the California Community Power Board to approve the Energy Storage Services Agreement between CC Power and Goal Line BESS 1, LLC and any necessary ancillary documents for a delivery term of 15 years starting at the Commercial Operation Date on or about June 1, 2025.

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

Vote as a director on the California Community Power Board to approve the Energy Storage Services Agreement between CC Power and Goal Line BESS 1, LLC and any necessary ancillary documents for a LDS project with a delivery term of 15 years starting at the Commercial Operation Date on or about June 1, 2025.

\* \* \* \* \*

**EXECUTION VERSION****ENERGY STORAGE SERVICE AGREEMENT****COVER SHEET**

**Seller:** Goal Line BESS 1, LLC, a Delaware limited liability company

**Buyer:** California Community Power, a California joint powers authority

**Description of Facility:** A grid-connected 50 MW/400 MWh battery energy storage facility, located in Escondido, CA, as further described in Exhibit A.

**Milestones:**

<b>Milestone</b>	<b>Expected Date for Completion</b>
<b>Evidence of Site Control</b>	████████
<b>Conditional Use Permit obtained</b>	████████
<b>Phase I and Phase II Interconnection study results obtained</b>	████████
<b>Interconnection Agreement executed</b>	████████
<b>Major equipment procurement agreements executed</b>	████████
<b>Federal and state discretionary permits issued</b>	████████
<b>Expected Construction Start Date</b>	████████
<b>Guaranteed Construction Start Date</b>	████████
<b>Initial Synchronization</b>	████████
<b>Full Capacity Deliverability Status or Interim Deliverability Status obtained</b>	████████
<b>Expected Commercial Operation Date</b>	████████
<b>Guaranteed Commercial Operation Date</b>	6/1/2025

**Delivery Term:** 15 Contract Years

**Guaranteed Capacity:** 50 MW of Installed Capacity at eight (8) hours of continuous discharge

**Dedicated Interconnection Capacity:** 50 MW

**Guaranteed Efficiency Rate:** [REDACTED]

**Contract Price & Excess Cycle Price:**

Contract Year	Contract Price & Excess Cycle Price
1 – 15	Contract Price: [REDACTED] (flat) with no escalation and subject to adjustments in <u>Exhibit C</u>  Excess Cycle Price: [REDACTED]

**Product:**

- ☒ Discharging Energy
- ☒ Installed Capacity and Effective Capacity
- ☒ Ancillary Services
- ☒ Capacity Attributes

**Scheduling Coordinator:**

Prior to Commercial Operation Date: Seller

From Commercial Operation Date through the Delivery Term: Buyer

**Security Amount:**

Development Security: [REDACTED] of Guaranteed Capacity

Performance Security: [REDACTED] of Guaranteed Capacity

**TABLE OF CONTENTS****Page****TABLE OF CONTENTS**

ARTICLE 1 DEFINITIONS .....	1
1.1 Contract Definitions.....	1
1.2 Rules of Interpretation .....	22
ARTICLE 2 TERM; CONDITIONS PRECEDENT .....	23
2.1 Contract Term .....	23
2.2 Commercial Operation; Conditions Precedent .....	23
2.3 Development; Construction; Progress Reports .....	24
2.4 Remedial Action Plan .....	25
2.5 Pre-Commercial Operation Actions.....	25
ARTICLE 3 PURCHASE AND SALE .....	25
3.1 Product .....	25
3.2 Discharging Energy .....	26
3.3 Capacity Attributes. ....	26
3.4 Ancillary Services; Environmental Attributes.....	26
3.5 Resource Adequacy Failure .....	27
3.6 Buyer's Re-Sale of Product .....	28
3.7 Pre-COD Operations .....	28
3.8 Compliance Expenditure Cap .....	28
ARTICLE 4 OBLIGATIONS AND DELIVERIES .....	30
4.1 Delivery.....	30
4.2 Interconnection. ....	30
4.3 Performance Guarantees .....	30
4.4 Facility Testing .....	30
4.5 Testing Costs and Revenues .....	31
4.6 Facility Operations.....	32
4.7 Dispatch Notices .....	32
4.8 Facility Unavailability to Receive Dispatch Notices .....	32
4.9 Energy Management .....	33
4.10 Capacity Availability Notice.....	35
4.11 Daily Operating Report.....	35
4.12 Outages .....	35
ARTICLE 5 TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS.....	37
5.1 Allocation of Taxes and Charges.....	37
5.2 Cooperation.....	37
5.3 Environmental Costs.....	37
ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY .....	37
6.1 Maintenance of the Facility .....	37
6.2 Maintenance of Health and Safety.....	38
6.3 Shared Facilities.....	38

ARTICLE 7 METERING .....	38
7.1 Metering.....	38
7.2 Meter Verification.....	39
ARTICLE 8 INVOICING AND PAYMENT; CREDIT .....	39
8.1 Invoicing.....	39
8.2 Payment.....	39
8.3 Books and Records.....	40
8.4 Payment Adjustments; Billing Errors.....	40
8.5 Billing Disputes.....	40
8.6 Netting of Payments.....	40
8.7 Seller's Development Security.....	41
8.8 Seller's Performance Security.....	41
8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral.....	41
8.10 Buyer Credit Arrangements.....	42
ARTICLE 9 NOTICES.....	43
9.1 Addresses for the Delivery of Notices.....	43
9.2 Acceptable Means of Delivering Notice.....	43
ARTICLE 10 FORCE MAJEURE .....	43
10.1 Definition.....	43
10.2 No Liability If a Force Majeure Event Occurs.....	44
10.3 Notice.....	45
10.4 Termination Following Force Majeure Event.....	45
ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION .....	45
11.1 Events of Default.....	45
11.2 Remedies; Declaration of Early Termination Date.....	48
11.3 Damage Payment; Termination Payment.....	48
11.4 Notice of Payment of Termination Payment or Damage Payment.....	49
11.5 Disputes With Respect to Termination Payment or Damage Payment.....	49
11.6 [REDACTED].....	50
11.7 Rights And Remedies Are Cumulative.....	50
11.8 Mitigation.....	50
11.9 Pass Through of Buyer Liability.....	50
11.10 Seller Pre-COD Liability Limitations.....	50
ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.....	51
12.1 No Consequential Damages.....	51
12.2 Waiver and Exclusion of Other Damages.....	51
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; COVENANTS .....	52
13.1 Seller's Representations and Warranties.....	52
13.2 Buyer's Representations and Warranties.....	53



13.3	General Covenants .....	54
13.4	Seller's Covenants .....	54
ARTICLE 14 ASSIGNMENT .....		55
14.1	General Prohibition on Assignments .....	55
14.2	Collateral Assignment .....	55
14.3	Permitted Assignment .....	55
14.4	Portfolio Financing .....	56
ARTICLE 15 DISPUTE RESOLUTION .....		56
15.1	Governing Law. ....	56
15.2	Dispute Resolution. ....	57
15.3	Attorneys' Fees. ....	57
ARTICLE 16 INDEMNIFICATION .....		57
16.1	Indemnification .....	57
16.2	Claims. ....	58
ARTICLE 17 INSURANCE .....		58
17.1	Insurance .....	58
ARTICLE 18 CONFIDENTIAL INFORMATION .....		60
18.1	Definition of Confidential Information .....	60
18.2	Duty to Maintain Confidentiality .....	60
18.3	Irreparable Injury; Remedies .....	61
18.4	Further Permitted Disclosure .....	61
18.5	Press Releases .....	61
ARTICLE 19 MISCELLANEOUS .....		62
19.1	Entire Agreement; Integration; Exhibits .....	62
19.2	Amendments .....	62
19.3	No Waiver .....	62
19.4	No Agency, Partnership, Joint Venture or Lease .....	62
19.5	Severability .....	62
19.6	Mobile-Sierra .....	62
19.7	Counterparts .....	63
19.8	Electronic Delivery .....	63
19.9	Binding Effect .....	63
19.10	No Recourse to Members of Buyer .....	63
19.11	Forward Contract .....	63
19.12	Change in Electric Market Design .....	63
19.13	Further Assurances .....	64

### **Exhibits:**

Exhibit A	Facility Description
Exhibit B	Facility Construction and Commercial Operation

Exhibit C	Compensation
Exhibit D	Scheduling Coordinator Responsibilities
Exhibit E	Progress Reporting Form
Exhibit F	Form of Monthly Expected Available Capacity Report
Exhibit G	Form of Daily Availability Notice
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I	Form of Capacity and Efficiency Rate Test Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Form of Buyer Liability Pass Through Agreement
Exhibit M	Form of Replacement RA Notice
Exhibit N	Notices
Exhibit O	Capacity and Efficiency Rate Tests
Exhibit P	Facility Availability Calculation
Exhibit Q	Operating Restrictions
Exhibit R	Metering Diagram
Exhibit S	Form of Daily Operating Report
Exhibit T	Form of Collateral Assignment Agreement
Exhibit U	Material Permits
Exhibit V	Project Participants and Liability Shares

## ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement (“**Agreement**”) is entered into as of [REDACTED] (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, 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 3.8(c).

“**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 least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Buyer the public entities designated as members or participants under the Joint Powers Agreement creating Buyer shall not constitute or otherwise be deemed an “Affiliate” for purposes of this Agreement.

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

“**Alternative Dispatches**” has the meaning set forth in Section 4.6(b).



**“Ancillary Services”** means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services, in each case as defined in the CAISO Tariff from time to time, that the Facility is at the relevant time actually physically capable of providing consistent with the Operating Restrictions set forth in Exhibit Q, which may be updated to add new Ancillary Services pursuant to Section 3.4.

**“Annual Excess Cycle Payment”** has the meaning set forth in Exhibit C.

**“Approval Period”** has the meaning in Section 2.1(b).

**“Approved Maintenance Hours”** means up to [REDACTED] hours per Contract Year for Facility maintenance scheduled in accordance with Section 4.12, calculated on a *pro rata* basis based upon the time period of such Facility maintenance and the Available Capacity. [REDACTED]

**“Automated Dispatches”** has the meaning set forth in Section 4.6(b).

**“Automated Dispatch System”** or **“ADS”** has the meaning set forth in the CAISO Tariff.

**“Automated Generation Control”** or **“AGC”** has the meaning set forth in the CAISO Tariff.

**“Availability Adjustment”** has the meaning set forth in Exhibit C.

**“Availability Notice”** has the meaning set forth in Section 4.10.

**“Availability Standards”** has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

**“Available Capacity”** means the capacity of the Facility, expressed in whole MWs, that is mechanically available to charge and discharge Energy and provide Ancillary Services.

**“Bankrupt”** or **“Bankruptcy”** 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. local time for the Party sending a Notice, or payment, or performing a specified action.

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

**“Buyer Default”** means any breach or an Event of Default of Buyer.

**“Buyer Dispatched Test”** has the meaning in Section 4.4(c).

**“Buyer’s Indemnified Parties”** has the meaning set forth in Section 16.1(a).

**“Buyer Liability Pass Through Agreement”** means the form set forth in Exhibit L.

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

**“CAISO Balancing Authority Area”** has the meaning set forth in the CAISO Tariff.

**“CAISO Certification”** means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services that the Facility can provide, PMA<sub>X</sub>, and PMIN associated with such storage units, that are applicable to the Facility.

**“CAISO Charges Invoice”** has the meaning set forth in Exhibit D.

**“CAISO Dispatch”** means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

**“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 that the Facility can charge, discharge and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

**“Capacity Damages”** has the meaning set forth in Section 5 of Exhibit B.

**“Capacity Test”** or **“CT”** means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity, Efficiency Rate or any other test conducted pursuant to Exhibit O.

“**CEQA**” means the California Environmental Quality Act, as amended or supplemented from time to time.

“**Change in Law**” means the enactment, adoption, promulgation, modification, suspension, repeal, or judicial determination, after the Effective Date, by any Governmental Authority of any Law, including a change in interpretation or enforcement of any existing Law.

“**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*, 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 tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“**Charging Energy**” means the Energy delivered to the Facility pursuant to a Charging Notice as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses.

“**Charging Notice**” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff. Any instruction to charge the Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice.

“**Collateral Assignment Agreement**” has the meaning set forth in Section 14.2 and substantially in the form attached as Exhibit T.

“**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice of the same to Buyer; *provided* Commercial Operation shall occur no sooner than one hundred eighty (180) days prior to the Expected Commercial Operation Date.

“**Commercial Operation Capacity Test**” means the Capacity Test conducted in connection with Commercial Operation of the Facility, including any additional Capacity Test for additional capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“**Commercial Operation Date**” or “**COD**” means the date on which Commercial Operation is achieved.



**“Commercial Operation Delay Damages”** means an amount equal to (a) the Development Security amount required hereunder, divided by (b) [REDACTED].

**“Communications Protocols”** means certain operating and dispatch protocols developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Facility pursuant to this Agreement.

**“Compliance Actions”** has the meaning set forth in Section 3.8(a).

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.8.

**“Compliant Project Participant”** means a Project Participant that is not a Defaulted Project Participant.

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

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

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

**“Contract Price”** has the meaning set forth 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 Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

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

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

**“CPM Soft Offer Cap”** has the meaning set forth in the CAISO Tariff.

**“CPUC”** means the California Public Utilities Commission, or any successor entity performing similar 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, to curtail deliveries of Discharging 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 Transmission Provider 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 Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller’s obligations under the Interconnection Agreement with the Transmission Provider or distribution operator.

**“Cycles”** means the number of equivalent charge/discharge cycles of the Facility during a specified time period, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy discharged from the Facility (expressed in MWh) divided by (b) eight (8) hours times the average Effective Capacity for such time period.

**“Daily Delay Damages”** means an amount equal to (a) the Development Security amount required hereunder, divided by (b) [REDACTED].

**“Daily Operating Report”** has the meaning in Section 4.11.

**“Damage Payment”** means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount set forth in Section 11.3(a).

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

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

**“Dedicated Interconnection Capacity”** means the maximum instantaneous amount of Charging Energy and/or Discharging Energy, as applicable, that is permitted to be delivered from and/or to the Delivery Point under the Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.

**“Defaulted Liability Share”** means the Liability Share of a Defaulted Project Participant.

**“Defaulted Project Participant”** means a Project Participant that has incurred but not cured a Project Participant Payment Default, including any Project Participant whose rights under



the Project Participation Share Agreement have been suspended or terminated.

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

**“Delivery Point”** means the Interconnection Point.

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

**“Development Cure Period”** has the meaning set forth in Exhibit B.

**“Development Security”** means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

**“Discharging Energy”** means the Energy delivered from the Facility to the Delivery Point pursuant to a Discharging Notice during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses.

**“Discharging Notice”** means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff. Any instruction to discharge the Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.

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

**“Dispatch Notice”** means any Charging Notice, Discharging Notice and any subsequent updates thereto, given by the CAISO, Buyer or Buyer’s SC, to Seller, directing the Facility to charge or discharge Energy at a specific MWh rate to a specified Storage Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff.

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

**“Effective Capacity”** means the lesser of (a) PMAX, and (b) the Effective Capacity determined pursuant to the most recent Capacity Test (including the Commercial Operation Capacity Test), and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Capacity (with respect to a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test).

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

**“Effective Flexible Capacity”** or **“EFC”** has the meaning set forth in the CAISO Tariff.

**“Efficiency Rate”** means the rate calculated pursuant to Sections II.I(2) and III(A) of Exhibit O by dividing Discharging Energy by Charging Energy and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

**“Efficiency Rate Adjustment”** has the meaning set forth in Exhibit C.

**“Electrical Losses”** means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy. If any amounts included within the definitions of “Electrical Losses” and “Station Use” hereunder are duplicative, then for all relevant calculations hereunder it is intended that such amounts not be double counted or otherwise duplicated.

**“Emission Reduction Credits”** or **“ERCs”** means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

**“Energy”** means electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof.

**“Energy Level”** means the actual amount of Energy (expressed in MWh) physically stored in the Facility at any moment in time. The Facility’s EMS shall provide a continuous monitoring and read out of the Energy Level.

**“Energy Management System”** or **“EMS”** means the Facility’s energy management system.

**“Energy Ratio”** means the ratio of the Energy Level to the actual full storage capacity of the Facility, expressed as a percentage as shown on the EMS.

**“Environmental Attributes”** shall mean any and all attributes 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 Facility and its displacement of conventional energy generation, but excluding Tax Credits.

**“Environmental Cost”** means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment,

costs of permit maintenance fees and emission fees as applicable, the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate the Facility, and the costs associated with the disposal and clean-up of hazardous substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

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

**“Excess Cycle Discharging Energy”** has the meaning set forth in Exhibit C.

**“Excess Cycle Price”** has the meaning set forth on the Cover Sheet.

**“Excused Event”** has the meaning set forth in Exhibit P.

**“Expected Commercial Operation Date”** means the date set forth on the Cover Sheet.

**“Facility”** means the energy storage 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 Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

**“Facility Meter”** means a CAISO-approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Facility Metering Point and the amount of Discharging Energy delivered to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

**“Facility Metering Point”** means the location(s) of the Facility Meter shown in Exhibit R.

**“Federal Investment Tax Credit Legislation”** means validly enacted federal legislation that either (a) applies the ITC in its current form to the Facility without regard to the source of energy used to charge the Facility, or (b) extends federal Tax Credits associated with capital investment in the construction of energy storage facilities or equipment used to store energy for which Seller, as the owner of the Facility, is eligible.

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

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

**“Flexible Capacity Ratio”** has the meaning set forth in Section 3.5(b)(i)(B).

**“Flexible RAR”** means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

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

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

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

**“Gains”** means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Environmental Attributes and Capacity Attributes.

**“Governmental Authority”** means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided*, “Governmental Authority” shall not in any event include any Party.

**“Guaranteed Availability”** has the meaning set forth in Section 4.3(a).

**“Guaranteed Amount”** has the meaning set forth in each Project Participant’s Buyer Liability Pass Through Agreement, which amount may be different for each Project Participant given each Project Participant’s Liability Share.

**“Guaranteed Capacity”** means the Guaranteed Capacity set forth on the Cover Sheet.

**“Guaranteed Commercial Operation Date”** means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

**“Guaranteed Construction Start Date”** means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

**“Guaranteed Efficiency Rate”** means the minimum guaranteed Efficiency Rate of the Facility in each Contract Year of the Delivery Term, as set forth on the Cover Sheet.

**“Guaranteed Flexible Capacity”** means, at any point in time, the maximum quantity of Effective Flexible Capacity (in MWs) for which a storage facility having a storage capacity of 50

MW with at least eight (8) hours of continuous discharging at the maximum rate of discharge, and a minimum ramp rate of 100 MW/minute, having achieved FCDS, and performing with operational characteristics equal to or better than those required by the Guaranteed Availability and Guaranteed Efficiency Rate may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.

**“Guaranteed Net Qualifying Capacity”** means, at any point in time, the maximum quantity of Net Qualifying Capacity (in MWs) for which a storage facility having a storage capacity of 50 MW with at least eight (8) hours of continuous discharging at the maximum rate of discharge, and a minimum ramp rate of 100 MW/minute, having achieved FCDS, and performing with operational characteristics equal to or better than those required by the Guaranteed Availability and Guaranteed Efficiency Rate may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.

**“Hazardous Substance”** means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

**“Imbalance Energy”** means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy or Discharging Energy deviates from the applicable amount of Energy in a CAISO Dispatch.

**“Indemnified Party”** shall mean (i) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

**“Indemnifying Party”** shall mean (i) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

**“Initial Liability Share”** means the Liability Share of each Project Participant shown on Exhibit V as of the Effective Date.

**“Initial Synchronization”** means the commencement of Trial Operations (as defined in the CAISO Tariff).

**“Installed Capacity”** means the lesser of (a) PMAX, and (b) Installed Capacity that achieves Commercial Operation, as determined pursuant to the most recent Commercial Operation

Capacity Test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, but in either case (a) or (b) up to but not in excess of the Guaranteed Capacity. It is acknowledged that Seller shall have the right and option in its sole discretion to install Facility capacity in excess of the Guaranteed Capacity; *provided*, for all purposes of this Agreement the amount of Installed Capacity shall never be deemed to exceed the Guaranteed Capacity, and (for the avoidance of doubt) Buyer shall have no rights to instruct Seller to (i) charge or discharge the Facility at an instantaneous rate (in MW) in excess of the Effective Capacity or (ii) charge the Facility to a level in excess of 100% Storage Level.

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

**“Interconnection Agreement”** means the interconnection agreement entered into by Seller or a Seller Affiliate pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which the 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.

**“Interconnection Point”** has the meaning set forth in Exhibit A.

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

**“Interim Deliverability Status”** 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 January 29, 2021, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

**“kWh”** means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

**“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 (a) 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 and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) 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.

**“Liability Share”** means the percentage amount set forth for each Project Participant in Exhibit V.

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

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

**“Local RAR”** means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

**“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., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Environmental Attributes and Capacity Attributes.

**“Marketable Emission Trading Credits”** means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code

Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

**“Master Data File”** has the meaning set forth in the CAISO Tariff.

**“Material Permits”** means all permits required for Seller to commence construction, as set forth on Exhibit U.

**“Maximum Charging Capacity”** means the highest charging rate at which the Facility may be charged, expressed in MW and as set forth in Exhibit Q, at a specific SOC.

**“Maximum Discharging Capacity”** means the highest discharging rate at which the Facility may be discharged, expressed in MW and as set forth in Exhibit Q, at a specific SOC.

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

**“Monthly Capacity Availability”** has the meaning set forth in Exhibit P.

**“Monthly Capacity Payment”** means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.

**“Monthly Forecast”** has the meaning in Section 4.10(a).

**“Monthly RA Replacement Adjustment”** has the meaning set forth in Exhibit C.

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

**“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.

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

**“Net Qualifying Capacity”** or **“NQC”** has the meaning set forth in the CAISO Tariff.

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

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

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



**“Notification Deadline”** in respect of a Showing Month shall be fifteen (15) Business Days before the relevant deadlines for the corresponding RA Compliance Showings for such Showing Month.

**“NP-15”** means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

**“Operating Restrictions”** means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

**“Outage Schedule”** has the meaning set forth in Section 4.12(a)(i).

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

**“Participating Transmission Owner”** or **“PTO”** means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is San Diego Gas & Electric.

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

**“Payment Demand”** has the meaning set forth in Exhibit L.

**“Performance Guarantees”** has the meaning set forth in Section 4.3(b).

**“Performance Security”** means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

**“Permitted Transferee”** means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person (on a consolidated basis with its Affiliates) that satisfies the following requirements:

(a) A tangible net worth of not less than [REDACTED] or a Credit Rating of at least BBB- from S&P or Baa3 from Moody's; and

(b) At least one (1) year of experience in the ownership and operations of energy storage facilities similar to the Facility, or (failing such operations experience) has retained a third-party with such experience to operate the Facility.

**“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 that has been scheduled in advance in accordance with Section 4.12(a).

“**PMAX**” means the applicable CAISO-certified maximum operating level of the Facility at the Interconnection Point.

“**PMIN**” means the applicable CAISO-certified minimum operating level of the Facility at the Interconnection Point.

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

“**Point of Change of Ownership**” has the meaning set forth in Exhibit A.

“**Portfolio**” means the single portfolio of electrical energy generating, electrical energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“**Portfolio Financing**” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“**Portfolio Financing Entity**” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“**Prevailing Wage Requirement**” has the meaning set forth in Section 13.4(b).

“**Pro Rata**” means, for purposes of calculating a Project Participant’s Revised Liability Share, the ratio of (i) such Project Participant’s Initial Liability Share to (ii) the sum of the Initial Liability Shares of all of the Compliant Project Participants.

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

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

“**Project Labor Agreement**” has the meaning set forth in Section 13.4(b).

“**Project Participant**” means each Person identified in Exhibit V that shall execute a Buyer Liability Pass Through Agreement in the form set forth in Exhibit L.

“**Project Participant Approval**” means each Project Participant has obtained all necessary approvals from its board or governing authority necessary to execute a Buyer Liability Pass Through Agreement and the Project Participation Share Agreement, and that Buyer has delivered to Seller Buyer Liability Pass Through Agreements and the Project Participation Share Agreement executed by each Project Participant and countersigned by Buyer.

“**Project Participant Payment Default**” means any failure by a Project Participant to pay any material amount under the Project Participation Share Agreement as and when due (without giving effect to any extensions of time, waivers or late notices), including monthly amounts collected to fund, or to reserve funds for, payment of Buyer’s obligations under this Agreement.

“**Project Participation Share Agreement**” means that certain Goal Line Storage Project

Participation Share Agreement executed by and among Buyer and all of the Project Participants relating to their allocation among themselves of Buyer's responsibilities and liabilities under this Agreement, and any successor agreement.

**"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 independent power producers within the electric industry during the relevant time period with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States, and (b) any of the practices, methods and acts which, in the exercise of reasonable judgment 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 energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable 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.

**"RA Change in Law"** means any Change in Law which results in a reduction of the maximum quantity of Effective Flexible Capacity or Net Qualifying Capacity that a storage capacity of 50 MW with at least eight (8) hours of continuous discharging at the maximum rate of discharge, and a minimum ramp rate of 100 MW/minute, having achieved FCDS, and performing with operational characteristics equal to or better than those required by the Guaranteed Availability and Guaranteed Efficiency Rate may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.

**"RA Compliance Showing"** means the (a) System RAR compliance or advisory showings (or similar or successor showings) and (b) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

**"RA Deficiency Amount"** means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month, as calculated in accordance with Section 3.5(b).

**"RA Guarantee Date"** means the Commercial Operation Date, which is the date by which the Facility is expected to have achieved Full Capacity Deliverability Status or Interim Deliverability Status.

**"RA Penalties"** means the RA penalties assessed against load serving entities by the CPUC for RA deficiencies that are not replaced or cured, as established by the CPUC in the Resource Adequacy Rulings and subsequently incorporated into the annual Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings that is issued by the CPUC Energy Division, or any replacement or successor documentation established by the CPUC Energy Division to

reflect RA penalties that are established by the CPUC and assessed against load serving entities for RA deficiencies.

**“RA Shortfall Month”** means any Showing Month, commencing with the Showing Month that contains the RA Guarantee Date, during which either:

(a) the Facility has not achieved FCDS (unless the Facility has achieved Interim Deliverability Status); or

(b) the Net Qualifying Capacity of the Facility for such Showing Month was either (i) not published by or otherwise established with the CAISO by the Notification Deadline for such Showing Month (other than due to Buyer’s action or inaction), or (ii) was less than the then applicable Guaranteed Net Qualifying Capacity of the Facility for such Showing Month; or

(c) the Effective Flexible Capacity of the Facility for such Showing Month was either (i) not published by or otherwise established with the CAISO by the Notification Deadline for such Showing Month (other than due to Buyer’s action or inaction), or (ii) was less than the then applicable Guaranteed Flexible Capacity of the Facility for such Showing Month.

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

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

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

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

**“Replacement RA”** means Resource Adequacy Benefits, if any, (a) equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and (b) located within the CAISO Balancing Authority Area.

**“Requested Confidential Information”** has the meaning set forth in Section 18.2.

**“Resource Adequacy Benefits”** means the rights and privileges attached to the Facility that satisfy any entity’s Resource Adequacy Requirements, as those obligations are set forth in any ruling issued by a Governmental Authority, including the Resource Adequacy Rulings and shall include Flexible Capacity and any local, zonal or otherwise locational attributes associated with the Facility.

**“Resource Adequacy Requirements”** or **“RAR”** means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

**“Resource Adequacy Resource”** shall have the meaning used in Resource Adequacy Rulings.



**“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, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

**“Revised Liability Share”** means the sum of a Project Participant’s Initial Liability Share plus its Pro Rata portion of all Defaulted Liability Shares, not to exceed [REDACTED].

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

**“SCADA Systems”** means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

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

**“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 Indemnified Parties”** has the meaning set forth in Section 16.1(b).

**“Seller Initiated Test”** has the meaning set forth in Section 4.4(c).

**“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 Discharging Energy to the Delivery Point, including the Interconnection Facilities and the Interconnection Agreement itself, if applicable, that are used in common with third parties or by Seller for electric generation or storage facilities owned by Seller other than the Facility.

**“Showing Month”** shall be a calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, that is the subject of a RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

**“Site”** means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; *provided*, that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

**“Site Control”** means that, for the Contract Term, Seller or, prior to the Delivery Term, its Affiliates: (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.

**“State of Charge”** or **“SOC”** means, at a particular time, the Storage Level in the Facility divided by the Effective Capacity multiplied by eight (8), expressed as a percentage.

**“Station Use”** means the Energy that is used within the Facility as defined by the retail energy provider and CAISO Tariff in accordance with applicable CPUC rules and decisions regarding such station use, except during periods in which the Facility is charging or discharging pursuant to a Charging Notice, Discharging Notice, Buyer Dispatched Test or Seller Initiated Test.

**“Step-Up Event”** means the forty-fifth (45th) day following the occurrence of a Project Participant Payment Default if such Project Participant Payment Default has not been cured by that date, regardless of whether or not notice was given to the Defaulted Project Participant under the Project Participation Share Agreement or otherwise or by Buyer hereunder.

**“Storage Level”** means, at a particular time, the amount of electric Energy in the Facility available to be discharged as Discharging Energy, expressed in MWh. The Parties acknowledge that, taking into account Electrical Losses to the Delivery Point (as referenced in the definition of Discharging Energy), the Energy Level (expressed in MWh) physically stored in the Facility at any moment in time will be greater than the Storage Level.

**“Subsequent Purchaser”** means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

**“Supplementary Capacity Test Protocol”** has the meaning set forth in Exhibit O.

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

**“System Emergency”** means any condition that requires, as determined and declared by CAISO or the Transmission Provider, 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.

**“System RAR”** means the Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “System RAR” may also be known as system area reliability, system resource adequacy, system resource adequacy procurement requirements, or system capacity requirement in other regulatory proceedings or legislative actions.

**“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 any (i) federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit, including the ITC, specific to investments in renewable energy facilities and/or energy storage facilities and (ii) any refundable credit, grant, or other cash payment in lieu of an incentive described in clause (i).

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

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

**“Transmission Provider”** means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Discharging Energy from the Delivery Point.

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

**“Transmission System Outage”** means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving the Facility’s Energy onto the Transmission System.

**“Ultimate Parent”** means Onward [REDACTED].

**“Unplanned Outage”** means a period during which the Facility is not capable of providing service due to the need to maintain or repair a component thereof, which period is not a Planned Outage.

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 Article, 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” mean “include 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, including Section 2.1(b) (“**Contract Term**”); *provided*, 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) Notwithstanding anything to the contrary in this Agreement, if Project Participant Approval of this Agreement is not obtained within ninety (90) days following the Effective Date (the “**Approval Period**”), then either Party may terminate this Agreement upon written Notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(c). During the Approval Period, Seller or Seller’s Affiliates may at their sole discretion actively market and negotiate to sell, transfer or assign the Facility and any Product associated with or attributable thereto, provided that neither Seller nor Seller’s Affiliates may enter into any agreement to sell, transfer or assign the Facility and any Product associated with or attributable thereto to a party other than Buyer prior to the expiration of the Approval Period.

(c) 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 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

2.2 **Commercial Operation; Conditions Precedent.** Seller shall provide Notice to Buyer of the Commercial Operation Date at least sixty (60) days in advance of such date. Seller shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all the conditions precedent set forth below for achieving Commercial Operation. Following Buyer’s receipt of such Notice, Buyer shall have five (5) Business Days to approve or reject Seller’s request for Commercial Operation. Upon Buyer’s approval of Seller’s achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date.

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a

Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity and Efficiency Rate on the Commercial Operation Date;

(b) Seller or its Affiliates, as applicable, shall have executed the Interconnection Agreement with the Transmission Provider, which shall be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(c) Seller has provided Buyer with a copy of written notice from CAISO that the Facility has achieved Full Capacity Deliverability Status or Interim Deliverability Status, as applicable. If the Seller provides written notice that it has achieved Interim Deliverability Status, Seller shall also provide a timeline under which Full Capacity Deliverability Status is expected to be obtained and an explanation of any required transmission upgrades;

(d) A Participating Generator Agreement and a Meter Service Agreement shall have been executed by Seller or its Affiliates, as applicable, with CAISO, which shall be in full force and effect and a copy of each such agreement delivered to Buyer;

(e) Seller has obtained CAISO Certification for the Facility;

(f) The Facility has successfully completed all testing required by any requirement of Law to operate the Facility;

(g) All applicable regulatory authorizations, approvals and permits for the commencement of operation of the Facility have been obtained and all conditions thereof required for the commencement of operations that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(h) Seller or its Affiliates, as applicable, shall have obtained Site Control;

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

(j) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1; and

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

**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 agrees to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably 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. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the

Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If a Milestone is missed by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the 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, as such date may be extended pursuant to Exhibit B; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones (to the extent not addressed in an earlier Remedial Action Plan) and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies, or causes any of its Affiliates to comply, with the 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(s); *provided*, in the event any Milestone is missed by more than sixty (60) days and Seller cannot reasonably demonstrate a plan for achieving Commercial Operation by the Guaranteed Commercial Operation Date, as such date may, or is reasonably expected to, be extended pursuant to Exhibit B, Buyer shall have the right to terminate this Agreement pursuant to Section 11.1(a)(iii) (following notice and expiration of any applicable cure periods).

2.5 **Pre-Commercial Operation Actions.** The Parties agree that, in order for Seller to achieve the Commercial Operation Date, Seller will need to conduct operational testing of the Facility (including charging and discharging the Facility), and the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller’s delivery of an Availability Notice for the Commercial Operation Date, and delivery of Charging Energy and Dispatch Notices consistent with Seller’s reasonable requests to enable Facility operational testing and nominating and scheduling the Facility, in advance of the Commercial Operation Date. The Parties shall cooperate with each other to facilitate the foregoing and to avoid delaying the Commercial Operation Date, including Buyer’s use of commercially reasonable efforts to provide Scheduling Coordinator services prior to the Commercial Operation Date for the limited purpose of aiding Seller in achieving Commercial Operation of the Facility under this Agreement.

### ARTICLE 3 PURCHASE AND SALE

3.1 **Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall have the exclusive right to the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith. Seller shall operate the Facility and make available, charge and discharge, deliver, and sell the Product therefrom to Buyer when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or

purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes (except for Replacement RA) from any other energy storage resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or the CAISO pursuant to this Agreement.

3.2 **Discharging Energy.** Seller commits to make available the Discharging Energy to Buyer during the Delivery Term, and Buyer shall have the exclusive rights to all such Discharging Energy, subject to the Operating Restrictions. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

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

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

(b) Throughout the Delivery Term, Seller shall maintain Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

(c) For the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.4 **Ancillary Services; Environmental Attributes.**

(a) **Ancillary Services.** Buyer shall have the exclusive rights to all Ancillary Services with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Contract Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Facility's initial CAISO Certification associated with the Installed Capacity. Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services herein, provided that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with conducting such additional CAISO Certification.

(b) **Environmental Attributes.** Buyer shall have the exclusive rights during the Delivery Term to any Environmental Attributes existing on the Effective Date or that may come into existence during the Contract Term. Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Environmental

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

### 3.5 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer as liquidated damages the RA Deficiency Amount, as set forth in Section 3.5(b), and/or provide Replacement RA, as set forth in Section 3.5(c), as the exclusive remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of:

(i) The greater of:

(A) the difference, expressed in kW, of the quantity of the then applicable Guaranteed Net Qualifying Capacity of the Facility, minus the then applicable Net Qualifying Capacity of the Facility that may be included in Supply Plans by Buyer, which shall be deemed to be zero (0) MW if the Net Qualifying Capacity has not been published by or otherwise established with the CAISO by the Notification Deadline for such RA Shortfall Month (other than due to Buyer's action or inaction), plus any Replacement RA that was able to be included in Supply Plans for the Showing Month by Buyer; and

(B) the difference, expressed in kW, of the quantity of the then applicable Guaranteed Flexible Capacity of the Facility, minus the then applicable Effective Flexible Capacity of the Facility that may be included in Supply Plans by Buyer, which shall be deemed to be zero (0) MW if the Effective Flexible Capacity has not been published by or otherwise established with the CAISO by the Notification Deadline for such RA Shortfall Month (other than due to Buyer's action or inaction), plus any Effective Flexible Capacity that was provided as Replacement RA that was able to be included in Supply Plans in the Showing Month by Buyer, divided by the ratio of Guaranteed Flexible Capacity to Guaranteed Net Qualifying Capacity (the "**Flexible Capacity Ratio**");

(ii) [REDACTED]



(c) If Seller anticipates that it will have an RA Shortfall Month, Seller may provide Replacement RA in the amount of (i) the Guaranteed Net Qualifying Capacity of the Facility with respect to such Showing Month, minus (ii) the expected Net Qualifying Capacity of the Facility with respect to such Showing Month; provided that any Replacement RA provided pursuant to this Section 3.5 is communicated by Seller to Buyer in a Notice substantially in the form of Exhibit M at least seventy-five (75) days before the RA Shortfall Month.

3.6 **Buyer's Re-Sale of Product.** Buyer shall have the exclusive right in its sole discretion and at its sole cost and expense to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right at its sole cost and expense to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable administrative actions (at Buyer's cost and expense) and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

3.7 **Pre-COD Operations.** Prior to the Commercial Operation Date, and notwithstanding anything in Exhibit D or elsewhere under this Agreement, Seller shall have the right to operate the Facility and sell Products therefrom for its own account, so long as such operation does not interfere with Seller's ability to perform its obligations under this Agreement. Subject to Section 2.5, prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Facility, and Seller shall be entitled to all revenues and other amounts paid by CAISO for periods prior to the Commercial Operation Date and as otherwise expressly set forth herein.

3.8 **Compliance Expenditure Cap.** If a Change in Law (excluding any RA Change in Law) occurring after the Effective Date (1) results in or gives rise to any increase in Seller's costs, liabilities or obligations to comply with its obligations under this Agreement exceeding the cost, liabilities or obligations that Seller incurred or expected to incur as of the Effective Date to comply with Seller's obligations under this Agreement, or (2) precludes or prohibits Seller from performing any of its obligations under this Agreement, in each case of clause (1) and (2) above with respect to obtaining, maintaining, conveying or effectuating Buyer's use of any Product or any obligation under Sections 3.1 through 3.4, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at (i) [REDACTED] per MW of Guaranteed Capacity in the aggregate over the Delivery Term ("Compliance Expenditure

**Cap**”). For the avoidance of doubt, the requirements of this Section 3.8 do not apply to any RA Change in Law that impacts RA Deficiency Amounts that Seller may owe under Section 3.5(b).

(a) Any actions required for Seller to comply with any Change(s) in Law the cost of which is included in the Compliance Expenditure Cap as set forth in the first paragraph above, shall be referred to collectively as the “**Compliance Actions**”; provided that notwithstanding anything to the contrary hereunder, Compliance Actions shall not require Seller to install any additional MW or MWh of energy storage capacity, or otherwise alter the physical design or configuration of the Facility in any material manner as a result of any Change in Law occurring after the Effective Date.

(b) If Seller reasonably anticipates the need to incur costs and expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated costs and expenses.

(c) 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 costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.8 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 notwithstanding anything to the contrary hereunder, if Buyer waives or is so deemed to have waived Seller’s obligation to take such Compliance Actions, Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions for the remainder of the Delivery Term (and there shall be no reduction in Seller’s compensation hereunder or imposition of any damages, penalties or fees hereunder as a result of Seller’s failure to take any Compliance Actions).

(d) 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 in a commercially reasonable timeframe 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; provided that notwithstanding anything to the contrary hereunder, any such Compliance Actions implemented by Seller shall not reduce Seller’s compensation hereunder or cause Seller to incur any damages, penalty or fee hereunder, including for the avoidance of doubt, that if any Compliance Action causes the Facility to have reduced Monthly Capacity Availability, Efficiency Rate or Effective Capacity for any period of time, then such reduced availability or capacity shall be excluded for purposes of calculating Seller’s compensation hereunder.



## ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date 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. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Discharging Energy to the Delivery Point, including any operation and maintenance charges imposed 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 Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. Commencing as of the Commercial Operation Date, the Charging Energy and Discharging Energy will be Scheduled to the CAISO by Buyer in accordance with Exhibit D.

4.2 **Interconnection.** Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. During the Delivery Term, Seller shall maintain the Dedicated Interconnection Capacity for the Facility's sole use.

4.3 **Performance Guarantees.**

(a) During the Delivery Term, the Facility shall maintain a Monthly Capacity Availability during each month of no less than [REDACTED] (the "**Guaranteed Availability**"), which Monthly Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate, which Efficiency Rate shall be calculated in accordance with Exhibit O. The Guaranteed Availability and Guaranteed Efficiency Rate are collectively the "**Performance Guarantees**".

(c) Buyer's remedies for Seller's failure to achieve the Performance Guarantees are: (i) for the Guaranteed Availability, (1) the Availability Adjustment to the Monthly Capacity Payment, as set forth in Exhibit C, and (2) the Seller Event of Default as set forth in Section 11.1(b)(iii) and the applicable remedies set forth in Article 11; and (ii) for the Guaranteed Efficiency Rate, the Efficiency Rate Adjustment to the Monthly Capacity Payment, as set forth in Exhibit C.

4.4 **Facility Testing.**

(a) **Capacity Tests.** Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests, subject to applicable NERC requirements and other applicable Laws.



(ii) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Capacity Test varies from the then-current Effective Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate determined pursuant to such Capacity Test shall become the new Effective Capacity and/or Efficiency Rate, at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) Additional Testing. Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Facility is functioning properly and the Facility is able to respond to Dispatch Notices pursuant to Section 4.6(b).

(c) Any testing of the Facility requested by Buyer after the Commercial Operation Capacity Tests, and all required annual tests pursuant to Section B of Exhibit O, shall be deemed Buyer-instructed dispatches of the Facility ("Buyer Dispatched Test"). Any test of the Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation), any Commercial Operation Capacity Test, any Capacity Test conducted if the Effective Capacity immediately prior to such Capacity Test [REDACTED], any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest) shall be deemed a "Seller Initiated Test".

(i) For any Seller Initiated Test other than a Capacity Test required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Dispatch Notices shall be issued during any Seller Initiated Test. Dispatch Notices may be issued during a Buyer Dispatched Test as reasonably necessary to implement the applicable test. The Facility shall be deemed unavailable during any Seller Initiated Test. Any Buyer Dispatched Test shall be deemed an Excused Event for the purposes of calculating the Monthly Capacity Availability.

#### 4.5 Testing Costs and Revenues.

(a) Buyer shall be responsible for paying for all Charging Energy and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test. Seller shall be responsible for paying for all Energy to charge the Facility and shall be entitled to all CAISO revenues associated with a Seller Initiated Test. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(b) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(c) Except as set forth in Sections 4.5(a) and (b), all other costs of any testing of the Facility shall be borne by Seller.

#### 4.6 **Facility Operations.**

(a) Seller shall operate the Facility in accordance with Prudent Operating Practices.

(b) During the Delivery Term, Seller shall maintain SCADA Systems, communications links, and other equipment necessary to receive automated Dispatch Notices consistent with CAISO protocols and practice (“**Automated Dispatches**”). In the event of the failure or inability of the Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer’s review and comment. During any period during which the Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Dispatch Notices (“**Alternative Dispatches**”).

(c) Seller shall maintain in accordance with Prudent Operating Practices a daily operations log for the Facility which shall include but not be limited to information on Energy charging and discharging, electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 4.6(c) shall be provided to Buyer within fifteen (15) days of Buyer’s request.

(d) Seller shall maintain in accordance with Prudent Operating Practices accurate records with respect to all Capacity Tests.

(e) Seller shall maintain in accordance with Prudent Operating Practices and make available to Buyer upon request records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and upon request permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.

4.7 **Dispatch Notices.** Buyer shall have the right to dispatch the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Subject to the Operating Restrictions, each Dispatch Notice shall be effective unless and until such Dispatch Notice is modified by the CAISO, Buyer or Buyer’s SC. If Automated Dispatches are not possible for reasons beyond Buyer’s control, Alternative Dispatches may be provided pursuant to Section 4.6(b).

4.8 **Facility Unavailability to Receive Dispatch Notices.** To the extent the Facility is unable to receive or respond to Dispatch Notices either through Automated Dispatches or Alternative Dispatches during any Settlement Interval or Settlement Period, then as an exclusive remedy, the time period corresponding to such Settlement Interval or Settlement Period shall be

deemed unavailable for purposes of calculating the Monthly Capacity Availability.

#### 4.9 **Energy Management.**

(a) **Charging Generally.** Upon receipt of a valid Charging Notice, Seller shall take all action necessary to deliver the Charging Energy to the Facility in order to deliver the Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy during the Delivery Term. Buyer shall ensure that all Charging Notices and Discharging Notices are issued in a manner consistent with all requirements of this Agreement, including all Operating Restrictions and the CAISO Tariff.

(b) **Charging Notices.** Buyer shall have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Charging Notices to be issued; provided Buyer's right to cause Charging Notices to be issued is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the provisions of Section 4.9(a). Each Charging Notice issued in accordance with this Agreement shall be effective unless and until Buyer's SC or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) **No Unauthorized Charging.** Seller shall not charge the Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions or the CAISO Tariff), or in connection with a Buyer Dispatched Test or Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider or any Governmental Authority. If, during the Delivery Term, Seller charges the Facility (i) to a Storage Level greater than the Storage Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.9(c), then (i) Seller shall pay to Buyer all Energy costs associated with such charging of the Facility, and (ii) Buyer shall be entitled to discharge such Energy and shall be entitled to all of the benefits (including Product) associated with such discharge.

(d) **Discharging Notices.** Buyer shall have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Discharging Notices to be issued, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the existing level of charge of the Facility. Each Discharging Notice issued in accordance with this Agreement shall be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice.

(e) **No Unauthorized Discharging.** Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions or the CAISO Tariff), or in connection with a Seller Initiated Test

(including Facility maintenance or a storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider or any Governmental Authority.

(f) Unauthorized Charges and Discharges. If Seller or anyone under Seller's control charges, discharges or otherwise uses the Facility other than as permitted hereunder, or as is expressly addressed in this Section 4.9, Seller shall reimburse Buyer for all FERC, CPUC or CAISO charges or penalties arising therefrom, and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures (following notice and applicable cure periods) shall be an Event of Default under Article 11.

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.9 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. Except to the extent otherwise expressly stated herein, Buyer shall be liable for all CAISO charges, penalties and costs, including any imbalance charges and penalties, provided that during any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the Facility deviates from a CAISO Dispatch solely due to (i) Seller's violation of the CAISO Tariff, (ii) Seller's breach of this Agreement or (iii) operating or performance deficiencies or defects of Seller or the Facility (except to the extent arising from a Force Majeure Event), Seller shall be responsible for all CAISO charges and penalties resulting from such deviation (in addition to any Buyer remedy related to overcharging of the Facility as set forth in Section 4.9(c)).

(h) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Facility.

(i) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.9 or any Dispatch Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer (or Buyer's SC) shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order consistent with CAISO rules and the Operating Restrictions.

(j) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy used to serve Station Use during periods in which the Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice), (ii) Energy supplied from Charging Energy or Discharging Energy during periods in which the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice or Seller Initiated Test shall not be considered Station Use, and (iii) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from Energy supplied for Station Use by any means other than retail service from the applicable utility, and

shall take any additional measures to ensure Station Use (other than that supplied from Charging Energy or Discharging Energy as provided in clause (ii)) is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences.

#### 4.10 **Capacity Availability Notice.**

(a) No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Available Capacity for each day of the following month in a form substantially similar to Exhibit F ("**Monthly Forecast**").

(b) During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with CAISO scheduling practices, Seller shall provide Buyer and the SC (if applicable) with an hourly schedule of the Available Capacity that the Facility is expected to have for each hour of such schedule day (the "**Availability Notice**"). Seller shall provide Availability Notices (including updated Availability Notices) using the form attached in Exhibit G, or other form as reasonably requested by Buyer, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.

(c) Seller shall notify Buyer and the SC (if applicable) immediately with an updated Monthly Forecast and Availability Notice, as applicable, if the Available Capacity of the Facility changes or is expected to change after Buyer's receipt of a Monthly Forecast or Availability Notice. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices.

4.11 **Daily Operating Report.** Upon Buyer's request, Seller shall, on each day immediately after each operating day, provide Buyer an operating report for the Facility substantially in the form attached in Exhibit S (the "**Daily Operating Report**").

#### 4.12 **Outages**

##### (a) **Planned Outages.**

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller's schedule of proposed Planned Outages ("**Outage Schedule**") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer's reasonable requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to reduce deliveries of applicable Product during any 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 4.12(a)(i); *provided* that Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an “Approved Maintenance Outage” under the CAISO Tariff (or such shorter period as may be reasonably acceptable to Buyer), and Seller shall (A) reimburse Buyer for any costs, penalties or charges imposed by CAISO in connection therewith, (B) provide Buyer with Replacement RA corresponding to such time period to the extent required by the CAISO and (C) subject to Prudent Operating Practices, use commercially reasonable efforts to limit maintenance repairs performed pursuant to this Section 4.12(a)(ii) to periods reasonably acceptable to Buyer.

(b) **No Planned Outages During Summer Months.** Except as scheduled by the Parties under Section 4.12(a), during the months of June through September, Seller shall not schedule any non-emergency maintenance that reduces the energy storage capability of the Facility by more than [REDACTED], 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 of the months of June through September, (iii) such outage is required in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(c) **Planned Outage Timing.** To the fullest extent practical and without limiting Seller’s rights pursuant to Section 4.12(a)(ii), Seller shall schedule maintenance outages, (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.

(d) **Notice of Unplanned Outages.** Seller shall notify Buyer by telephoning Buyer’s Scheduling Coordinator no later than ten (10) minutes following Seller becoming aware of the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Unplanned Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.

(e) **Inspection.** In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller’s safety and security rules and instructions during any inspection and shall not interfere with work on or operation of the Facility.

(f) **Reports of Outages.** Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws. Seller shall also report all Unplanned Outages or Planned Outages in the Daily Operating Report.

## ARTICLE 5 TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS

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 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 to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and 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*, 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.

5.3 **Environmental Costs.** Seller shall be solely responsible for all Environmental Costs, excluding, however, environmental related costs of any type arising out of or related to Charging Energy or Discharging Energy where such costs are assessed or arise at, or on the grid side of, the Delivery Point, all of which costs shall (as between Seller and Buyer) be the sole responsibility of Buyer.

## ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY

### 6.1 **Maintenance of the Facility.**

(a) Seller shall construct, operate, and maintain the Facility so that Buyer may dispatch the Facility within the operating parameters of the Operating Restrictions.

(b) Seller shall, as between Seller and Buyer, be solely responsible for the operation, inspection, maintenance and repair of the Facility, and any portion thereof, in accordance with applicable Law and Prudent Operating Practices. Seller shall maintain and deliver maintenance and repair records of the Facility to Buyer's scheduling representative upon request.

(c) Subject to Article 10 and the other provisions hereof, Seller shall promptly make all necessary repairs to the Facility, and any portion thereof, and take all actions necessary

in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Performance Guarantees).

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility or suspending the supply of Discharging Energy to the Delivery Point.

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 and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Shared Facilities and Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements. Seller agrees that any such agreements regarding Shared Facilities (i) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, (ii) shall provide for separate metering of the Facility; (iii) shall not limit Buyer's ability to charge or discharge the Facility up to the Dedicated Interconnection Capacity; (iv) shall provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource ID; and (v) shall provide that any curtailment or restriction of Shared Facility capacity shall be allocated to all generating or energy storage facilities using the Shared Facilities based on their pro rata allocation of the Shared Facility capacity prior to such curtailment or reduction. Seller shall not, and shall not permit any Affiliate to, allocate to other Persons a share of the total interconnection capacity under the Interconnection Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement minus the Dedicated Interconnection Capacity.

## **ARTICLE 7 METERING**

7.1 **Metering.** Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. Seller shall separately meter all Station Use. The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Each meter shall be kept under seal, such seals to be broken only when the Facility 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 Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO market results interface - settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility.



7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a Facility Meter malfunction, or upon Buyer's reasonable request, Seller shall request permission from CAISO to test the Facility 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 Facility 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 Facility Meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the invoices covering the period of time since the last Facility Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period if such adjustments are accepted by CAISO; *provided*, such period may not exceed twelve (12) months.

## ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10<sup>th</sup>) day of each month for the previous calendar month. Each invoice shall reflect (a) records of metered data, including (i) 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 Charging Energy and the amount of Discharging Energy, in each case as read by the Facility Meter, and the amount of Replacement RA delivered to Buyer (if any) and (ii) data showing a calculation of the Annual Excess Cycle Payment (if any), Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Beginning on the Commercial Operation Date, Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller of Monthly Capacity Payments for Product (and any other amounts due, including, if applicable, the Annual Excess Cycle Payment) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within (30) days of Buyer's receipt of Seller's invoices; *provided*, 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 fifteen (15) 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 \$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 Facility 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 P, 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 within thirty (30) days after Project Participant Approval of this Agreement is obtained. Seller shall maintain the Development Security in full force and effect. Subject to Section 11.10, within five (5) Business Days following any draw by Buyer on the Development Security, Seller shall replenish the amount drawn such that the Development Security is restored to the applicable amount. 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 requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Development Security for another permitted form.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller 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 requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Performance Security for another permitted form.

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):

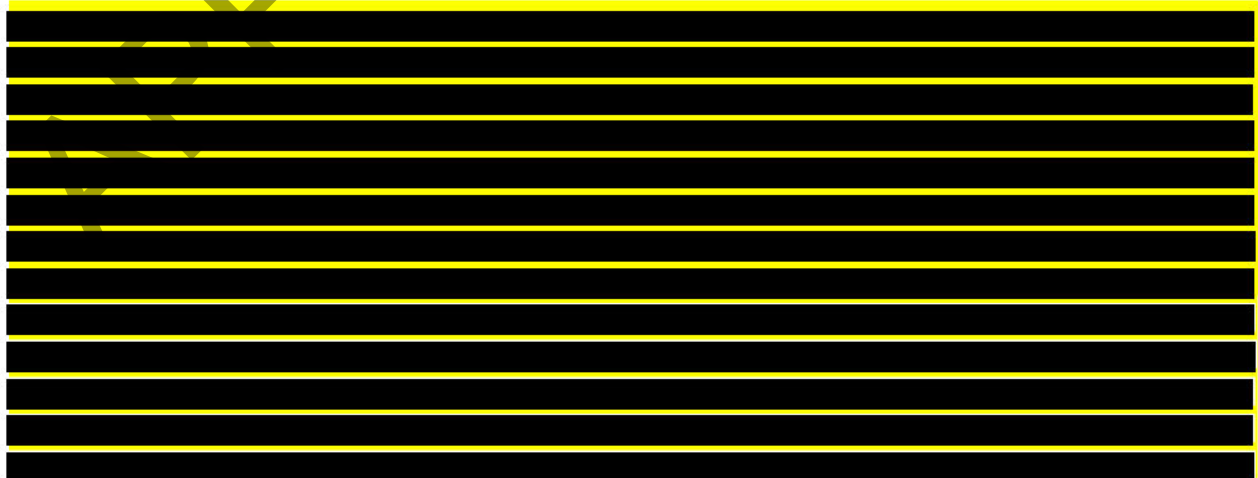
(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(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 such obligations are satisfied in full.

8.10 **Buyer Credit Arrangements.** To secure its obligations under this Agreement, Buyer shall deliver to Seller, within ninety (90) days after the Effective Date, Buyer Liability Pass Through Agreements from the Project Participants with Liability Shares as set forth on Exhibit V. Seller shall countersign each Buyer Liability Pass Through Agreement within ten (10) days of receipt of Buyer's delivery of each such Buyer Liability Pass Through Agreement executed by Buyer and the applicable Project Participant. Buyer shall maintain such Buyer Liability Pass Through Agreements in full force and effect until both of the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Buyer due and payable under this Agreement are paid in full (whether directly or indirectly such as through set-off or netting). Buyer may propose amendments to Exhibit V, including with respect to the identity of Project Participants and the amount of each Project Participant's Liability Share. Seller shall have ten (10) Business Days to evaluate any such proposed amendments to Exhibit V in its sole but good faith discretion. If Seller approves such proposed amendments to Exhibit V, Buyer shall have thirty (30) days to provide Seller with replacement Buyer Liability Pass Through Agreements executed by Buyer and the Seller-approved Project Participants and incorporating the revised Liability Shares set forth in the amended Exhibit V. Seller shall countersign each Buyer Liability Pass Through Agreement executed by Buyer and such Seller-approved Project Participants within ten (10) Business Days after Buyer's delivery of such Buyer Liability Pass Through Agreements to Seller; *provided* that no delay in countersigning any such Buyer Liability Pass Through Agreement shall affect Seller's, Buyer's or the Project Participant's rights or obligations thereunder.





Following the occurrence of a Step-Up Event, Seller and Buyer will amend Exhibit V to set forth the Revised Liability Shares of the remaining Project Participants.

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party

relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic (including the COVID 19 pandemic); landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; any Change in Law that renders this Agreement or any provisions hereof incapable of (or delayed in) being performed or administered; 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 any Change 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 Product 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 that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order, except to the extent such Curtailment Order is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun 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) events otherwise constituting a Force Majeure Event that prevents Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under this Agreement; or (ix) any action or inaction by any third party, including Transmission Provider, 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.

**10.2 No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented or delayed from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable (or delayed) to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability or delay with commercially reasonable speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform or delay after said cause has been removed. The obligation to use commercially reasonable speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. 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 Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Section 4 of 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 remedies 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) promptly 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) promptly 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*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, 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 Notice to the other Party. 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(c), and Buyer shall promptly return to Seller any 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)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for any provision hereof that provides for a liquidated or other exclusive remedy, the exclusive remedy for which shall be that set forth in such provision), 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)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

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

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

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

(d) to suspend performance; and

(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*, 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 **Damage Payment; Termination Payment.** If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) **Damage Payment by Seller Prior to Commercial Operation Date.** If the Early Termination Date occurs before the Commercial Operation Date with Seller as the Defaulting Party, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i)



The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(b) **Other Termination Payment.** The payment owed by (i) Buyer as the Defaulting Party to Seller as the Non-Defaulting Party for a Terminated Transaction occurring prior to the Commercial Operation Date or (ii) the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring on or after the Commercial Operation Date ("**Termination Payment**") 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. 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 (i) 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, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3 (b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

**11.4 Notice of Payment of Termination Payment or Damage Payment.** As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, 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 or Damage Payment, as applicable, 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 or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, 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 or



Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

[REDACTED]

[REDACTED]

\_\_\_\_\_

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

11.8 **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.

11.9 **Pass Through of Buyer Liability.** Notwithstanding any other provision of this Agreement, if Buyer fails 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, Seller may, without waiving any of its rights with respect to Buyer except as expressly provided herein, pursue remedies under any or all of the Buyer Liability Pass Through Agreements as provided therein. Seller hereby waives the right to recover directly from Buyer any Damage Payment or Termination Payment owed by Buyer that is not paid by Buyer pursuant to Sections 11.3 and 11.4, but the foregoing waiver does not apply to any other right or remedy of Seller under this Agreement, including the right to recover accrued Monthly Capacity Payments, other amounts payable or reimbursable under this Agreement or any other amounts incurred or accrued prior to termination of this Agreement, and the right to terminate the ESSA as the result of an Event of Default by Buyer.

**11.10 Seller Pre-COD Liability Limitations.** Notwithstanding any other provision of



this Agreement, Seller's aggregate liability under or arising out of this Agreement prior to the Commercial Operation Date shall be limited to an amount equal to [REDACTED]

## ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 16 INDEMNITY CLAIM, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, 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. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED OR ANY OTHER EXCLUSIVE REMEDY IS SET FORTH HEREIN, INCLUDING UNDER SECTIONS 3.5, 4.3, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT P, 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; COVENANTS**

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

(a) Seller is a Delaware 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 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) Any and all permits and approvals necessary for the construction and operation of the Facility shall be obtained and maintained as and when needed by Seller or its Affiliates, as applicable, including without limitation, environmental clearance under CEQA or

other environmental law, as applicable, from the local jurisdiction where the Facility is or will be constructed.

(f) Site Control shall be maintained by Seller or its Affiliates, as applicable, throughout the Delivery Term.

(g) Neither Seller nor its Affiliates have received notice from, or been advised by, any existing or potential supplier or service provider that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused, or are 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 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, 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 is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It or its Affiliates, as applicable, shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Seller’s Covenants.** Seller covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) **Compliance with Laws.** Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination and non-preference; conflict of interest; environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees. Seller shall not discriminate against any employee or applicant for employment on the basis of the fact or perception of that person’s race, color, religion, ancestry, national origin, age, sex (including pregnancy, childbirth or related medical conditions), legally protected medical condition, family care status, veteran status, sexual orientation, gender identity, transgender status, domestic partner status, marital status, physical or mental disability, or AIDS/HIV status.

(b) **Workforce Development.** Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations and orders and decrees of any courts or administrative bodies or tribunals, including, without limitation, employment discrimination and prevailing wage laws. Although the Facility is not a public work as defined by California Labor Code section 1720, any construction work contracted by Seller in furtherance of this Agreement shall (i) comply with California prevailing wage provisions applicable to public works projects, including but not limited to those set forth in California Labor Code sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6, as they may be amended from time to time (“**Prevailing Wage Requirement**”); and (ii) be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations (“**Project Labor Agreement**”). Seller shall use best efforts to include the following language in any Project Labor Agreement: “Union members agree not to



make any written or verbal statements about CC Power or its members that are disparaging, untrue or inaccurate.”

(c) **Prohibition Against Forced Labor.** Seller represents and warrants that it has not and will not knowingly utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any Person under the threat of a penalty and for which the Person has not offered himself or herself voluntarily (“**Forced Labor**”). Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.

## **ARTICLE 14 ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may 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; *provided*, a Change of Control of Seller shall not require Buyer’s consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall pay the other Party’s reasonable expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys’ fees.

14.2 **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 without the consent of Buyer. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“**Collateral Assignment Agreement**”), which shall be substantially in the form of Exhibit T and shall include any revisions and comments reasonably required by the Lender and reasonably acceptable to Buyer. Seller shall pay Buyer’s reasonable expenses, including attorneys’ fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller’s financing of the Facility. Buyer shall have no obligation to agree to any revisions by the Lender to the Collateral Assignment Agreement that materially and adversely affect any of Buyer’s rights, benefits, risks or obligations under this Agreement.

### 14.3 **Permitted Assignment.**

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to:

- (i) an Affiliate of Seller; or
- (ii) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law) if, and only if (A) such Person is a Permitted

Transferee; (B) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and (C) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests pursuant to this Section 14.3(a)(ii) 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, 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.

(b) Buyer may, without the prior written consent of Seller, transfer or assign this Agreement to any Project Participant that (A) has, and has continued to maintain for at least one hundred eighty (180) consecutive days, a Credit Rating of at least BBB-(stable) from S&P or Baa3 from Moody's, (B) is a load serving entity, (C) has no pending or threatened actions, suits, proceedings or claims against Seller or Seller's Affiliates and (D) is not a competitor to Seller and poses no material business, legal or ethical conflict to Seller; *provided*, Buyer shall give Seller Notice at least fifteen (15) Business Days before the date of such proposed assignment and provide to Seller a written agreement, in a form acceptable to Seller, signed by the Person to which Buyer wishes to assign its interests that provides that such Person will assume all of Buyer's obligations and liabilities under this Agreement upon such transfer or assignment. Notwithstanding the foregoing, any assignment by Buyer, its successors or assigns under this Section 14.3(b) shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

14.4 **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, which may include cross-collateralization or similar arrangements. 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 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be brought in the federal or state courts located in the State of California in a location to be mutually chosen by Buyer and Seller, or in the absence of mutual agreement, the County of San Francisco.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law in or equity.

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 **Indemnification.**

(a) Seller agrees to indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "**Buyer's Indemnified Parties**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) a violation of applicable Laws by Seller or its Affiliates, including but not limited to violations of any laws in constructing or operating the Facility, (ii) negligent or tortious acts, errors, or omissions by Seller or its Affiliates, or (iii) intentional acts or willful misconduct by Seller or its Affiliates, directors, officers, employees, or agents.

(b) Buyer agrees to indemnify, defend and hold harmless Seller and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "**Seller's Indemnified Parties**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) a violation of applicable Laws by Buyer or its Affiliates, (ii) negligent or tortious acts, errors, or omissions by Buyer or its Affiliates, or (iii) intentional acts or willful misconduct by Buyer or its Affiliates, directors, officers, employees, or agents.

(c) Seller shall indemnify, defend, and hold harmless Buyer's Indemnified Parties, from any claim, liability, loss, injury or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the storage, disposal and transportation of Hazardous Substances, or the contamination of land, including but not limited to the Site, with any Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement.

(d) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting solely from its own negligence, intentional acts or willful misconduct. These

indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which an indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; *provided*, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## **ARTICLE 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 [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED], endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured. Such insurance shall include Buyer as an additional insured and contain standard cross-liability and severability of interest provisions.

(b) **Employer's Liability Insurance.** Seller, if it has employees, shall maintain Employers' Liability insurance with limits of not less than [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] 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 statutory amounts, with employer's liability limits of not less than [REDACTED] for each accident, injury, or illness; and include a blanket waiver of subrogation.



(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 [REDACTED] 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 and shall include Buyer as an additional insured and contain standard cross-liability and severability of interest provisions.

(e) Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Insurance in the amount of [REDACTED] per occurrence and in the aggregate, including Seller (and Lender, if any) as additional insureds.

(f) Umbrella Liability Insurance. Seller shall maintain or cause to be maintained an umbrella liability policy with a limit of liability of [REDACTED] per occurrence and in the aggregate. Such insurance shall be in excess of the General Liability, Employer's Liability, and Business Auto Insurance coverages. Seller may choose any combination of primary, excess or umbrella liability policies to meet the insurance limits required under Sections 17.1(a), 17.1(b) and 17.1(d) above.

(g) 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.

(h) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits with deductibles and sublimits in accordance with industry standards. Such insurance shall include business interruption coverage in an amount equal to [REDACTED] of expected revenue from this Agreement.

(i) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than [REDACTED]; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (i)(i) and (i)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(i).

(j) 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 with insurers with ratings comparable to A-, VII or higher, that are authorized to do business in the State of California, and that are reasonably satisfactory to Buyer, in form evidencing all coverages set forth above. Such 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. The general liability, auto liability and worker's compensation policies shall provide a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(k) **Failure to Comply with Insurance Requirements.** If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## **ARTICLE 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.** The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's members, employees, actual or prospective lenders or investors, counsel, accountants, contractors, vendors, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief

in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word "Confidential." The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as "Confidential" that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("**Requested Confidential Information**"), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer and Buyer's Indemnified Parties from any claims, liability, award of attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer or Buyer's Indemnified Parties for Buyer's refusal to disclose any Requested Confidential Information.

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 herein. 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 Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its or its Affiliates' agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as 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.



## 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 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*, 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) and/or, to the extent set forth herein, any Lender and/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.** 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.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words “execution,” “signed,” “signature,” and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

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

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Except as set forth in Section 11.9 and any Buyer Liability Pass Through Agreements issued by one or more Project Participants pursuant to Section 8.10, Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and 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 officers, directors, advisors, contractors, consultants or employees of Buyer or its constituent members, in connection with this Agreement.

19.11 **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.

19.12 **Change in Electric Market Design.** If a change in the CAISO Tariff (excluding any Change in Law governed by Section 3.8) 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.

19.13 **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.

**GOAL LINE BESS 1, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CALIFORNIA COMMUNITY POWER,**  
a California joint powers authority

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVAL DRAFT

**EXHIBIT A**  
**FACILITY DESCRIPTION**

**Site Name:** Goal Line BESS

**Site includes all or some of the following APNs:** [REDACTED]

**City:** Escondido

**County:** CA

**Zip Code:** 92025

**Latitude and Longitude:** GPS: [REDACTED]  
[REDACTED]

**Facility Description:** Grid connected 50 MW/400 MWh battery energy storage facility as depicted in preliminary Site diagrams on the following pages.

**Interconnection Point:** See Note 1 below.

**Point of Change of Ownership:** See Note 1 below.

**Facility Meter:** See Note 1 below.

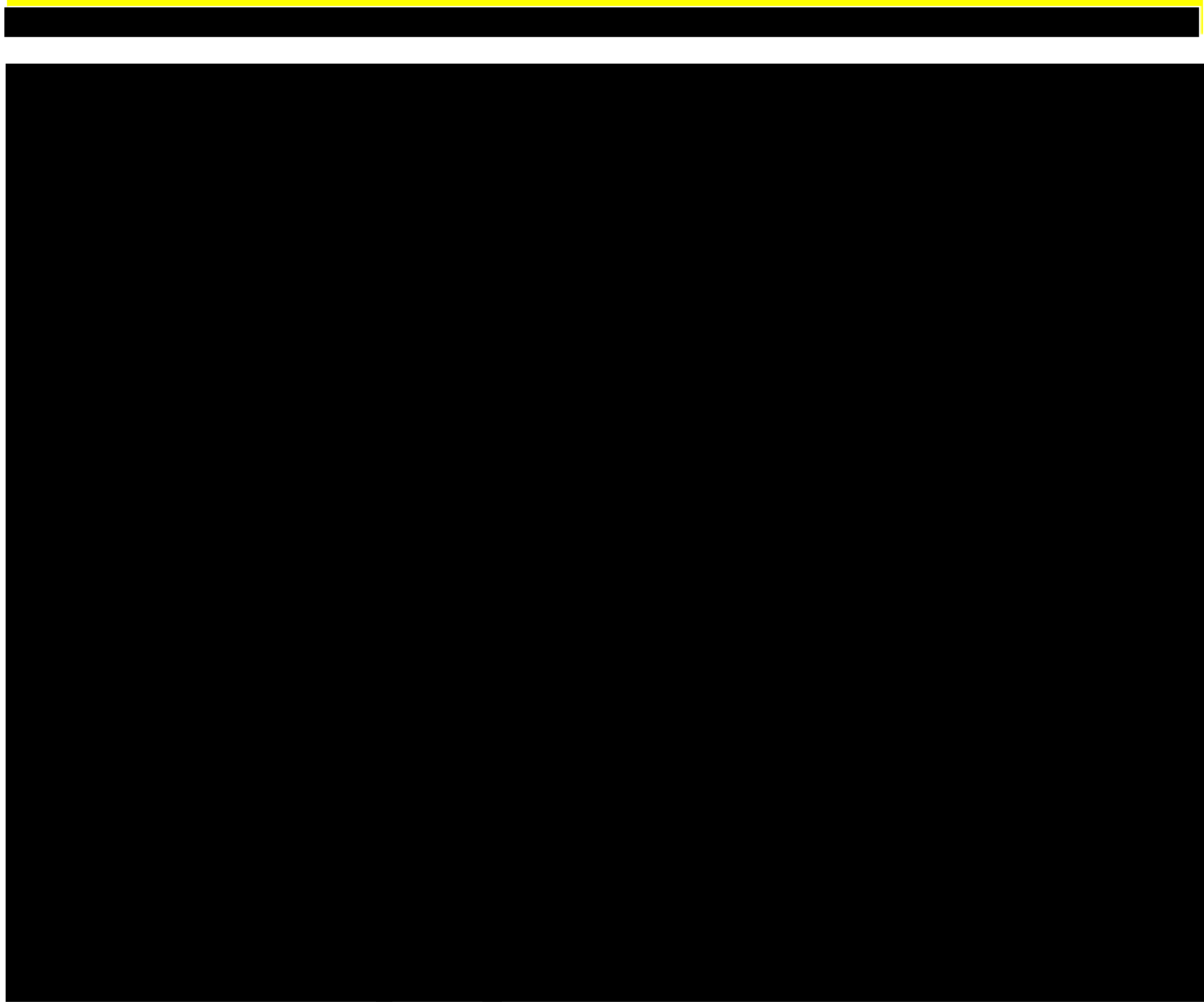
**Facility Metering Points:** See Note 1 below.

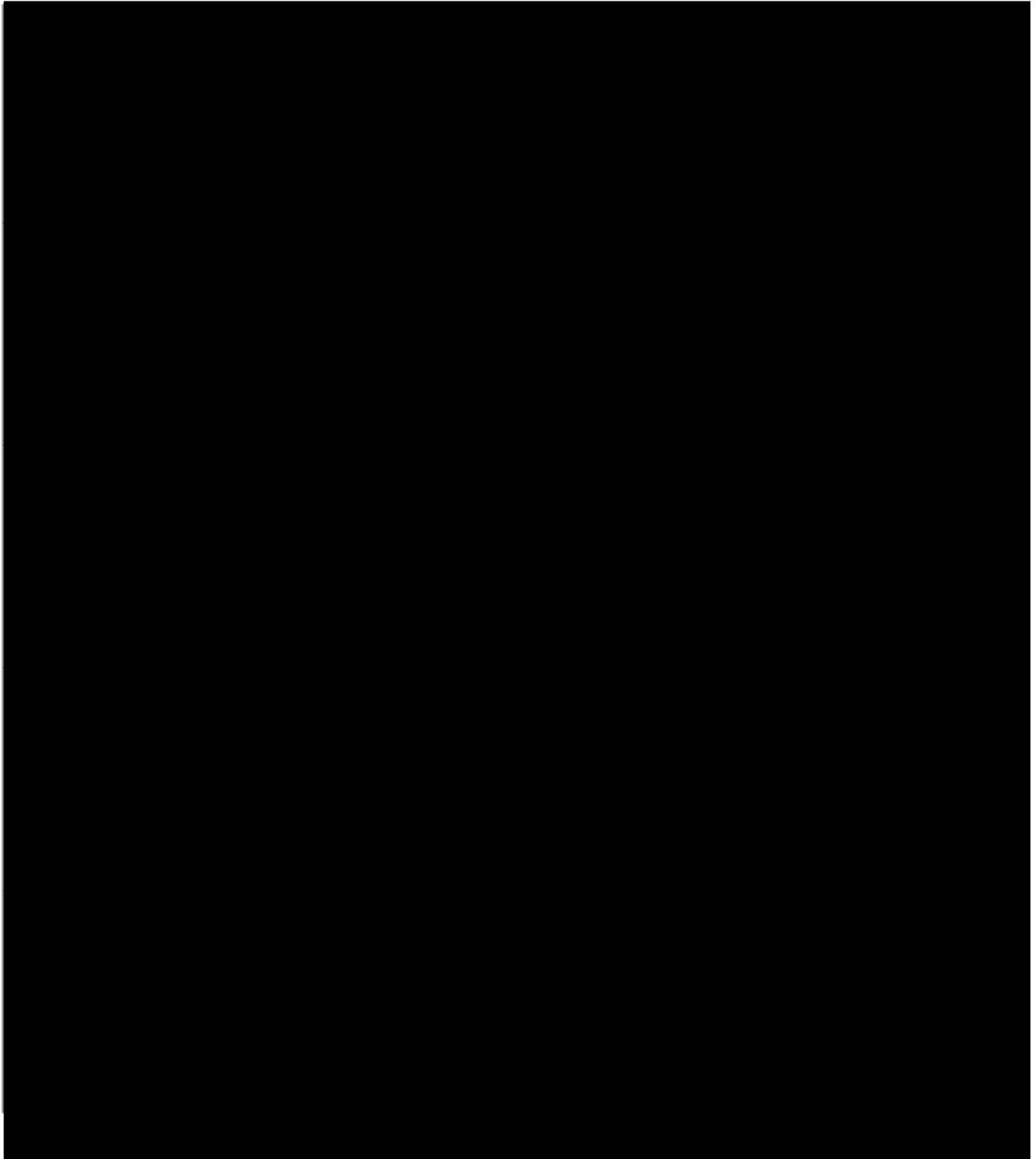
**PNode:** See Note 1 below.

**Transmission Provider:** San Diego Gas & Electric

**Additional Information:** none

Note 1: The Interconnection Point, Point of Change of Ownership, Facility Meter, Facility Metering Points, and PNode will be defined by Seller by written notice to Buyer following the execution of the Interconnection Agreement.







**EXHIBIT B****FACILITY CONSTRUCTION AND COMMERCIAL OPERATION****1. Construction of the Facility.**

- a. **“Construction Start”** will occur upon (i) acquisition by Seller or its Affiliate, as applicable, of all applicable regulatory authorizations, approvals and permits necessary for commencement of the construction of the Facility and (ii) the execution by Seller or its Affiliate, as applicable, of any engineering, procurement, or construction contract (or similar contract) with respect to the Facility and issuance of a notice to proceed (or reasonable equivalent) to the contractor or integrator party thereto that authorizes the contractor to mobilize to Site and begin physical construction at the Site, all in a manner (under preceding clauses (i) and (ii)) that can reasonably be considered necessary so that engineering, procurement and construction of the Facility may begin and proceed to completion without foreseeable interruption of a material duration. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Construction Start shall occur no later than the Guaranteed Construction Start Date.
- b. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of [REDACTED] of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date, Seller may provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b). If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.

**2. Commercial Operation of the Facility.**

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date.
- b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to



extend the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED] of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller may provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates.** Independent of Seller's extension rights under Sections 1 and 2 of this Exhibit B above, the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, both 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. neither Seller nor its Affiliate, as applicable, has acquired the Material Permits by the Guaranteed Construction Start Date despite the exercise of diligent and commercially reasonable efforts by Seller or its Affiliates, as applicable; or
  - b. a Force Majeure Event occurs; or
  - c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to receive approval for Initial Synchronization and to connect and sell Product at the Delivery Point by the original expected Initial Synchronization date as set forth in the Cover Sheet, despite the exercise of diligent and commercially reasonable efforts by Seller; or
  - d. Buyer has not made all necessary arrangements to receive the Discharging Energy at the Delivery Point by the Guaranteed Commercial Operation Date (it being acknowledged that an extension under this paragraph (d) shall not limit other rights and remedies Seller may have for any Buyer Default).

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to

clause 4(d) above) shall not exceed [REDACTED], for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) 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 commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity [REDACTED], Seller shall have [REDACTED] after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is equal to (but not greater than (without limiting Seller's right to overbuild the Facility in accordance with the definition of "Installed Capacity")) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly. Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Daily Delay Damages, Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.
6. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.



## EXHIBIT C

### COMPENSATION

(a) Monthly Compensation. Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the sum of (x) Contract Price x Effective Capacity x Availability Adjustment x Efficiency Rate Adjustment and (y) Monthly RA Replacement Adjustment. If Buyer dispatches the Facility for more than [REDACTED] Cycles during a Contract Year, Buyer shall pay Seller the Annual Excess Cycle Payment calculated for such Contract Year in accordance with clause (e) below, which shall be included in Seller's invoice to Buyer following the end of such Contract Year in accordance with Section 8.1. All of such foregoing Monthly Capacity Payments and Annual Excess Cycle Payments constitute the entirety of the amount due to Seller from Buyer for the Product. If the Effective Capacity and/or Efficiency Rate are adjusted pursuant to a Capacity Test effective as of a day other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Capacity and/or Efficiency Rate are applicable.

(b) Availability Adjustment. The "Availability Adjustment" (or "AA") is calculated as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(c) Efficiency Rate Adjustment. The "Efficiency Rate Adjustment" is calculated as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(d) Monthly RA Replacement Adjustment. The “**Monthly RA Replacement Adjustment**” is calculated as follows: [REDACTED]

[REDACTED]

[REDACTED]

(e) Annual Excess Cycle Payment. The “**Annual Excess Cycle Payment**” is calculated as follows: [REDACTED]

[REDACTED]

(f) Tax Credits. Seller shall take commercially reasonable efforts to evaluate and determine whether to pursue Tax Credits available to Seller under any Federal Investment Tax Credit Legislation that is enacted after the Effective Date and prior to Commercial Operation Date [REDACTED]

[REDACTED]

**EXHIBIT D****SCHEDULING COORDINATOR RESPONSIBILITIES**

(a) Buyer as Scheduling Coordinator for the Facility. Subject to Section 2.5 with respect to pre-Commercial Operations, beginning on the Commercial Operation Date, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt (as applicable) of Charging Energy, Discharging Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Commercial Operation Date, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Commercial Operation Date, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Commercial Operation Date. Buyer (or Buyer's SC) shall submit an NQC request to CAISO in relation to the Facility as early as is reasonably possible. Seller shall submit an NQC request to CAISO in relation to the Facility for purposes of inclusion on the annual RA plan as early as is reasonably possible. On and after the Commercial Operation Date, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer's SC (which may be Buyer) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real time or other market basis that may develop after the Effective Date, as determined by Buyer consistent with the CAISO Tariff.

(b) Notices. Beginning on the Commercial Operation Date, Buyer's SC (which may be Buyer) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO by (in order of preference) telephone or electronic mail to the personnel designated to receive such information. Buyer (as the Facility's SC) shall provide Seller with read-only access to applicable real-time CAISO data to the extent Buyer has the authorization to do so.

(c) CAISO Costs and Revenues. Beginning on the Commercial Operation Date, except as otherwise set forth in this part (c) or as otherwise expressly provided in the Agreement, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including Charging Energy, penalties, Imbalance Energy and Charging Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including Discharging Energy, credits, Imbalance Energy and Charging Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Delivery Point; *provided, however,* Seller shall assume all liability and reimburse Buyer for any and all costs or charges (i)



incurred by Buyer because of Seller's default, breach or other failure to perform as required by this Agreement, (ii) incurred by Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility), or (iii) to the extent arising as a result of Seller's failure to comply with a timely Curtailment Order if such failure results in incremental costs to Buyer. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account, except to the extent any Non-Availability Charges arise from Scheduling Coordinator's violation of the CAISO Tariff. If during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Beginning on the Commercial Operation Date, Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices in respect of performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Beginning on the Commercial Operation Date, Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer or Buyer's designated SC as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(h) NERC Reliability Standards. Beginning on the Commercial Operation Date, Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller, or cause its designated SC to cooperate reasonably with Seller, to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with any applicable NERC reliability standards. This cooperation shall include the provision of information in Buyer's or its designated SC's possession, as applicable, that Buyer (as Scheduling Coordinator) or its designated SC, as applicable, has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) or its designated SC, as applicable, related to Seller's compliance with applicable NERC reliability standards.

**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. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to 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 material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. If Network Upgrades are required by CAISO, a list of any such Network Upgrades and a status report of progress toward completion of such Network Upgrades as and when known by Seller; or if Network Upgrades are not required by CAISO, a notice of such outcome.
15. Any other documentation reasonably requested by Buyer.

**EXHIBIT F****FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT**

[Available Capacity, MW Per Hour] – [Insert Month]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

**EXHIBIT G****FORM OF DAILY AVAILABILITY NOTICE**

Trading Day: \_\_\_\_\_

Station: \_\_\_\_\_

Issued By: \_\_\_\_\_

Unit: \_\_\_\_\_

Issued At: \_\_\_\_\_

Unit 100% Available No Restrictions: \_\_\_\_\_

Hour Ending	Available Capacity			Comments
	(MW)			
1:00				
2:00				
3:00				
4:00				
5:00				
6:00				
7:00				
8:00				
9:00				
10:00				
11:00				
12:00				
13:00				
14:00				
15:00				
16:00				
17:00				
18:00				
19:00				
20:00				
21:00				
22:00				
23:00				
0:00				

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT H****FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification ("**Certification**") of Commercial Operation is delivered by \_\_\_\_\_ [*licensed professional engineer*] ("**Engineer**") to California Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service 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.

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. The Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Discharging Energy to, the CAISO Balancing Authority.
3. The commissioning of the equipment has been completed in accordance with the applicable material requirements of the manufacturers' specifications.
4. The Facility's Installed Capacity is no less than \_\_\_\_\_ of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
5. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on \_\_\_\_\_ [DATE]\_\_\_\_\_.
6. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on \_\_\_\_\_ [DATE]\_\_\_\_\_.
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on \_\_\_\_\_ [DATE]\_\_\_\_\_.
8. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_



Its: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVAL DRAFT

**EXHIBIT I****FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE**

This certification ("**Certification**") of Capacity and Efficiency Rate Test results is delivered by [licensed professional engineer] ("**Engineer**") to California Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated \_\_\_\_\_ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify that a Capacity and Efficiency Rate Test conducted on [Date] demonstrated (i) an [Installed or Effective] Capacity of \_\_ MW AC to the Delivery Point at eight (8) hours of continuous discharge, and (ii) an Efficiency Rate of \_\_%, all in accordance with the testing procedures, requirements and protocols set forth in Section 4.4 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT J****FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to California Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service 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) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on \_\_\_\_\_ (the “**Construction Start Date**”); and
- (3) 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 of the Agreement.)

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

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT K**  
**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXX]

Beneficiary:

California Community Power,  
a California joint powers authority  
[Address]

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 California Community Power, a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Energy Storage [Service] Agreement dated as of \_\_\_\_\_ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in San Francisco, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed

documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the 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; *provided*, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then current Expiration Date. 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.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

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.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: California Community Power, a California joint powers authority, [Title], [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

---

[Insert officer name]

[Insert officer title]

APPROVAL DRAFT



EXHIBIT A

(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 California Community Power, [ADDRESS], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of \_\_\_\_\_ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Energy Storage Service 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 a Seller Event of Default (as such term is defined in the Agreement) 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 [ ] 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 [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

\_\_\_\_\_  
Name and Title of Authorized Representative

Date\_\_\_\_\_

**EXHIBIT L****FORM OF BUYER LIABILITY PASS THROUGH AGREEMENT**

This Buyer Liability Pass Through Agreement (this “**BLPTA**”) is entered into as of [\_\_\_\_], 20\_\_ (the “**BLPTA Effective Date**”) by and between [\_\_\_\_], a [\_\_\_\_] (together with its successors and permitted assigns “**Project Participant**”), California Community Power, a California joint powers authority (“**CC Power**”), and [\_\_\_\_], a [\_\_\_\_] (together with its successors and permitted assigns “**Seller**”). Seller, CC Power, and Project Participant are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.”

**RECITALS**

**WHEREAS**, CC Power and Seller have entered into that certain Energy Storage Service Agreement (as amended, restated or otherwise modified from time to time, the “**ESSA**”) dated as of [\_\_\_\_], 20\_\_;

**WHEREAS**, Project Participant is entering into this BLPTA to secure, in part, California Community Power’s obligations under the ESSA;

**WHEREAS**, Project Participant is named as a Project Participant under the ESSA and will derive substantial direct and indirect benefits from the execution and delivery of the ESSA;

**WHEREAS**, Seller and CC Power will derive substantial and direct benefits from the execution and delivery of this BLPTA; and

**WHEREAS**, initially capitalized terms used but not defined herein have the meaning set forth in the ESSA.

**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:

**AGREEMENT**

**1. Project Participant Covenants.** For value received, Project Participant does hereby unconditionally, absolutely, and irrevocably guarantee, as obligor and not as a surety, to Seller the complete and prompt payment of [X%] (the “**Liability Share**”), as the same may be adjusted pursuant to Section 4, [*Note: Insert percentage from Exhibit V*] of all obligations and liabilities for payment now or hereafter owing from CC Power to Seller under the ESSA, including liabilities for Monthly Capacity Payments, the Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts (each such obligation or liability of CC Power under the ESSA, a “**Guaranteed Amount**”). Any payment made directly from CC Power to Seller under the ESSA shall reduce Project Participant’s liability hereunder by reducing the total amount that is used to calculate the Guaranteed Amount pursuant to the preceding sentence. This BLPTA is an irrevocable, absolute, unconditional, and continuing guarantee of the punctual payment and performance, and not of collection, of Project Participant’s

Liability Share of the Guaranteed Amount. In the event CC Power shall fail to duly, completely, or punctually pay any amount owed by Buyer pursuant to the terms and conditions of the ESSA, and such failure is not remedied within ten (10) Business Days after Notice thereof pursuant to Sections 11.1 or 11.4, as applicable, Project Participant shall promptly pay Project Participant's Liability Share of the Guaranteed Amount, as required herein.

2. **Seller Waiver.** In consideration of the foregoing, Seller unconditionally waives all right to recover directly from CC Power any Damage Payment or Termination Payment that is not paid by CC Power pursuant to Sections 11.3 and 11.4 of the ESSA, but the foregoing waiver does not apply to any other right or remedy of Seller under the ESSA, including the right to recover accrued Monthly Capacity Payments, other amounts payable or reimbursable under the ESSA or any other amounts incurred or accrued prior to termination of the ESSA and the right to terminate the ESSA as the result of an Event of Default by Buyer.

3. **Demand Notice.** For avoidance of doubt, Seller may demand payment from Project Participant for purposes of this BLPTA only when and if a payment is not duly, completely, or punctually paid by CC Power pursuant to the terms and conditions of the ESSA and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof is issued pursuant to Sections 11.1 or 11.4, as applicable. If CC Power fails to pay any amount when due pursuant to the ESSA, and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof, then Seller may exercise its rights under this BLPTA and make a payment demand upon Project Participant to pay Project Participant's Liability Share of the unpaid Guaranteed Amount (a "**Payment Demand**"). A Payment Demand shall be in writing and shall reasonably specify (a) in what manner and what amount CC Power has failed to pay, (b) an explanation of why such payment is due and owing, (c) a calculation of the Guaranteed Amount due from Project Participant, and (d) a specific statement that Seller is requesting that Project Participant pay its Guaranteed Liability Share of the unpaid Guaranteed Amount under this BLPTA. Project Participant shall, within fifteen (15) Business Days following its receipt of the Payment Demand, pay to Seller Project Participant's Liability Share of the unpaid Guaranteed Amount.

4. **Step-Up Events.** Within thirty (30) days after the occurrence of a Step-Up Event, Project Participant and CC Power will tender to Seller a duly executed and binding replacement Buyer Liability Pass Through Agreement in the same form as this Agreement, but for a Liability Share equal to the Project Participant's Revised Liability Share. Upon receipt of such executed replacement Buyer Liability Pass Through Agreement, Seller will cancel this Buyer Liability Pass Through Agreement, effective upon the effectiveness of the replacement Buyer Liability Pass Through Agreement. For the avoidance of doubt, the cancellation of an existing Buyer Liability Pass Through Agreement shall not be effective unless and until the replacement Buyer Liability Pass Through Agreement has become effective and binding. Following delivery of such replacement Buyer Liability Pass Through Agreement and cancellation of this Buyer Liability Pass Through Agreement, Exhibit V to the ESSA will be deemed amended to reflect the Project Participant's Revised Liability Share; [REDACTED]

5. **Scope and Duration of BLPTA.** The obligations under this BLPTA are independent of the obligations of CC Power under the ESSA, and an action may be brought to

enforce this BLPTA whether or not action is brought against CC Power under the ESSA. This BLPTA shall continue in full force and effect from the BLPTA Effective Date until both of the following have occurred: (a) the Delivery Term of the ESSA has expired or terminated early, and (b) either (i) all payment obligations of CC Power due and payable under the ESSA are paid in full (whether directly or indirectly such as through set-off or netting) or (ii) Project Participant has paid the maximum Guaranteed Amount (i.e. based on its maximum Revised Liability Share as provided in Section 4) in full. This BLPTA shall also continue to be effective or be reinstated, as the case may be, if at any time any payment of any Guaranteed Amount by CC Power is rescinded or must otherwise be returned by Seller upon the insolvency, bankruptcy or reorganization of CC Power or similar proceeding, all as though such payment had not been made, and Project Participant's Liability Share of such Guaranteed Amount shall be subject to payment following a Payment Demand issued pursuant to this BLPTA. Without limiting the generality of the foregoing, and to the extent that the Project Participant has not paid its maximum Guaranteed Amount in full, the obligations of the Project Participant hereunder shall not be released, discharged, or otherwise affected, and this BLPTA shall not be invalidated or impaired or otherwise affected for the following reasons:

- A. The extension of time for the payment of any Guaranteed Amount; or
- B. Any amendment, modification or other alteration of the ESSA; or
- C. Any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount; or
- D. 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 CC Power, including but not limited to any rejection or other discharge of CC Power's obligations under the ESSA 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
- E. Any reorganization of CC Power or Project Participant, or any merger or consolidation of CC Power or Project Participant into or with any other Person; or
- F. The receipt, release, modification or waiver of, or failure to pursue or seek relief under or with respect to, any other BLPTA, guaranty, collateral, pledge or security device whatsoever; or
- G. CC Power's inability to pay any Guaranteed Amount or perform its obligations under the ESSA; or
- H. 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 Project Participant reserves the right to assert for itself any defenses, setoffs or counterclaims that CC Power is or may be entitled to assert against Seller, including with respect to disputes regarding the calculation of a Guaranteed Amount.

**6. Waivers by Project Participant.** Project Participant hereby unconditionally



waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraphs 2 and 3, (a) notice of acceptance, presentment or protest, notice of any of the events described in Paragraph 5, or any other notice or demand of any kind with respect to the Guaranteed Amounts and this BLPTA, (b) any requirement that Seller pursue or exhaust any right, power or remedy or proceed against California Community Power under the ESSA or against any other Person, including any obligation to pursue any other BLPTAs, or to marshal assets, (c) any defense based on any of the matters described in Paragraph 4, (d) all rights of subrogation or other rights to pursue CC Power for payments made under this BLPTA until all amounts owing under the ESSA have been paid in full, and (e) any duty of Seller to disclose any information or other matters relating to the business, operations or finances or other condition of CC Power or any other Person who has provided a BLPTA or other security or guaranty with respect to the ESSA now or hereafter known to Seller. Project Participant further acknowledges and agrees that it is and will be bound by actions taken and elections made by CC Power under the ESSA and waives any defense based on CC Power's authority or lack thereof or the validity, regularity or advisability of the actions taken or elections made.

**7. Project Participant Representations and Warranties.** Project Participant hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA 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 BLPTA does not and will not contravene Project Participant's organizational documents, any applicable Law or any contractual provisions binding on or affecting Project Participant, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Project Participant, threatened, against or affecting Project Participant or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Project Participant to enter into or perform its obligations under this BLPTA, 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 member of the Project Participant), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Project Participant.

**8. Seller Representations and Warranties.** Seller hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA 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 BLPTA does not and will not contravene Seller's organizational documents, any applicable Law or any contractual provisions binding on or affecting Seller, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Seller, threatened, against or affecting Seller or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Seller to enter into or perform its obligations under this BLPTA, 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 Seller), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Seller.

**9. California Community Power Representations and Warranties.** California Community Power hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA 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 BLPTA does not and will not contravene California Community Power's organizational documents, any applicable Law or any contractual provisions binding on or affecting California Community Power, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the California Community Power, threatened, against or affecting California Community Power or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of California Community Power to enter into or perform its obligations under this BLPTA, 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 member of California Community Power), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by California Community Power.

**10. Notices.** Notices under this BLPTA 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 (4) Business Days after mailing if sent by certified, first-class mail, return receipt requested. Any Party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Seller, to it at:

[\_\_\_\_\_]

Attn: [\_\_\_\_\_]

Fax: [\_\_\_\_\_]

If delivered to Project Participant, to it at:

[\_\_\_\_\_]

Attn: [\_\_\_\_\_]

Fax: [\_\_\_\_\_]

If delivered to CC Power, to it at:

[\_\_\_\_\_]

Attn: [\_\_\_\_\_]

Fax: [\_\_\_\_\_]

**11. Governing Law and Forum Selection.** This BLPTA 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 BLPTA shall be brought in the federal courts of the United States or the courts of the State of California sitting in the county of [\_\_\_\_\_].

**12. Miscellaneous.** This BLPTA shall be binding upon the Parties and their respective successors and assigns and shall inure to the benefit of the Parties and their successors and permitted assigns. No provision of this BLPTA may be amended or waived except by a written instrument executed by Seller, CC Power, and Project Participant. No provision of this BLPTA confers, nor is any provision intended to confer, upon any third party (other than the Parties' successors and permitted assigns) any benefit or right enforceable at the option of that third party. This BLPTA 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 BLPTA 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 BLPTA and all other provisions shall remain in full force and effect. This BLPTA 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 BLPTA 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.

**13. Assignment.** Except as provided below in this Paragraph 12, no Party may assign this BLPTA or its rights or obligations under this BLPTA, without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Seller may, without the prior written consent of Project Participant and CC Power, transfer or assign this BLPTA to any Person to whom Seller may assign its rights or obligations under the ESSA, including assignments for financing purposes, including a Portfolio Financing; *provided*, Seller shall give Project Participant and CC Power Notice at least fifteen (15) Business Days before the date of such proposed assignment and, except in the case of a collateral assignment or other assignment for financing purposes, provide Project Participant and CC Power a written agreement signed by the Person to which Seller wishes to assign its interests that provides that such Person will fully assume all of Seller's obligations and liabilities under this BLPTA, including obligations and liabilities that arose prior to the date of transfer or assignment, upon such transfer or assignment. Project Participant may, without the prior written consent of Seller and CC Power, transfer or assign this BLPTA to any member of CC Power that (A) has a Credit Rating of at least BBB- from S&P or Baa3 from Moody's, and (B) is a load serving entity; *provided*, Project Participant shall give Seller and CC Power Notice at least fifteen (15) Business Days before the date of such proposed assignment and provide to Seller and CC Power a written agreement signed by the Person to which Project Participant wishes to assign its interests that provides that such Person will fully assume all of Project Participant's obligations and liabilities, including obligations and liabilities that arose prior to the date of transfer or assignment, under this BLPTA upon such transfer or assignment.

**14. No Recourse to Members of Project Participant.** Project Participant 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. Project Participant shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA. Seller and CC Power shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Project Participant's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

**15. Financing Cooperation.** Project Participant agrees to provide reasonable cooperation to any Lender, including entering into a customary acknowledgment and consent to assignment and related documents and agreements as are reasonably necessary for obtaining and maintaining financing for the Project typical in non-recourse financing of power projects similar to the Project; *provided*, Project Participant shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Project Participant and all reasonable attorney's fees incurred by Project Participant in connection therewith shall be borne by Seller. Project Participant also agrees (i) to respond promptly to reasonable requests for information from any Lender, including financial statements for Project Participant (subject to a reasonably appropriate confidentiality agreement) and (ii) to deliver usual and customary legal opinions of counsel to Project Participant (regarding due authorization, enforceability and such other matters relating to such consent and this BLPTA as reasonably requested) and related certifications (including certificates of good standing and applicable authorizations for execution and delivery of the applicable agreements).

**16. No Recourse to Members of CC Power.** CC Power 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. Except as expressly set forth in the ESSA and this BLPTA, CC Power shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA, and as such, Seller and Project Participant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CC Power's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

**17. CleanPowerSF as Project Participant.** Paragraph 14 shall not apply if CleanPowerSF is the Project Participant, but the following shall apply:

a. **Designated Fund.** CleanPowerSF payment obligations under this BLPTA are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. CleanPowerSF's payment obligations under this BLPTA are not a charge upon the revenues or general fund of the San Francisco Public Utility Commission ("**SFPUC**") or the City and County of San Francisco or upon any non- CleanPowerSF moneys or other property of the SFPUC or the City and County of San Francisco.

b. **Controller Certification.** CleanPowerSF's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of CleanPowerSF are not authorized to request, and CleanPowerSF is not required to

reimburse Seller for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of CleanPowerSF are not authorized to offer or promise, nor is CleanPowerSF required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

c. Biennial Budget Process. For each City and County of San Francisco biennial budget cycle during the term of this BLPTA, CleanPowerSF agrees to take all necessary action to include the maximum amount of its annual payment obligations under this BLPTA in its budget submitted to the City and County of San Francisco's Board of Supervisors for each year of that budget cycle.

d. Compliance with Laws. Each Party shall keep itself fully informed of all applicable federal, state, and local laws in any manner affecting the performance of its obligations under this BLPTA, and must at all times materially comply with such applicable laws as they may be amended from time to time.

e. Prohibition on Political Activity with City Funds. In performing any services required under this BLPTA, Seller shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this BLPTA from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco.

f. Non-discrimination in Contracts. Seller shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

g. Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Seller does not as of the date of this BLPTA, and will not during the term of this BLPTA, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

h. Submitting False Claims. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (1) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (3) conspires to defraud the City by getting a false claim allowed or paid by the City; (4) knowingly makes, uses, or causes to be made or used

a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (5) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

i. Consideration of Salary History. Seller shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Seller is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this BLPTA or in furtherance of this BLPTA, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property.

j. Consideration of Criminal History in Hiring and Employment Decisions. Seller agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to Seller’s operations to the extent those operations are in furtherance of the performance of this BLPTA, shall apply only to applicants and employees who would be or are performing work in furtherance of this BLPTA, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

k. Conflict of Interest. By executing this BLPTA, Seller certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this BLPTA.

l. Campaign Contributions. By executing this BLPTA, Seller acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Seller’s board of directors; Seller’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in the bid or contract; and any committee that is sponsored or

controlled by Seller. Seller shall inform the relevant persons of the limitation on contributions imposed by Section 1.126.

m. MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles.

n. Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, Seller shall not provide any items to the City in performance of this BLPTA which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of Seller to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

o. Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 17(d) through 17(n) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 17(d) through 17(n) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

**18. City of San José (San José Clean Energy) as Project Participant.** Paragraph 14 shall not apply if the City of San José, as administrator of San José Clean Energy ("**SJCE**") is the Project Participant, but the following shall apply:

a) Designated Fund. The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; *provided, however*, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) ("**Designated Fund**") for payment of its obligations under this BLPTA. Subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the SJCE's obligations, SJCE agrees to establish rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this BLPTA.

b) Limited Obligations. SJCE's payment obligations under this BLPTA are special limited obligations of the SJCE payable solely from the Designated Fund and are not a

charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

c) Nondiscrimination/Non-Preference. In performing its obligations under this BLPTA, Seller shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Seller to file, and cause any Seller's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

d) Conflict of Interest. Seller represents that it is familiar with the local and state conflict of interest laws and agrees to comply with those laws in performing this BLPTA. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Seller shall avoid all conflicts of interest or appearances of conflicts of interest in performing this BLPTA. Seller has the obligation of determining if the manner in which it performs any part of this BLPTA results in a conflict of interest or an appearance of a conflict of interest and shall immediately notify SJCE in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Seller's violation of this subsection (ii) is a material breach.

e) Environmentally Preferable Procurement Policy. Seller shall perform its obligations under this BLPTA in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 13.1(g) be a material breach of this BLPTA or otherwise give rise to an Event of Default or entitle SJCE to terminate this BLPTA.

f) Gifts Prohibited. Seller represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Seller's violation of this subsection (iv) is a material breach.

g) Disqualification of Former Employees. Seller represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate



Chapter 12.10.

h) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 17(d) through 17(g) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 17(c) through 17(h) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

APPROVAL DRAFT

**IN WITNESS WHEREOF**, the Parties have caused this BLPTA to be duly executed and delivered by their duly authorized representatives on the date first above written.

[Redacted Signature]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CALIFORNIA COMMUNITY POWER, a  
California joint powers authority:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Redacted Signature]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT M****FORM OF REPLACEMENT RA NOTICE**

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to [\_\_\_\_], a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.5 of the Agreement, Seller hereby provides the below Replacement RA product information:

**Unit Information<sup>1</sup>**

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

<sup>1</sup> To be repeated for each unit if more than one.

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVAL DRAFT

**EXHIBIT N****NOTICES**

<b>Goal Line BESS 1, LLC</b> (“Seller”)	<b>California Community Power, a California</b> <b>joint powers authority (“Buyer”)</b>
<b>All Notices:</b> <div style="background-color: black; height: 15px; width: 150px; margin-bottom: 5px;"></div> <div style="background-color: black; height: 15px; width: 280px; margin-bottom: 5px;"></div> <div style="background-color: black; height: 15px; width: 190px; margin-bottom: 5px;"></div> <div style="background-color: black; height: 15px; width: 300px; margin-bottom: 5px;"></div> <div style="background-color: black; height: 15px; width: 180px; margin-bottom: 5px;"></div> <div style="background-color: black; height: 15px; width: 340px; margin-bottom: 5px;"></div> <div style="background-color: black; height: 15px; width: 290px; margin-bottom: 5px;"></div>	<b>All Notices:</b>  Street: 70 Garden Court, Suite 300 City: Monterey, CA 93940 Attn: Tim Haines  Phone: 916-207-4078 Email: timhaines@powergridsymmetry.com
<b>Scheduling:</b> <i>[To be provided]</i> Attn: Phone: Email:	<b>Scheduling:</b> Attn: TBD Phone: TBD Email: TBD
<b>Confirmations:</b> <i>[To be provided]</i> Attn: Phone: Email:	<b>Confirmations:</b> Attn: TBD Phone: TBD Email: TBD
<b>Invoices:</b> <i>[To be provided]</i> Attn: Phone: E-mail:	<b>Invoices:</b> Attn: TBD Phone: TBD E-mail: TBD
<b>Payments:</b> <i>[To be provided]</i> Attn: Phone: E-mail:	<b>Payments:</b> Attn: TBD Phone: TBD E-mail: TBD
<b>Wire Transfer:</b> <i>[To be provided]</i> <div style="background-color: black; height: 15px; width: 50px; margin-bottom: 5px;"></div> <div style="background-color: black; height: 15px; width: 50px; margin-bottom: 5px;"></div> <div style="background-color: black; height: 15px; width: 50px; margin-bottom: 5px;"></div>	<b>Wire Transfer:</b> BNK: TBD ABA: TBD ACCT: TBD
<b>Reference Numbers:</b> <i>[To be provided]</i> Duns: Federal Tax ID Number:	<b>Reference Numbers:</b> Duns: Federal Tax ID Number:
<b>Credit and Collections:</b> <i>[To be provided]</i> Attn: Street: City: Phone: Email:	<b>Credit and Collections:</b> Attn: Street: City: Phone: Email:

<b>Goal Line BESS 1, LLC</b> (“Seller”)	<b>California Community Power, a California</b> <b>joint powers authority (“Buyer”)</b>
<b>With additional Notices of an Event of</b> <b>Default to:</b>  [REDACTED] [REDACTED] [REDACTED] [REDACTED]  [REDACTED] [REDACTED] [REDACTED]	<b>With additional Notices of an Event of</b> <b>Default to:</b> Attn: Brittany Iles, Attorney Street: 555 Capitol Mall, Ste 570 City: Sacramento, CA 95814 Phone: 916 326-5812 Facsimile: 916 330-4337 Email: <a href="mailto:iles@braunlegal.com">iles@braunlegal.com</a>



**EXHIBIT O****CAPACITY AND EFFICIENCY RATE TESTS****Capacity Test Notice and Frequency**

A. Commercial Operation Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test (and any subsequent Commercial Operation Capacity Test permitted in accordance with Section 5 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Facility determined by such Commercial Operation Capacity Test(s).

B. Subsequent Capacity Tests. Following the Commercial Operation Date, at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test. Buyer shall have the right to require a Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Capacity or Efficiency Rate have varied materially from the results of the most recent prior Capacity Test. Seller shall have the right to run a retest of any Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Capacity and Efficiency Rate. No later than five (5) Business Days following any Capacity Test, Seller shall submit to Buyer raw data and preliminary Capacity Test results. No later than ten (10) Business Days following any Capacity Test, Seller shall submit to Buyer a testing report detailing results and findings of the Capacity Test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

**Capacity Test Procedures****PART I. GENERAL.**

A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

B. Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points. Communications protocols and communications connection requirements shall be modified, if necessary, to comply with NERC CIP standards.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA System data. Communications protocols and communications connection requirements shall be modified, if necessary, to comply with NERC CIP standards.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.
- (4) Additional Testing. The Seller shall have the right to conduct one or more preliminary runs as a part of any Capacity Test prior to the commencement of a Capacity Test to determine or adjust, as necessary, the then current Energy Ratio at 0% SOC and 100% SOC.

## PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

***Note: Seller shall have the right and option in its sole discretion to install storage capacity in excess of the Guaranteed Capacity; provided, for all purposes of this Agreement, the amount of Installed Capacity shall never be deemed to exceed the Guaranteed Capacity, and all Energy Level measurements associated with a Capacity Test shall be based on the Storage Level without taking into account any energy that exceeds 100% SOC.***

A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

- (1) Total electrical energy discharged from the Facility, as recorded at the Facility Meter when Maximum Discharging Capacity is sustained for eight (8) continuous hours; and
- (2) Total electrical energy used to charge the Facility, as recorded at the Facility Meter when Maximum Charging Capacity is sustained until the SOC

reaches at least 90%, continued by electrical input at a rate up to the Maximum Charging Capacity and sustained until the SOC reaches 100%, not to exceed ten (10) hours of total charging time.

B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:

- (1) Time;
- (2) Total electrical energy discharged from the Facility, as recorded at the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);
- (3) Total electrical energy used to charge the Facility, as recorded at the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter);
- (4) Storage Level (MWh);
- (5) Energy Level (MWh); and
- (6) Energy Ratio.

C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

- (1) Relative humidity (%);
- (2) Barometric pressure (inches Hg) near the horizontal centerline of the Facility; and
- (3) Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

- (1) That the CT successfully started;
- (2) The nominal sustained discharging level for eight (8) consecutive hours pursuant to A(1) above;
- (3) The nominal sustained charging level for ten (10) consecutive hours pursuant to A(2) above;
- (4) Amount of time between the Facility's electrical output going from 0 to the Maximum Discharging Capacity during the CT (for purposes of calculating the ramp rate);

- (5) Amount of time between the Facility's electrical input going from 0 to the Maximum Charging Capacity during the CT (for purposes of calculating the ramp rate);
- (6) Energy Level (MWh) at 0% SOC and 100% SOC, to be used for the testing and operation of the Facility until the subsequent CT supersedes the values.
- (7) Total electrical energy used to charge the Facility, registered at the Facility Meter, to go from 0% SOC to 100% SOC;
- (8) Total electrical energy discharged from the Facility, registered at the Facility Meter, to go from 100% SOC to 0% SOC.
- (9) Amount of charging reactive energy in VARh, registered at the Facility Meter during the charging period
- (10) Amount of discharging reactive energy in VARh, registered at the Facility Meter during the discharging period.
- (11) Maximum, minimum, average, and standard deviation of the battery temperatures (°C)
- (12) Battery enclosure temperatures (°C).

E. Test Conditions.

- (1) General. At all times during a CT, the Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Facility. Capacity Test shall be conducted within 10 C of the industry standard test conditions of 25 °C. If battery starting temperatures are not greater than 30 °C, preconditioning will be performed prior to the start of the CT. Capacity Tests conducted to determine Effective Capacity and Efficiency Rate shall be conducted at a power factor between 0.99 lagging and 0.99 leading.
- (2) Abnormal Conditions. If at any time any operating protocols including but not limited to current, voltage and temperature are exceeded, the test shall be immediately halted and the system placed into a safe mode. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff. The measurement uncertainty calculated in

the post-test measurement uncertainty analysis will be applied to the test results of the Capacity Test.

- F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties and all costs, expenses and fees payable as a result of such retest shall be borne or reimbursed by the Party that requested the initial incomplete CT; provided, however, that if Seller is unable to complete a CT due to any action or inaction of Buyer, all costs, expenses and fees payable as a result of such retest shall be borne or reimbursed by Buyer regardless of which Party requested the initial incomplete CT.
- G. Test Report. Within ten (10) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
  - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
  - (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor. If either Party rejects the results of any CT and provides data or reasons with such rejection reasonably indicating that the results were not in accordance with this agreement, or the Supplementary Capacity Test Protocol, such CT shall be repeated in accordance with Section 4.4 of the Agreement.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then current design of the Facility ("**Supplementary Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity

Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Capacity and Efficiency Rate. The Effective Capacity and Efficiency Rate shall be updated as follows:

- (1) The total amount of electrical energy delivered to the Delivery Point (expressed in MWh AC) during the first eight (8) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Capacity (in the case of a Commercial Operation Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Capacity (in the case of any other Capacity Test), multiplied by (ii) eight (8) hours) shall be divided by eight (8) hours to determine the Effective Capacity, which shall be expressed in MW AC, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.
- (2) Total electrical energy discharged from the Facility (as reported under Section II.D(8) above) divided by the total electrical energy used to charge the Facility (as reported under Section II.D(7) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Capacity and Efficiency Rate Test**

• Procedure:

- (1) System Starting State: The Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the Energy Ratio, Energy Level, the Storage Level, and the initial time.
- (3) Command a real power charge of Facility's Maximum Charging Capacity and begin the test period once the system has fully ramped. Continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) ten (10) hours have elapsed since the Facility commenced charging.
- (4) Record and store the Energy Ratio, Energy Level, Storage Level, and time after the earlier of (a) the Facility has reached 100% SOC or (b) ten (10) hours of continuous charging.
- (5) Record and store the total electrical energy used to charge the Facility, registered at the Facility Meter, to go from 0% SOC to 100% SOC, Energy Level, and the Storage Level.



- (6) Following an agreed-upon rest period, command a real power discharge of the Facility's Maximum Discharging Capacity and begin the test period once the system has fully ramped. Maintain the discharging rate until the earlier of (a) the Facility has discharged for eight (8) consecutive hours, or (b) the Facility has reached 0% SOC.
  - (7) Record and store the Energy Ratio, Energy Level, Storage Level, and time after eight (8) hours of continuous discharging.
  - (8) Record and store the total electrical energy discharged from the Facility as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Effective Capacity.
  - (9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches 0% SOC or 0% Energy Ratio, whichever occurs first.
  - (10) Record and store the Storage Level, Energy Level, and the total electrical energy discharged from the Facility as measured at the Facility Meter from the commencement of discharging pursuant to Part III.A.6 until the Facility has reached 0% SOC or 0% Energy Ratio, whichever occurs first, pursuant to either Part III.A.7 or Part III.A.9, as applicable.
- Test Results:
    - (1) The resulting Effective Capacity measurement is the sum of the total electrical energy discharged from the Facility, as registered at the Facility Meter, divided by eight (8) hours.
    - (2) Total electrical energy discharged from the Facility (as reported under Section III.A(10) above) divided by the total electrical energy used to charge the Facility (as reported under Section III.A(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

#### **B. AGC Discharge Test**

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's nominal discharging level within 8 seconds.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  - (1) Record the Facility active power level at the Facility Meter.

(2) Command the Facility to follow a simulated CAISO RIG signal of P<sub>MAX</sub> at .95 power factor for ten (10) minutes.

(3) Record and store the Facility active power response (in seconds).

- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

#### C. **AGC Charge Test**

- Purpose: This test will demonstrate the AGC charge capability to achieve the facility's nominal charging level within 8 seconds.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.

- Procedure:

(1) Record the Facility active power level at the Facility Meter.

(2) Command the Facility to follow a simulated CAISO RIG signal of P<sub>MAX</sub> at .95 power factor for ten (10) minutes.

(3) Record and store the Facility active power response (in seconds).

- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

#### D. **Reactive Power Production Test**

- Purpose: This test will demonstrate the reactive power production capability of the Facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.

- Procedure:

(1) Record the Facility reactive power level at the Facility Meter.

(2) Command the Facility to follow 25 MW for ten (10) minutes.

(3) Record and store the Facility reactive power response.

- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

**E. Reactive Power Consumption Test**

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
  - (1) Record the Facility reactive power level at the Facility Meter.
  - (2) Command the Facility to follow 25 MW for ten (10) minutes.
  - (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

**EXHIBIT P****FACILITY AVAILABILITY CALCULATION**

Monthly Capacity Availability Calculation. Seller shall calculate the “**Monthly Capacity Availability**” for a given month of the Delivery Term using the formula set forth below:

$$\text{Monthly Capacity Availability (\%)} = \frac{[\text{AVAILHRS}_m + \text{EXCUSEDHRS}_m]}{[\text{MONTHRS}_m]}$$

Where:

$m$  = relevant month “m” in which Monthly Capacity Availability is calculated;

MONTHRS<sub>m</sub> is the total number of hours for the month;

AVAILHRS<sub>m</sub> is the total number of hours, or partial hours, in the month during which the Facility was available to charge and discharge Energy and to provide Ancillary Services at the Point of Change of Ownership (excluding, for avoidance of doubt, all circumstances on or beyond the PTO’s side of the Point of Change of Ownership). If the Facility is available pursuant to the preceding sentence during any applicable hour, or partial hour, but for less than the full amount of the Effective Capacity, the AVAILHRS<sub>m</sub> for such time period shall be calculated by multiplying such AVAILHRS<sub>m</sub> by a percentage determined by the quotient of (a) divided by (b); where (a) is the lower of (i) such capacity amount reported as available by Seller’s real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.10(b)), and (b) is the Effective Capacity.

EXCUSEDHRS<sub>m</sub> is the total number of hours, or partial hours, in the month during which the Facility is unavailable to charge and discharge Energy and to provide Ancillary Services at the Point of Change of Ownership due to Approved Maintenance Hours, Force Majeure Events, Buyer Dispatched Tests, Operating Restrictions in Exhibit Q, Buyer Default, or any circumstances arising on or beyond the PTO’s side of the Point of Change of Ownership that may limit Seller’s delivery of Product (each, an “**Excused Event**”). If an Excused Event results in less than the full amount of the Effective Capacity for the Facility being available during any applicable hour, or partial hour, the EXCUSEDHRS<sub>m</sub> for such time period shall be calculated by multiplying such EXCUSEDHRS<sub>m</sub> by a percentage determined by the quotient of (a) divided by (b); where (a) is the lower of such Effective Capacity amount that is not reported as available by (i) Seller’s real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.10(b)), and (b) is the Effective Capacity. For avoidance of doubt, the total of AVAILHRS<sub>m</sub> plus EXCUSEDHRS<sub>m</sub> for any hour, or partial hour, shall never exceed 1.

If the Facility or any component thereof was previously deemed unavailable for an

hour or part of an hour, and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Facility in the Day-Ahead Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time Buyer is required to schedule or bid the Facility in the Real-Time Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

APPROVAL DRAFT



**EXHIBIT Q****OPERATING RESTRICTIONS**

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Facility in the absence of Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include Facility Scheduling, operating restrictions, and communications protocols.

<b>File Update Date:</b>	[XX/XX/20XX]
<b>Technology:</b>	Lithium-ion
<b>Facility Name:</b>	[Name]
<b>A. Contract Capacity</b>	
<b>Guaranteed Capacity (MW):</b>	50
<b>Effective Capacity (MW):</b>	50
<b>B. Total Unit Dispatchable Range Information</b>	
	Operating Restrictions (Applicable to Buyer)
<b>Interconnect Voltage (kV)</b>	69
<b>Maximum SOC during Charging</b>	100%
<b>Minimum SOC during Discharging</b>	0%
<b>Maximum Storage Level (MWh):</b>	400
<b>Minimum Storage Level (MWh):</b>	0
<b>Maximum Charging Capacity (MW):</b>	50
<b>Maximum Discharging Capacity (MW):</b>	50
<b>Maximum annual Cycles:</b>	
<b>Energy Ramp Rate (MW/minute)</b>	100
<b>C. Ancillary Services</b>	
<b>Frequency regulation is included:</b>	Yes
<b>Spinning reserve is included:</b>	Yes
<b>Non-spinning reserve is included:</b>	Yes
<b>Regulation up is included:</b>	Yes
<b>Regulation down is included:</b>	Yes
<b>Black start is included:</b>	No
<b>Voltage support is included:</b>	Yes



**EXHIBIT R**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**EXHIBIT S**

**FORM OF DAILY OPERATING REPORT**

**DAILY OPERATING REPORT**

for     MM/DD/YY    

**Availability – Capacity - Generation**

**Plant Status at 0600 Hours:**

Unit 1	
<input type="checkbox"/>	Operating
<input type="checkbox"/>	Available
<input type="checkbox"/>	Not Available
See significant events	

**Previous 24 Hours:**

Unit 1	
Operating Hours:	_0:00_ Hrs:Min
(0001 – 2400 Total On Line Hours)	
Net Generation:	_0.0_ MWhr
(0001 – 2400 Total Net Generation)	

**Facility**

((On Line Hr + Off Line Available Hr)/24)

**Period Availability:**

Unit 1
M(onth)TD Availability <u>100.00</u> %
P(eak)TD Availability <u>100.00</u> %

**State of Charge Ratio:**

Unit 1
Initial SOC: __
Ending SOC: __
Battery String SOC: __

**Significant Events**


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- ☐ No significant events, generation losses, major equipment out of service, accidents, injuries or operating anomalies.

Losses of Generation: (Include Date/Time Off Line; Date/Time On Line; Brief Narrative Description of Event.)

List Major Equipment Out of Service; Briefly Describe any Accidents or Injuries; Describe any Operating Anomalies

**EXHIBIT T****FORM OF CONSENT TO COLLATERAL ASSIGNMENT**

This Consent to Collateral Assignment (this “Consent”) is entered into among (i) California Community Power, a California joint powers authority (“CCP”), (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”). CCP, 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 ESSA (as defined below).

RECITALS

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

- A. Project Company and CCP have entered into that certain Energy Storage Service Agreement, dated as of *[Date]* *[List all amendments as contemplated by Section 3.4]* (“ESSA”), pursuant to which Project Company will develop, construct, commission, test and operate the Facility (the “Project”) and sell the Product to CCP, and CCP will purchase the Product from Project Company;
- B. As collateral for Project Company’s obligations under the ESSA, Project Company has agreed to provide to CCP certain collateral, which may include Performance Security and Development Security and other collateral described in the ESSA (collectively, the “ESSA 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 ESSA 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 ESSA that CCP 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.

CCP 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 ESSA (subject to CCP's rights and defenses under the ESSA and the terms of this Consent) and accepts any such exercise; *provided*, insofar as the Collateral Agent exercises any such rights under the ESSA or makes any claims with respect to payments or other obligations under the ESSA, the terms and conditions of the ESSA 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 CCP is authorized to act in accordance with Collateral Agent's instructions, and that CCP 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 ESSA, or upon the occurrence or non-occurrence of any event or condition under the ESSA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CCP to terminate or suspend its performance under the ESSA (a "ESSA Default"), CCP will not terminate or suspend its performance under the ESSA until it first gives written notice of such ESSA Default to Collateral Agent and affords Collateral Agent the right to cure such ESSA Default within the applicable cure period under the ESSA, which cure period shall run concurrently with that afforded Project Company under the ESSA. In addition, if Collateral Agent gives CCP written notice prior to the expiration of the applicable cure period under the ESSA of Collateral Agent's intention to cure such ESSA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such ESSA Default) and is diligently proceeding to cure such ESSA Default, notwithstanding the applicable cure period under the ESSA, Collateral Agent shall have a period of sixty (60) days (or, if such ESSA Default is for failure by the Project Company to pay an amount to CCP which is due and payable under the ESSA other than to provide ESSA Collateral, thirty (30) days, or, if such ESSA Default is for failure by Project Company to provide ESSA Collateral, ten (10) Business Days) from the Collateral Agent's receipt of the notice of such ESSA Default from CCP to cure such ESSA Default; *provided*, (a) if possession of the Project is necessary to cure any such non-monetary ESSA Default and Collateral Agent has

commenced foreclosure proceedings within sixty (60) days after notice of the ESSA 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 ESSA Default, to complete such proceedings and cure such ESSA Default, and (b) if Collateral Agent is prohibited from curing any such ESSA 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 ESSA 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 CCP with reports concerning the status of efforts to cure a ESSA Default upon CCP'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") CCP 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 ESSA, and, subject to Sections 1.7(b) and 1.7(c) below, CCP and Substitute Owner will recognize each other as counterparties under the ESSA and will continue to perform their respective obligations (including those obligations accruing to CCP and the Project Company prior to the existence of the Substitute Owner) under the ESSA in favor of each other in accordance with the terms thereof; *provided*, before CCP is required to recognize the Substitute Owner, the Substitute Owner must have provided reasonable evidence to CCP that the Substitute Owner is a Permitted Transferee (as defined below). For purposes of the foregoing, CCP 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 ESSA 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.

"Permitted Transferee" means any person or entity who is at least as creditworthy as the Project Company on the Effective Date (as defined in the ESSA) and has, or contracts with an operator that has, at least three (3) years of experience either owning or operating energy storage facilities. Collateral Agent may from time to time, following the occurrence of a Financing Document Event of Default, notify CCP in writing of the identity of a proposed transferee of the ESSA, which proposed transferee may include any Lender, in connection with the enforcement of Lender's rights under the Financing Documents, and CCP shall, within thirty (30) Business Days of its receipt of such written notice, confirm to Lender whether or not such proposed transferee is a "Permitted Transferee" (together with a written statement of the reason(s) for any negative determination) it being understood that if CCP shall fail to so respond within such thirty (30) Business Day period such proposed transferee shall be deemed to be a "Permitted Transferee".

#### 1.5 Replacement Agreements.

Subject to Section 1.7, if the ESSA 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”), CCP shall, at Collateral Agent’s or any Replacement Owner’s request, enter into a new agreement with Collateral Agent or Replacement Owner, as applicable, for the balance of the obligations under the ESSA remaining to be performed having terms substantially the same as the terms of the ESSA with respect to the remaining Term (“Replacement ESSA”); *provided*, before CCP is required to enter into a Replacement ESSA, the Replacement Owner must have provided reasonable evidence to CCP that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CCP 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 ESSA, to the extent CCP is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the ESSA, CCP may suspend performance of its obligations under such Replacement ESSA, unless and until all ESSA Defaults of Project Company under the ESSA or Replacement ESSA have been cured other than any such ESSA Defaults that are personal to Project Company and not reasonably capable of cure (which shall not include any payment default).

#### 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 ESSA and a Replacement ESSA 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 provided reasonable evidence to CCP 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 CCP all of the obligations of Project Company, Substitute Owner or Replacement Owner under the ESSA or Replacement ESSA, as applicable, including posting and collateral assignment of the ESSA Collateral. Upon such assignment and the cure of any outstanding ESSA Default other than any such ESSA Defaults that are personal to Project Company and not reasonably capable of cure (which shall not include any payment default), and payment of all other amounts due and payable to CCP in respect of the ESSA or such Replacement ESSA, the transferor shall be released from any further liability under the ESSA or Replacement ESSA, 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 ESSA other than any such ESSA obligations that are personal to Project Company and not reasonably capable of cure (which shall not include

any payment default), including posting and collateral assignment of the ESSA Collateral; *provided*, the obligations of such Substitute Owner shall be no more than those of Project Company under the ESSA.

(c) No Liability.

CCP acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the ESSA 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 ESSA, 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 ESSA, Collateral Agent shall not have any personal liability to CCP under the ESSA or Replacement ESSA and the sole recourse of CCP 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 CCP's right to seek equitable or injunctive relief against Collateral Agent, or CCP's rights with respect to any offset rights expressly allowed under the ESSA, a Replacement ESSA or the ESSA Collateral.

1.8 Delivery of Notices.

CCP shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CCP to Project Company pursuant to the ESSA relating to (a) a ESSA Default by Project Company under the ESSA, (b) any claim regarding Force Majeure by CCP under the ESSA, (c) any notice of dispute under the ESSA, (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 CCP's obligation to give Collateral Agent a notice of ESSA Default under Section 1.3. Collateral Agent shall deliver to CCP, 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.

CCP will, as and when reasonably requested by Project Company or Collateral Agent from time to time, confirm in writing matters relating to the ESSA (including the performance of same by Project Company); *provided*, such confirmation may be limited to matters of which CCP is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CCP under the ESSA as between CCP 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 CCP receives a Financing Document Default Notice, CCP shall deal exclusively with Project Company in connection with the performance of CCP's obligations under the ESSA. From and after such time as CCP receives

a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement ESSA is entered into or the ESSA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, CCP shall, until Collateral Agent confirms to CCP in writing that all obligations under the Financing Documents are no longer outstanding or that the Financing Document Default Notice has been withdrawn, deal exclusively with Collateral Agent in connection with the performance of CCP's obligations under the ESSA, and CCP 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, CCP agrees that it will not, without the Project Company obtaining 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 ESSA (b) terminate or suspend its performance under the ESSA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the ESSA by Project Company.

### SECTION 2. PAYMENTS UNDER THE ESSA

#### 2.1 Payments.

Unless and until CCP receives written notice to the contrary from Collateral Agent, CCP will make all payments to be made by it to Project Company under or by reason of the ESSA directly to Project Company. CCP, Project Company, and Collateral Agent acknowledge that CCP will be deemed to be in compliance with the payment terms of the ESSA to the extent that CCP makes payments in accordance with Collateral Agent's instructions.

#### 2.2 No Offset, Etc.

All payments required to be made by CCP under the ESSA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the ESSA.

### SECTION 3. REPRESENTATIONS AND WARRANTIES OF CCP

CCP makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

#### 3.1 Organization.

CCP 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. CCP has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the ESSA, 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 CCP of this Consent and the ESSA have been duly authorized by all necessary corporate or other action on the part of CCP and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CCP which, if not obtained, will prevent CCP from performing its obligations hereunder or under the ESSA 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 ESSA is in full force and effect, have been duly executed and delivered on behalf of CCP by the appropriate officers of CCP, and constitute the legal, valid and binding obligation of CCP, enforceable against CCP 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 CCP nor, to CCP's actual knowledge, Project Company, is in default of any of its obligations under the ESSA; (b) CCP and, to CCP's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the ESSA; (c) to CCP'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 CCP or Project Company to terminate or suspend its obligations under the ESSA; and (d) the ESSA 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.

CCP 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 ESSA, except as previously disclosed in writing and consented to by CCP.

## 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 CCP:

### 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 ESSA, 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 ESSA 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, CCP, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, CCP, has complied with all conditions precedent to the effectiveness of its obligations under the ESSA; (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 CCP or Project Company to terminate or suspend its obligations under the ESSA; and (d) the ESSA 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 ESSA.

### SECTION 5. RESERVED

### 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 ESSA (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 CCP or Project Company, in accordance with [\[Notice Section of the ESSA\]](#) of the ESSA, (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 ESSA. 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 CCP, 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 CCP 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 ESSA or any Replacement ESSA, its obligations under such ESSA or Replacement ESSA 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.

CCP 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.]*

APPROVAL DRAFT

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.

<p><i>[NAME OF PROJECT COMPANY],</i> <i>[Legal Status of Project Company].</i></p>	<p>CALIFORNIA COMMUNITY POWER, a California joint powers authority.</p>
<p><b>By:</b></p> <p>_____</p> <p><i>[Name]</i> <i>[Title]</i></p> <p>Date: _____</p>	<p><b>By:</b></p> <p>_____</p> <p><i>[Name]</i> <i>[Title]</i></p> <p>Date: _____</p>
<p><i>[NAME OF COLLATERAL AGENT],</i> <i>[Legal Status of Collateral Agent].</i></p> <p><b>By:</b></p> <p>_____</p> <p><i>[Name]</i> <i>[Title]</i></p> <p>Date: _____</p>	

**SCHEDULE A**

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

APPROVAL DRAFT

**EXHIBIT U**  
**MATERIAL PERMITS**

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APPROVAL DRAFT

**EXHIBIT V****PROJECT PARTICIPANTS AND LIABILITY SHARES**

<b>Project Participant</b>	<b>Liability Share</b>
Clean Power San Francisco	21.50%
Redwood Coast Energy Authority	4.00%
San Jose Clean Energy	24.22%
Silicon Valley Clean Energy	28.42%
Sonoma Clean Power	17.36%
Valley Clean Energy	4.50%



**PENINSULA CLEAN ENERGY AUTHORITY**  
**JPA Board Correspondence**

**DATE:** February 17, 2022  
**BOARD MEETING DATE:** February 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 position. The job description can be found on the website:

[Chief Operating Officer](#)

**Work from Home Update**

Peninsula Clean Energy will be implementing a Remote Working Policy going forward. As part of this policy, staff will generally be working from home but are welcome to come into the office if preferred. We will have two to four in-person all-staff meetings for defined purposes throughout the year with the first one planned for Thursday, March 17. Functional teams are encouraged to meet monthly or every other month in-person as needed. We are working with our legal counsel to develop a work-from-home policy that employees will sign agreeing to how their office space will be maintained at home, and other legal protections.

**Impact of COVID-19 on PCE Load**

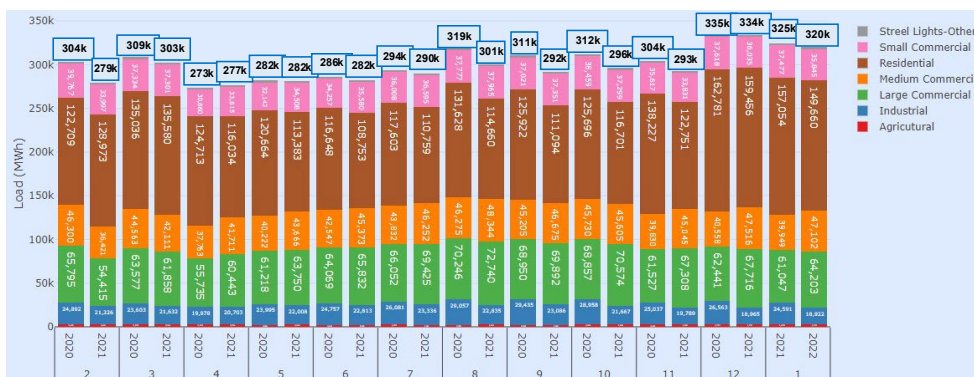
Attached to this report are summary graphs of the impact of COVID-19 on Peninsula Clean Energy's load. The first graph, "Monthly Load", shows the change in load on a monthly basis from February 2020 through January 2022. There was a 4% decrease in Peninsula Clean Energy's load in August-December 2021 compared to August-December 2020 namely due to the heatwaves, fires, and smoke in August and September of 2020. There was a 1% decrease in Peninsula Clean Energy's load in January 2022 compared to January 2021. The second graph, "Monthly Load Changes by Customer Class", shows that commercial and residential loads were significantly



lower in August-December 2021 compared to 2020 mainly due to the heatwaves experienced in 2020. Industrial and residential load was lower in January 2022 compared to January 2021, but commercial load was higher in January 2022 compared to January 2021. The third graph, "Load Shapes (PCE)", shows the change overall in our load on an hourly basis. The load in January 2022 was 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

- 5% decrease in PCE's load in February 2021 March 2021 (PostCOVID) compared to February 2020 March 2020 (PreCOVID)
- 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 2022 compared to January 2021



Peninsula Clean Energy

2

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

Agricultural	-1%	-12%	-7%	26%	3%	-9%	5%	4%	0%	6%	0%	-5%
Industrial	-15%	-8%	4%	-8%	-8%	-11%	-21%	-22%	-25%	-21%	-29%	-23%
Small Commercial	-15%	0%	10%	7%	4%	2%	0%	1%	-3%	-5%	-4%	-4%
Medium Commercial	-21%	-6%	10%	9%	7%	6%	4%	3%	0%	13%	17%	18%
Large Commercial	-17%	-3%	8%	4%	3%	5%	4%	1%	2%	9%	8%	5%
Residential	5%	0%	-7%	-6%	-7%	-6%	-13%	-12%	-7%	-11%	-2%	-5%
Street Lights-Other	-5%	-1%	0%	0%	-2%	-4%	-4%	-3%	-4%	-4%	-5%	-5%
PCE	-8%	-2%	1%	0%	-1%	-1%	-6%	-6%	-5%	-4%	0%	-1%
Month	2	3	4	5	6	7	8	9	10	11	12	1

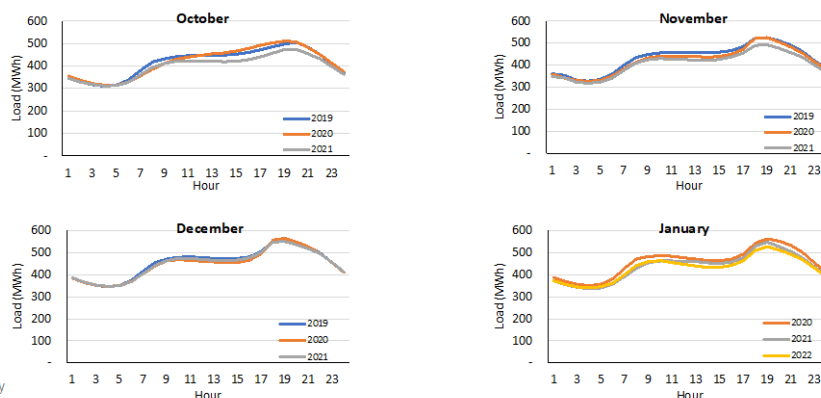
For months 2-12, the heatmap shows how much load in 2021 was lower/higher compared to same month in 2020. For month 1, the heatmap shows how much load in 2022 was lower/higher compared to same month in 2021.

Peninsula Clean Energy

3

## Load Shapes (PCE)

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



Peninsula Clean Energy

4

### Reach Codes

Attached to this report is an updated table showing the status of Reach Code adoption by Peninsula Clean Energy jurisdictions. Atherton, Belmont, and Hillsborough held study session in February and San Bruno has a study session scheduled.

## San Mateo County Status – Reach Codes

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
Colma	Adopted	Prewiring required	Increase EV capable
Portola Valley	1 <sup>st</sup> reading TBD	(All-electric w/ exceptions)	(existing EV code)
Half Moon Bay	2 <sup>nd</sup> reading to be scheduled	All-electric new construction	PCE model code
<b>New</b> Atherton, Belmont, Hillsborough	Held study session in Feb		
<b>New</b> San Bruno	Study session scheduled		
Foster City	Council briefing 2020		
Woodside	Declined		

Santa Clara County  
Adopted: 13  
In-Progress: 1

PENINSULA  
CLEAN ENERGY

11

**Staff Training**

On January 14<sup>th</sup>, all staff participated in a training session on Virtual Communications, presented by Matt Abrahams, a lecturer at the Stanford Graduate School of Business. He provided information on essential best practices for virtual and hybrid meetings and presentations which we are endeavoring to implement in our work. ...

On February 18<sup>th</sup>, 14 staff members, including all staff from the Regulatory and Power Procurement teams, began a series of training sessions on negotiations. Jessica Notini, a lecturer at Stanford Law School, is providing this training in four 3-hour sessions through April 8<sup>th</sup>.

**Other Meetings and Events Attended by CEO**

Attended weekly and monthly CalCCA Board and Executive Committee meetings.

Will attend special February 25 meeting of CC Power Board of Directors. The notes from this board meeting will be provided in the March 2022 Board of Directors Agenda Packet.

Participated in SV5 (formerly called MAG5) meetings.

**PENINSULA CLEAN ENERGY AUTHORITY  
JPA Board Correspondence**

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

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** Leslie Brown, Director of Account Services

**SUBJECT:** Authorize new Peninsula Clean Energy rates to be effective April 1, 2022 with a net 5% discount in generation charges for ECOplus compared to PG&E generation rates

**RECOMMENDATION:**

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.

**BACKGROUND:**

On February 10<sup>th</sup> 2022, CPUC Commissioners voted to adopt PG&E's 2022 Electric Revenue Requirements associated with its 2022 Energy Resource Recovery Account (ERRA). As a result PG&E generation rates as well as the PCIA rates will change on March 1, 2022. The exact Tariffs will not be published until just before the new rates take effect. PG&E generation rates are expected to increase while 2016 vintage PCIA rates will decrease. The result of this will be an increase in PCE rates and a decrease in PCIA rates for San Mateo County customers, with Peninsula Clean Energy continuing to maintain an overall net 5% discount value proposition via ECOplus compared to PG&E generation.

Two rate schedules for ECOplus will be created by PCE staff, one for San Mateo County customers based on the 2016 PCIA Vintage and a new rate schedule for Los Banos customers based on the 2021 PCIA Vintage. Separate rate schedules are necessary for each territory because of the different PCIA Vintages that will apply to customers. The generation costs for both territories will result in equitable total costs and an overall net savings of 5% from PG&E's otherwise applicable generation rates.

Los Banos customers will begin enrollment in Peninsula Clean Energy during their April 2022 billing cycle. The Peninsula Clean Energy rate schedule effective on April 1, 2022 will be a slight decrease from the higher bundled PG&E rates that will have already gone into effect in Los Banos on March 1, 2022.

**DISCUSSION:**

As soon as PG&E's Tariff's are published at the end of the month, staff will be working to update the existing San Mateo County rate schedule based on 2016 PCIA Vintage charges and create a new rate schedule for Los Banos customers based on the 2021 PCIA Vintage. Both rates will take effect April 1, 2022.

**FISCAL IMPACT:**

The March 1, 2022 PG&E rate changes will be an across the board increase in generation rates, but customers taking service from Peninsula Clean Energy's ECOplus rate will still see an overall savings of 5% from PG&E bundled customers. Adjusting Peninsula Clean Energy rates to reflect these changes will result in an overall increase in PCE revenues in 2022 compared to 2021 and will help to mitigate some of the operating losses PCE incurred during FY 21/22.

**STRATEGIC PLAN:**

Adjusting PCE rates to maintain the net 5% discount value proposition is consistent with PCE's goal to provide customers with cleaner electricity at a lower cost than what would otherwise be provided by PG&E.

**RESOLUTION NO. \_\_\_\_\_**

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

**STATE OF CALIFORNIA**

\* \* \* \* \*

**RESOLUTION AUTHORIZING NEW PENINSULA CLEAN ENERGY RATES  
EFFECTIVE APRIL 1<sup>ST</sup>, 2022 IN ORDER TO MAINTAIN A 5% DISCOUNT IN  
GENERATION CHARGES AS COMPARED TO PG&E**

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**RESOLVED**, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California (“Peninsula Clean Energy” or “PCE”), that

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

**WHEREAS**, the Board has established a set of strategic goals to guide PCE, including maintaining a cost-competitive electric-generation rate for County residents and businesses; and

**WHEREAS**, on March 1, 2022, PG&E will implement adjustments to both the Power Charge Indifference Adjustment (PCIA) and its own generation rates; and

**WHEREAS**, on April 1<sup>st</sup>, 2022 Peninsula Clean Energy will begin offering service to residents and businesses in the City of Los Banos; and

**WHEREAS**, PG&E’s rate changes necessitate changes to PCE’s ECOplus rates in order to maintain a net 5% discount in generation charges

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the Board authorizes the Chief Executive Officer to implement new Peninsula Clean Energy ECOplus rates for San Mateo County and the City of Los Banos, in order to maintain a net 5% discount in generation charges compared to PG&E, effective April 1, 2022.

\* \* \* \* \*



**PENINSULA CLEAN ENERGY AUTHORITY  
Board Correspondence**

**DATE:** February 17, 2022  
**BOARD MEETING DATE:** February 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:** Peninsula Clean Energy Labor Policy

**BACKGROUND:**

On December 15, 2016, the Peninsula Clean Energy board adopted [Policy 10](#), the Inclusive and Sustainable Workforce Policy. On October 25, 2018, this policy was revised.

**DISCUSSION:**

Policy 10 covers workforce policy goals for internal operations, including PCE staff and PCE office supply needs. The policy also covers sustainable workforce objectives for utility scale generation projects and local energy programs and energy efficiency projects.

Under **Sustainable Workforce**, the policy states:

PCE desires to facilitate and accomplish the following objectives:

- 1) Support for and direct use of local businesses;
- 2) Support for and direct use of union members from multiple trades;
- 3) Support for and use of training and State of California approved apprenticeship programs, and pre-apprenticeship programs from within PCE's service territory;  
and
- 4) Support for and direct use of green and sustainable businesses.

For **Power Purchase Agreements with Third Parties**, the policy states:

PCE shall collect information from respondents to any bidding and/or RFP/RFQ process regarding past, current and/or planned efforts by project developers and their contractors to:

- Employ workers and use businesses from the PCE service territory
- Employ properly licensed contractors
- Utilize multi-trade project labor agreements
- Utilize local apprentices
- Pay workers the correct prevailing wage
- Display power at jobsites about prevailing wage requirements
- Provide workers compensation coverage to on-site workers
- Support and use State of CA approved apprenticeship programs

This collected information from proposers is used to evaluate workforce impacts of proposed projects.

For **Energy Efficiency Projects**, the policy states:

- PCE shall use best efforts to support local businesses, union labor, and local apprenticeship programs.
- PCE shall use best efforts to ensure each construction contractors or subcontractors utilize local businesses, union labor, local apprenticeship, and fair compensation practices in program implementation including proper assignment of work to crafts that traditionally perform the work.

Peninsula Clean Energy staff will provide information to the board about the information collected on the use of project labor agreements and the payment of prevailing wages for third-party Power Purchase Agreements based on recent RFOs. Information will also be provided on the use of union contractors for local energy programs for the Low Income Home Upgrade Program and the EV Ready Program.



**PENINSULA CLEAN ENERGY AUTHORITY  
JPA Board Correspondence**

**DATE:** February 11, 2022  
**BOARD MEETING DATE:** February 24, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** None

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** Jan Pepper, CEO  
Shayna Barnes, Operations Specialist  
Kirsten Andrews-Schwind, Senior Manager of Community Relations

**SUBJECT:** Diversity, Equity, Accessibility, and Inclusion (DEAI) Project Status Update

**BACKGROUND:**

In July 2020, the Citizens Advisory Committee (CAC) formed an Equity Working Group with the primary task of “ensur[ing] equity is a priority across all working groups and built into PCE strategic priorities.” The CAC’s equity working group created a draft equity statement and brought the draft statement to Peninsula Clean Energy’s Board of Directors at their January 28, 2021 meeting. The draft equity statement is provided below:

*In light of the community’s focus on anti-racism and the Black Lives Matter Movement following the death of George Floyd in May of 2020 and other continuing instances of systemic racism and institutional violence against black people, the Peninsula Clean Energy CAC Equity Working Group has worked over the past few months on a statement that would embody the commitment of the organization to ensure equity and inclusion in their work. The working group recognizes that there are many forms of discrimination that impact people from different backgrounds but the growing awareness of significant violence and discrimination against people of color (BIPOC) is our current focus, and we are committed to developing a framework that will eventually address discrimination in all its forms.*

**Peninsula Clean Energy Citizens Advisory Committee Draft Statement on Equity and Inclusion**

- Peninsula Clean Energy commits to making anti-racism top of mind during decision making.
- Will follow best practices in hiring, vendor selection and project selection
- Will use a racial equity lens when developing the community impact report
- Develop a means of tracking revenue and formulating a mechanism (qualitative and quantitative) that ensures accountability.
- Current board goals - 20% of programs funding going to low-income communities (working on definition)
- Pursue equity in energy generation and programs

- Low-income households, as well as Black, Hispanic, and Native American households, pay a much larger share of their income on energy bills, straining budgets and putting them at heightened risk of utility shutoffs during the COVID-19 pandemic and recession (<https://www.aceee.org/press-release/2020/09/report-low-income-households-communities-color-face-high-energy-burden>)

At the Board of Directors Meeting on January 28, 2021, the Board accepted the above draft equity statement and formed a Diversity, Equity, Accessibility, and Inclusion Subcommittee to build on the statement and create a DEAI organizational statement/policy and action plan for Peninsula Clean Energy. Board members on this subcommittee include Directors Donna Colson, Michael Smith, Sam Hindi, Carlos Romero, and Roderick Daus-Magbual.

### **Senate Bill 255 and Utility Supplier Diversity**

In addition to the CAC Draft Statement on Equity and Inclusion serving as a catalyst for undertaking the DEAI work, Peninsula Clean Energy has new regulatory compliance reporting obligations regarding DEAI under Senate Bill (SB) 255 (Bradford). SB 255 is a bill signed by Governor Newsom in October 2019 that amended the Public Utilities Code Sections 366.2 and 8283 and brought Community Choice Aggregators into the California Public Utilities Commission's (CPUC's) Utility Supplier Diversity Program. The Utility Supplier Diversity Program's framework and guidelines are laid out in the CPUC's General Order (GO) 156. To comply with SB 255 and GO 156, CCAs like Peninsula Clean Energy must annually submit a detailed and verifiable plan for increasing procurement from small, local, and diverse business enterprises, and a report that details our activities supporting diverse business enterprises and amount of procurement spend going towards these businesses in the prior year. This program focuses on the positive downstream economic effects of including diverse suppliers in utilities' supply chains. Compliance with SB 255 and GO 156 is another consideration that staff and the Board subcommittee contemplated when drafting the Request for Proposals and selecting the consultant team to carry out the DEAI work.

### **Selection of DEAI Consultant**

To create the DEAI organizational statement/policy and action plan, Peninsula Clean Energy staff drafted a Request for Proposals (RFP) for DEAI consulting services under direction from the DEAI subcommittee to be released as a competitive solicitation. The Request for Proposals was released in early May 2021 with responses due in mid-June 2021. Staff received eight responses to this RFP and interviewed three top consultants with the Board subcommittee in early July. The Board subcommittee recommended that the consultant team from GCAP Services, Inc. be selected to carry out the DEAI work as they were the best fit for Peninsula Clean Energy's range of needs, including regulatory compliance with SB 255 and GO 156. The full Peninsula Clean Energy Board approved the contract with GCAP Services, Inc. at the Board meeting on October 28, 2021.

### **DISCUSSION:**

The DEAI work began in mid November 2021, with a kickoff meeting with the selected consultant, GCAP, on November 15, 2021. GCAP and Peninsula Clean Energy staff covered the following items in the kickoff meeting:

- Introductions
- Data Collection and Discovery Process
- Project Management Meetings/Calls Schedule

- Project Schedule

Task 1 of the Scope of Work called for GCAP to conduct a regulatory review of General Order 156, Senate Bill 255, and Proposition 209 and to identify best practices to improve performance on required metrics. At the kickoff meeting, staff and the consultant team agreed that it made sense to conduct this regulatory review in conjunction with subsequent tasks on the project schedule (allowing us to proceed to other tasks before the regulatory review was complete). Staff also agreed to have the deliverable for Task 1 (brief report identifying organization-specific areas for improvement and recommendations, and best practices), be moved to later in the project schedule so that the recommendations could be informed by the DEAI needs assessment phase of the project (the survey phase). With these considerations in mind, staff and the consultant team met on November 17, 2021, to start brainstorming a list of stakeholders to whom we would send the DEAI survey. The initial list of stakeholders was further built out by staff over the following month and a half and ultimately included the following groups:

- Staff, including consultants and prior staff
- Peninsula Clean Energy Board Members and Alternates
- Peninsula Clean Energy Citizens Advisory Committee Members
- City Managers and City Sustainability Staff
- Outreach Grantees, Applicants, and Contractors
- Business Organizations, including Ethnic Chambers of Commerce
- Trade Organizations
- Other key community stakeholders (including core social service agencies, other nonprofit organizations, county contacts)

In the first month of the project (mid-November to mid-December, 2021), GCAP started their review of Proposition 209, Senate Bill 255, and General Order 156. They also started their initial review of other Peninsula Clean Energy policies and documents that would be updated as part of Task 4 of the project. These documents include Peninsula Clean Energy's Strategic Plan, Employee Handbook, and Policy #9 Ethical Vendor Standards, and Policy #10 Inclusive and Sustainable Workforce Policy. They also started drafting questions for the survey in Task 2, the organizational needs assessment phase of the project.

The majority of the second month of the project (mid-December to mid-January) was spent on development of the DEAI needs assessment survey. GCAP provided the initial draft of survey questions for internal and external stakeholders to Peninsula Clean Energy staff on January 4, 2022. Staff and the consultant team decided to have two survey types: internal (for staff, former staff, and contractors), and external (all other stakeholders). Peninsula Clean Energy staff conducted an internal review of the questions and provided comments to GCAP. GCAP and Peninsula Clean Energy then reviewed the survey questions and feedback together on January 7, 2022. Peninsula Clean Energy staff asked GCAP to add in more questions about environmental justice to the external-facing survey. Staff provided GCAP with the report *Building a Just Energy Future: A Framework for Community Choice Aggregators to Power Equity and Democracy in California* from the California Environmental Justice Alliance (CEJA) to use as a resource when coming up with questions that centered environmental justice, energy equity, and democracy.

In the third month of the project (mid-January to mid-February), Peninsula Clean Energy staff and the consultant team continued working on refining the survey questions. GCAP provided another draft of the survey questions that included assessment questions from the CEJA report mentioned above. Peninsula Clean Energy staff then added additional questions from this report. The questions added from the CEJA report focused on the following five subject areas:

1. Coordination with Local Community-Based Organizations (CBOs)
2. Accessible Information and Outreach
3. Community-Driven Local Program Design
4. Transparent Decision-Making
5. Local and State Accountability

Staff and the consultant team also started to prepare to meet with the DEAI subcommittee to review the survey. The team met with the Board DEAI subcommittee on January 27, 2022 to review the definitions of Diversity, Equity, Accessibility, and Inclusion, the survey questions, and survey stakeholder groups to be interviewed. At this meeting, the consultant team also reviewed the survey goals, objectives, design, format, and process. GCAP and Peninsula Clean Energy staff incorporated feedback from the Board subcommittee into the survey definitions and questions. Peninsula Clean Energy staff did two more reviews of the survey: one with GCAP on February 4, 2022, and one with just internal staff on February 8, 2022. GCAP incorporated final comments from staff and the survey went live on February 9, 2022. The survey will be open for a period of 3 weeks and will close on March 2, 2022.

The immediate next steps for the project include conducting 12 individual interviews with individual stakeholders to supplement the responses that are received through the survey as part of the DEAI needs assessment phase of the project. GCAP will also be monitoring the survey response level and will send periodic reminders to those who have not yet completed the survey. After the survey closes, GCAP will review and analyze the survey results and will draft a report and next steps based on the survey data. GCAP will also complete their analysis of Proposition 209, Senate Bill 255, and General Order 156. In addition to the organizational policies and documents mentioned above (strategic plan, employee handbook, policies #9 and #10), GCAP will review additional documents (JPA formation documents, employee handbook attachments, family leave policy, standard contract, and solicitation documents, etc.) and will draft recommended revisions to the organizational policies based on a review of these documents and the survey and interview results.

### **STRATEGIC PLAN:**

The DEAI Initiative supports the Organizational Excellence pillar of the strategic plan to *ensure organizational excellence by adhering to sustainable business practices and fostering a workplace culture of innovation, diversity, transparency, and integrity*. This initiative seeks to support the following objectives and key tactics under this pillar:

Objective A: Culture and People: Foster a workplace culture that attracts and develops exceptional talent and values all people

- Key Tactic 3: Ensure that our recruitment processes are designed to attract high caliber and diverse applicants

Objective D: External Vendor Partners: Implement Vendor Policies that embrace diversity and inclusion and that optimize engagement results

- Key Tactic 1: Develop methods to ensure adherence to the organization's Inclusive and Sustainable Workforce Policy
- Key Tactic 2: Develop methods to ensure adherence to the organization's Ethical Vendor Standards Policy

This initiative also supports the Community Energy Programs pillar of the strategic plan to *implement robust energy programs that reduce greenhouse gas emissions, align energy supply*

*and demand, and provide benefits to community stakeholder groups.* The DEAI initiative seeks to support the following objectives and key tactics under this pillar:

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities
- Key Tactic 3: Support workforce development programs in the County





**PENINSULA CLEAN ENERGY AUTHORITY**  
**JPA Board Correspondence**

**DATE:** February 17, 2022

**BOARD MEETING DATE:** February 24, 2022

**SPECIAL NOTICE/HEARING:** None

**VOTE REQUIRED:** None

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** Karen Janowski, Director of Marketing and Community Relations &  
Leslie Brown, Director of Account Services

**SUBJECT:** Update on Marketing, Outreach Activities, and Customer Care

**BACKGROUND**

The Marketing, Community Relations, and Customer Care Teams are responsible for enhancing Peninsula Clean Energy's brand reputation, educating and engaging customers, driving participation in programs, and ensuring customer satisfaction and retention. Tactics include community outreach, content creation and storytelling through owned (e.g. online, social media), earned (e.g. public relations), and paid media (advertising), school engagement programs, and customer care.

**DISCUSSION**

The following is an update of activities that are currently underway. See "Strategic Plan" section below for how these activities support Peninsula Clean Energy's strategic plan objectives.

**Heat Pump Water Heater (HPWH) Incentive Program**

Marketing is supporting the program goal to install 200 heat pump water heaters in the first two years. As of February 11, 2022, we have had more than 19,800 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. 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 227,000 impressions and engaged about 11,000 users. This has been a very efficient paid search campaign with an average cost-per-click of \$1.03, far lower than industry averages (which are ~\$3.50 across industries and \$2.30-3.20 for automotive related paid search).

### **Building Electrification Awareness Program**

Award winners in the second annual [All-Electric Awards](#) program have been chosen and will be notified by the end of February 2022. We are fortunate to have an [award selection committee](#) comprised of five notable building and electrification experts. 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 may be featured in future virtual or in-person tours.

Our virtual induction cooking event, [Learn to Love Induction Cooking](#), on February 3 was attended by 85 people. A recording of the webinar will be featured on our induction cooking web page which will go live in the next couple of weeks.

### **Los Banos Update**

Our first workshop for Los Banos NEM (Net Energy Metering) solar customers was held virtually on January 20, 2022 with an audience of 10. Leslie Brown described the benefits (including better pricing) Peninsula Clean Energy brings to solar customers, and addressed changes in billing methods. A second NEM workshop is in the planning stages. Two general hybrid (virtual and in-person at the Los Banos Community Center) workshops will take place in March, one in Spanish on March 15 and one in English on March 31.

An insert has been created and will be included in Los Banos city utility bills. Additional outreach efforts are in development, including paid media and printed collateral materials. Brochures in English and Spanish are being printed and will be available at the Los Banos City Hall and other locations.

### **CAC Recruitment**

We are beginning the process of recruiting CAC members to fill expected vacancies. The application will be uploaded to our website in the next couple of weeks and the

application period will close 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 press release announcing the launch of our Data Connect platform was issued on February 15, 2022.

Peninsula Clean Energy's Director of Power Resources, Siobhan Doherty, was interviewed by S&P Global Market Intelligence and quoted in this January 20, 2022 article, "[Lithium-ion takes early lead in Calif. Race for longer-lasting energy storage.](#)"

Full coverage of Peninsula Clean Energy in the news can be found on our [News & Media](#) webpage.

### **ENROLLMENT UPDATE**

#### **ECO100 Statistics (since January report)**

Total ECO100 accounts at end of January:	6,371
ECO100 accounts added in January:	70
ECO100 accounts dropped in January:	26
Total ECO100 accounts at the end of December:	6,327

#### **Enrollment Statistics**

Opt-outs during the month of January were 33, two more than the previous month of December (31). Total participation rate across all of San Mateo County at the end of January was 97.13%.

In addition to the County of San Mateo, there are a total of 15 ECO100 cities. The ECO100 towns and cities as of December 31st, 2021, include: Atherton, Belmont, Brisbane, Burlingame, Colma, Foster City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Portola Valley, Redwood City, San Carlos, San Mateo, and Woodside.

The opt-up rates below include municipal accounts, which may noticeably increase the rate in smaller jurisdictions.

Active Accounts as of February 6							
TOT	RES Count	COM Count	Active Count	Eligible Count	Participation Percent	ECO100 Count	ECO100 Percent
ATHERTON INC	2414	221	2635	2729	96.56%	58	2.20%
BELMONT INC	10706	919	11625	11947	97.30%	195	1.68%
BRISBANE INC	1967	497	2464	2536	97.16%	86	3.49%
BURLINGAME INC	13282	1970	15252	15637	97.54%	345	2.26%
COLMA INC	584	290	874	890	98.20%	32	3.66%
DALY CITY INC	31038	1992	33030	34167	96.67%	106	0.32%
EAST PALO ALTO INC	7067	442	7509	7855	95.60%	27	0.36%
FOSTER CITY INC	13659	844	14503	14797	98.01%	334	2.30%
HALF MOON BAY INC	4200	630	4830	4982	96.95%	112	2.32%
HILLSBOROUGH INC	3808	138	3946	4058	97.24%	71	1.80%
MENLO PARK INC	13843	1681	15524	15849	97.95%	518	3.34%
MILLBRAE INC	8399	640	9039	9476	95.39%	107	1.18%
PACIFICA INC	14021	857	14878	15445	96.33%	177	1.19%
PORTOLA VALLEY INC	1466	133	1599	1696	94.28%	1502	93.93%
REDWOOD CITY INC	31411	3295	34706	35605	97.48%	732	2.11%
SAN BRUNO INC	14719	1058	15777	16462	95.84%	94	0.60%
SAN CARLOS INC	12214	2093	14307	14713	97.24%	336	2.35%
SAN MATEO INC	39752	3857	43609	44775	97.40%	689	1.58%
SO SAN FRANCISCO INC	21428	3198	24626	25608	96.17%	121	0.49%
UNINC SAN MATEO CO	20802	2981	23783	24625	96.58%	641	2.70%
WOODSIDE INC	2011	220	2231	2286	97.59%	58	2.60%

Table reflects data as of February 6th, 2021

## PG&E 2022 ERRA and Peninsula Clean Energy Rate Change

The CPUC voted during its regular business meeting of February 10<sup>th</sup> to accept the Proposed Decision approving PG&E's 2022 ERRA application. As a result new PG&E generation rates and new PCIA rates will be effective March 1, 2022 . Peninsula Clean Energy is seeking approval from the Board to follow with our own rate adjustment for San Mateo County and to establish a new rate schedule for Los Banos customers to be effective April 1<sup>st</sup>, 2022 in order to maintain our 5% value proposition with ECOplus.

## Los Banos Enrollment Notices

The first set of Los Banos enrollment notices were mailed to customers February 14<sup>th</sup>, 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.

<b>Item/Project</b>	<b>Objective A:</b> Elevate Peninsula Clean Energy's brand reputation as a trusted leader in the community and the industry	<b>Objective B:</b> Educate and engage stakeholders in order to gather input, inspire action and drive program participation	<b>Objective C:</b> 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
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\* "KT" refers to Key Tactic

**PENINSULA CLEAN ENERGY AUTHORITY  
JPA Board Correspondence**

**DATE:** February 11, 2022  
**BOARD MEETING DATE:** February 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 December 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**

**Power Charge Indifference Adjustment (PCIA)**

Since the last update, there have been two timely developments on the PCIA front:

For starters, the CPUC adopted a new Decision on January 27, 2022, in the PCIA Order Instituted Rulemaking (OIR) resolving various issues explored in phase 2 of this case. This Decision introduces several significant procedural changes to the annual Energy Resource Recovery Account (ERRA) proceedings, which are used to adjust the Investor-Owned Utilities' (IOU) generation and PCIA rates. The three IOUs are now obligated to file their initial Erra Forecast applications and testimony by May 15<sup>th</sup> (PG&E previously would start these cases in early June). Additionally, the Commission will advance its calculation of PCIA benchmarks by one month such that each IOU's



substantially revised testimonies (commonly referred to as the “November Update”) will be submitted in early October instead of early November. These changes are both intended to allow for a less rushed review of the proceedings ahead of their targeted rate change deadlines of January 1 in the subsequent year. The Decision also directs the IOUs to take several steps to allow for more timely and consistent information flow to the other parties that intervene in these cases (such as through establishing a Master Data Request). All these changes combined result in a substantially improved ERRRA proceeding process for future cases that should allow for CCAs, and other parties, to engage and defend their customers’ interests much more efficiently.

Second, on February 10, 2022, the Commission finally adopted a Decision in PG&E’s 2022 ERRRA Forecast proceeding. The Commission originally aimed to resolve this case in time for a January 1, 2022, rate change date; however, last minute concerns raised by parties previously absent from the proceeding, along with general concern within the CPUC over the potential magnitude of the rate change, resulted in delays. With the Decision now adopted, PG&E can begin its process to revise its generation and PCIA rates for 2022, effective March 1, 2022. As a next step, PG&E has been directed to file an Advice Letter by February 25, 2022, detailing the rate revisions across all rate schedules. Because PCE (and all other CCAs) require access to this information to inform its own potential rate changes, PCE staff are presently planning on implementing rate changes effective April 1, 2022. As detailed in prior reports, these rate changes will be very favorable from PCE’s operational perspective because PG&E’s generation rates will be increasing significantly while its PCIA rates will be decreasing significantly. The primary driver for this substantial change to rates is the escalation of methane gas commodity costs that began in 2021 and seem likely to continue through 2022.

(Public Policy Objective A, Key Tactic 1)

### **Building Decarbonization**

Matthew Rutherford has been leading PCE’s recent engagement in proceedings related to Building Decarbonization (BD).

On February 11, 2022, the CPUC issued a Proposed Decision that would establish a new statewide program to incentivize the installation of Heat Pump Water Heaters (HPWHs) through the Self-Generation Incentive Program (SGIP). The initial funding amount of \$44.7 million is derived from unspent funds from other SGIP program categories, with additional funding of \$40 million to come from 2023 Cap and Trade funds. The PD proposes to provide incentives towards appliances and panel upgrades while also setting certain requirements for the appliance and operating requirements to maximize emissions benefits and minimize operating costs. These incentives will be broadly available for residential appliances as well as commercial appliances in very limited circumstances. PCE is reviewing the PD to determine how the new statewide program will overlap with PCE’s own HPWH program. The intent is to ensure that PCE direct participants who are eligible will also be able to benefit from the new statewide program. PCE is also part of a group of CCAs who have been engaged in this proceeding and are considering filing comments on the Proposed Decision.

On January 28, 2022, PCE and East Bay Community Energy (EBCE) filed joint comments in the California Energy Commission's (CEC) Integrated Energy Policy Report (IEPR) proceeding. The CEC sought comments from stakeholders on its *Draft 2021 Integrated Policy Report, Volume III: Decarbonizing the State's Gas System*. The CEC is envisioning that the final report will serve as a methane gas planning document that will serve as a baseline assessment of its current emission impacts and potential pathways to decarbonizing the system. With considerable support from Blake Herrschaft, PCE's building electrification program's manager, the CCAs provided specific suggestions to the report that would encourage the CEC to forecast decarbonization of the gas system at a rate that is commensurate with the state's 2045 carbon neutrality goals and better incorporate the impacts of methane emissions from all upstream and downstream segments of the gas system. The CCAs also urged the CEC to not overstate the potential emissions reductions from renewable methane gas as the resource still has not reached a scale of production or price point that would make it a viable alternative for many Californians, despite the fact that the methane gas industry has touted its potential as a decarbonization tool for more than a decade.

(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 is continuing intensive work to develop a replacement for the existing Resource Adequacy construct that would give closer to full credit for renewables and be more compatible with a fully decarbonized 24/7 renewable portfolio. After considerable analysis, PCE filed informal comments supporting the 24-hour capacity construct proposed by Southern California Edison, provided a mechanism for trading load obligations to facilitate transactions is included. Peninsula Clean Energy is co-sponsoring with San José Clean Energy and the California Energy Storage Alliance a proposal to enable such trading. The final working group report is due February 28, 2022.

In addition, Dr. Karpa has been involved in Commission efforts to improve the procedures of the Central Procurement Entity for local RA, which has largely shown major deficiencies to date. A Proposed Decision was just issued by the CPUC on February 10, 2022, that would adopt proposals that may improve the functionality of the CPE, but we are currently evaluating these mechanisms. Exactly how PG&E and the CPUC will remedy the present 4264 MW local RA shortfall for 2023, remains unclear.

In the Integrated Resources Planning, the CPUC amended the proposed decision of December 22, 2022 to delay the deadline for submission of Integrated Resources Plans to November 1, 2022. In addition, the California Independent System Operator has

developed its transmission plan based on the portfolios submitted in the IRP process, which may play a significant role in procurement 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 bi-weekly call with staff from CCAs and environmental and environmental justice stakeholders. On January 26<sup>th</sup>, the group discussed constraints and considerations in future Net Energy Metering Policy, and on February 9<sup>th</sup>, 2022, the group discussed the results of the CAISO transmission planning process, especially as it affects the ability to retire gas resources in disadvantaged communities in local capacity areas.

(Public Policy Objective A, Key Tactic 2)

### **FISCAL IMPACT**

Not applicable.

**PENINSULA CLEAN ENERGY AUTHORITY  
Board Correspondence**

**DATE:** February 11,  
2022

**BOARD MEETING DATE:** February 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:**

The 2022 session of the California Legislature convened on January 3 and began much the same way the 2021 session ended with many of the pandemic restrictions continuing in place.

The annex building that connected to the capitol and which held most of the offices of legislators and their staff has been closed for removal and new construction. During the construction period legislators' offices will be located down the street from the capitol building.

Late in December the California Redistricting Commission concluded its work crafting new district lines for the coming decade. All Assembly and Congressional seats will be up for election in 2022, as will be one-half of the state Senate seats. All the state constitutional offices will also be on the 2022 ballot.

The number of legislators who have recently resigned their offices, have announced they will be running for a different office and have announced that they will not be seeking re-election in 2022 continues to climb. The 5 vacant state Assembly seats makes it more difficult for the body to reach a 2/3 vote required to pass some legislation.

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 Utilities and Energy Committee. Asm. 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 governor's budget includes significant funding to help the state meet its climate and clean energy goals. Proposed is \$9.1 billion in transportation funding, including \$1.5 billion for public schools, estimated to be enough to convert about one-third of the school bus fleet to electric, \$4.2 billion for high-speed rail and \$3.25 billion for other transit projects. \$500 million would be spent in ways that encourage active transportation i.e., walking and biking. There is \$1.2 billion for 40,000 passenger electric vehicles and 100,000 new charging stations in California by the end of 2023 and \$1 billion for other zero-emission vehicle initiatives.

The governor has proposed \$2 billion to advance technology, reduce carbon emissions and shore up the grid. This includes \$380 million for long-duration storage.

Revenue projections that underly this budget proposal were made before the rise of the omicron variant. The numbers could change dramatically by the time the annual revision to the budget will be made public in May. The legislature will have its say on the budget and the final version will need to be adopted in June.

### **LEGISLATIVE ADVOCACY AND OUTREACH:**

In general, this year the introduction of new legislation has been slow. Legislators have until February 18 to submit a bill for consideration in the upcoming session.

One piece of legislation 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 drafted a letter of support for **AB 1944**. A copy of that correspondence is attached to this report. Staff will be reaching out to each Peninsula Clean Energy member jurisdiction and to other local agencies and organizations to seek additional letters of support for **AB 1944**.

### **Peninsula Clean Energy Legislative Initiative in 2022**

Recognizing the state's significant budget surplus, Peninsula Clean Energy is weighing opportunities to take a leadership role in championing legislative efforts that will support clean energy initiatives. We are also working with other CCAs and clean energy organizations to identify legislative needs and priorities.

Of particular interest is tapping into the nearly \$1 billion in the governor's January budget to retrofit buildings with energy-efficient lighting, better insulation, and electric appliances. About two-thirds of that sum would be set aside for low-income homes. We are also looking at the governor's proposed spending \$6.1 billion over the next 5 years in electric vehicle related initiatives.

### **CalCCA 2022 Legislative Initiative**

**AB 1814** was introduced this month 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 drafted a letter of support for **AB 1814**. A copy of the correspondence is attached to this report. Staff will be reaching out to each Peninsula Clean Energy member jurisdiction and to other local agencies and organizations to seek 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)



February \_\_, 2022

The Honorable Eduardo Garcia  
Chair, Assembly Utilities & Energy Committee  
1021 O St., Ste. 8120  
Sacramento, CA 95814

**Re: AB 1814 (Grayson) – SUPPORT**

Dear Assemblymember Garcia,

On behalf of Peninsula Clean Energy Authority, a Community Choice Aggregator (CCA) serving roughly 800,000 Californians in San Mateo County and Los Banos in Merced County, I write in support of AB 1814 (Grayson), a bill that would authorize CCAs to submit applications to the California Public Utilities Commission (CPUC) and receive funding to administer transportation electrification programs in their service areas.

Peninsula Clean Energy is a not-for-profit joint powers authority. We deliver 100 percent carbon-free electricity to all our customers. Also, we develop and administer local programs to expand electric vehicle adoption for all residents in our service area, improve and advance the resiliency of the local electricity sector, and enhance the communities we serve by reinvesting our revenues in those communities.

A major element of California's stringent air quality and climate change initiatives is the accelerated growth and development of zero-emission vehicle use and the associated network of electric vehicle (EV) charging stations. To build out the needed statewide system of EV charging stations, the California Public Utilities Commission (CPUC) is holding a proceeding to authorize the Investor-Owned Utilities (IOUs) to file applications to receive ratepayer funded transportation electrification program funding. Although our ratepayers also contribute to these funds, CCAs like Peninsula Clean Energy are not explicitly authorized in existing law to access these funds

For several years Peninsula Clean Energy has been administering and implementing a local EV charging program. We have financed the program by leveraging our own revenue and a state grant provided by the California Energy Commission's California Electric Vehicle Infrastructure Program (CALeVIP). Through this work, we have gained expertise on the EV infrastructure needs of our communities. We have been able to deliver this EV infrastructure at a significant cost savings.

For these reasons, we believe it would be beneficial to our community and to the state to provide Peninsula Clean Energy with the opportunity to apply to the CPUC for the ratepayer funds the IOUs are proposed to collect for EV infrastructure purposes. AB 1814 seeks to enable CCA access to that funding.

AB 1814 is a narrowly tailored, straightforward bill. It would explicitly authorize CCAs to file applications with the CPUC to administer funds for the purpose of implementing programs and investments that would accelerate widespread transportation

electrification. CCAs that receive funding would be regulated and required to adhere to all the same requirements that IOUs are currently required to meet.

We support AB 1814 and thank Assemblymember Grayson for his leadership. We respectfully request your “Aye” vote when the bill is heard in committee.

Sincerely,

Jan Pepper, CEO

cc: The Honorable Tim Grayson  
The Honorable Members of the Assembly Utilities & Energy Committee



February \_\_, 2022

The Honorable Cecilia Aguiar-Curry  
Chair, Assembly Local Government Committee  
1021 O St., Ste. 6350  
Sacramento, CA 95814

**Re: AB 1944 (Lee) – SUPPORT**

Dear Assemblymember Aguiar-Curry,

On behalf of Peninsula Clean Energy Authority, a community choice aggregator serving roughly 800,000 Californians, I write in support of AB 1944 (Lee), a bill that will allow members of a local legislative body to virtually participate in a public meeting of that body from a private address without publishing or making public that address. Further, AB 1944 would require a remote participation option for members of the public to address the local legislative body if board members participate virtually pursuant to the conditions prescribed in the bill.

We are a not-for-profit joint powers authority. We deliver 100% carbon-free electricity to all our customers while expanding electric vehicle adoption and advancing the resiliency of the local electricity sector. We are required by statute to hold public meetings at which members of the board appear in person or by teleconference if a quorum of the members participate from locations within the boundaries of the agency's jurisdiction and each teleconference location is identified in the notice and agenda of the meeting. Those remote locations must also be made accessible to the public.

The COVID-19 pandemic and the ensuing stay at home orders necessitated public meetings to be held remotely. On March 4, 2020, Governor Newsom issued Executive Order N-29-20 which waived the teleconference requirements for local agencies during the COVID-19 pandemic. Subsequent legislation, AB 361 (R.Rivas) permits local agencies, upon certain conditions, to continue to meet virtually and remotely until the end of the current state of emergency and during any future state of emergency up until January 1, 2024.

Our board successfully conducted virtual public meetings throughout the pandemic. We believe there are benefits to the legislative body and the public to continue this practice. More and more local agencies are recognizing that challenges can be met with a regional approach. We recently expanded our service territory to include Los Banos in Merced County to realize energy solutions at a regional level. A major concern for board members, spread out over two counties nearly 100 miles apart, is the statutory requirement to share the address of their private residence with the public if participating remotely from a private location. AB 1944 would resolve this issue by allowing members to participate in the meeting without disclosing their location.

We support AB 1944 and thank Assemblymember Lee for his leadership. We respectfully request your "Aye" vote when the bill is heard in committee.

Sincerely,

Jan Pepper, CEO

cc: The Honorable Alex Lee  
The Honorable Members of the Assembly Local Government Committee



**PENINSULA CLEAN ENERGY  
JPA Board Correspondence**

**DATE:** Feb. 18, 2022  
**BOARD MEETING DATE:** Feb. 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

**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](http://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](http://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 PCE territory, Burlingame, Brisbane, Colma, Daly City, E. Palo Alto, Menlo Park, Millbrae, Pacifica, Redwood City, San Carlos, San Mateo, San Mateo County, and South San Francisco have adopted reach codes. A number of additional agencies are in progress including Atherton, Belmont, Half Moon Bay and Portola Valley. Across San Mateo and Santa Clara Counties, 26 agencies have adopted some kind of all-electric reach code. PCE is providing support to Atherton, Belmont, Half Moon Bay 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 began on January 26, 2022 with a city staff workshop, and are continuing with three additional workshops February 15-17<sup>th</sup>. The first drafts of the model codes are being presented.
- **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. In the past month, technical assistance has helped an all-electric plan move forward for a 480-unit multi-family and a 2.5 million square foot spec lab/office building in our territories.
- **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.
- **Lead Consultant Contract:** As the reach code effort is continuing and the TRC contract expires in July a 2-yr contract extension is being proposed. Please see associated Board Memo.

#### **Strategic Plan:**

Goal 3 – Community Energy Programs, Objective A:

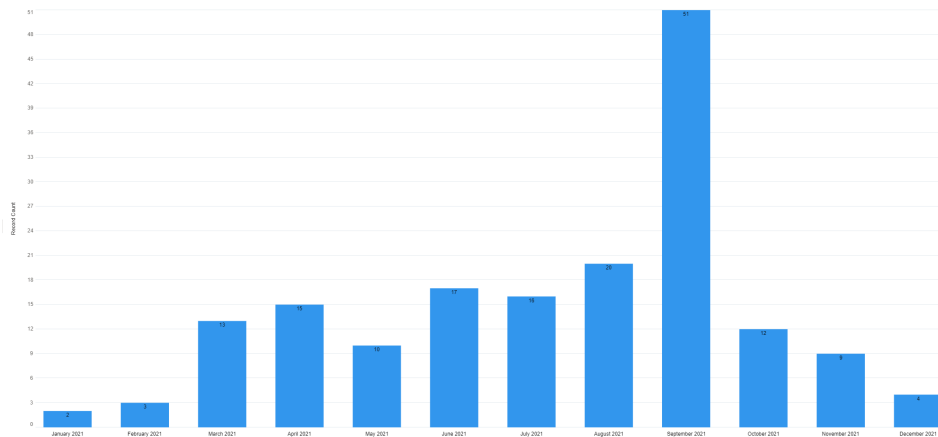
- Key Tactic 3: Ensure nearly all new construction is all-electric and EV ready
- Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

## **2. Buildings Programs**

## 2.1. Appliance Rebates

**Background:** In May 2020, the Board approved a 4-year, \$6.1 million for electrifying existing buildings. This included \$2.8 million for implementing an appliance rebate program. 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 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 heat pump water heater (HPWH) rebate program was launched on January 01, 2021 and to date we have received 172 applications and an additional 13 are pending. The chart at below shows when projects were completed in 2021 (excluding the pending applications). 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 20 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:

- Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

## 2.2. (Low-Income) Home Upgrade Program

**Background:** In May 2020, The Board approved \$2 million for implementing a turn-key low-income home upgrade program. The measures implemented through the program will vary depending on each home's needs but will include at least one electrification measure such as installing a HPWH or replacing a gas furnace with electric. The contract

with the administration and implementation firm, Richard Heath & Associates (RHA), was executed after being approved by the Board in the March 2021 meeting.

**Status:** The program was announced on September 28, 2021 and received coverage in the San Mateo Daily Journal. Approximately 275 homes have already expressed interest in the program through PCE 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 January 31, 2022, 59 homes have been fully enrolled in the program, and 35 of those have installations in progress.

**Strategic Plan:**

Goal 3 – Community Energy Programs, Objective B:

- Key Tactic 1: Invest in programs that benefit underserved communities
- Key Tactic 3: Support workforce development programs in the County

### **2.3. Building Pilots**

**Background:** In May 2020, The Board approved \$300,000 for piloting a new innovative technology from Harvest Thermal Inc., a Bay Area-based startup, that combines residential space and water heating into a unified heat pump electric system with a single water storage tank. Through this project, this technology will be installed in 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. Installation of the systems begun in February are expected to be done by the end of March 2022. TRC has been contracted to provide independent measurement and verification services for the project. Lastly, the Technical Advisory Committee (TAC) met September 30, 2021 to review and provided feedback on the project. TAC members include former building officials, former contractor, city commissioner, peer CCA program managers, CPUC staff, CAC member and Board member Jeff Aalfs.

**Strategic Plan:**

Goal 3 – Community Energy Programs, Objective C:

- Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

## **3. Distributed Energy Programs**



Peninsula Clean Energy has Board-approved strategies for the promotion of 20 MW of new distributed energy resources in San Mateo County and a three-year, \$10 million strategy to deploy local electricity resiliency programs in San Mateo County. The projects described below are efforts towards meeting both of these goals.

### **3.1. Local Government 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 10 of 13 agencies, with an aggregate portfolio size of approximately 1-2 MW.

#### **Status:**

As noted last month, we are working to develop relevant contracts and equipment solicitation materials, as well as secure a partner that can monetize and share the tax benefits (ITC and depreciation) that we cannot capture due to our tax-exempt status. We are in discussions with several firms that might be able to play this role and are still pursuing additional contacts/conversations. We are also exploring the complex and esoteric legal questions surrounding the mechanics of the contracting arrangements. We are expecting to present to the Executive Committee on the program in March.

#### **External proceedings that could also impact the project include:**

**Net Energy Metering (NEM) 3** decision on hold. Citing a need for further review, the CPUC did not move forward with the proposed revisions to the NEM tariff. We do not at this point have a clear understanding of the revised timeline or what changes might be made to the proposed decision. As such, we would expect that we could move the current solar projects forward under the existing NEM rules.

### **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. Peninsula Clean Energy is exploring possible expansion of the program. 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, PCE 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, 37 rebates have been provided under the new program and nearly 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, it is taking applicants longer than normal to purchase vehicles.

**Strategic Plan:**

Goal 3 – Community Energy Programs, Objective A:

- Key Tactic 1: Drive personal electrified transportation towards majority adoption

Goal 3 – Community Energy Programs, Objective B:

- Key Tactic 1: Invest in programs that benefit underserved communities

#### **4.2. “EV Ready” Charging Incentive Program (ongoing, no updates)**

**Background:** In December 2018 the Board approved \$16 million over four years for EV charging infrastructure incentives (\$12 million), technical assistance (\$2 million), workforce development (\$1 million), and administrative costs (\$1 million). Subsequent to authorization of funding, PCE successfully applied to the California Energy Commission (CEC) for the CEC to invest an additional \$12 million in San Mateo County for EV charging infrastructure. Of PCE’s \$12 million in incentives, \$8 million will be administered under the CEC’s California Electric Vehicle Incentive Project (CALeVIP) and \$4 million under a dedicated, complementary PCE incentive fund. The dedicated PCE incentives will address Level 1 charging, assigned parking in multi-family dwellings, affordable housing new construction, public agency new construction, and charging for resiliency purposes.

**Status:** The program is being impacted by supply chain issues including contractor, materials, and product supply and cost. This is resulting in installation delays. PCE’s technical assistance and outreach is ongoing. In total 100+ different locations are in the technical assistance process requesting over 800 charging ports. In the course of technical assistance, PCE delivered over 50 evaluations equaling 950+ ports. PCE’s dedicated incentive program of \$4 million has received 28 applications for funding for a total of 430 ports. Sixteen applications were approved totaling 358 ports and \$731,000. Five smart L1 ports have been installed at an apartment in Belmont. A total of \$9,180.13 in incentives have been processed for payment.

CALeVIP provided extensions to Year 1 applications that experienced project delays due supply chain impacts. PCE engaged with CALeVIP to determine the cause for delays and expected installation timeline. CALeVIP surveyed 122 applicants that requested an extension due to project delays and reported the 75% of respondents (n=25) require additional extensions to complete their project. In total, 78% of Year 1 projects between PCE, CPAU, SVCE, SJCE, and SCP required an extension to complete their project. Only one CALeVIP project has been completed; twenty Level 2 ports at an apartment in Belmont. Peninsula Clean Energy staff anticipated 689 Level 2 ports and 302 DCFC ports to be funded in Year 2. Year 2 and Year 3 funding application review has not started.

**Strategic Plan:**

Goal 3 – Community Energy Programs, Objective A:

- Key Tactic 1: Drive personal electrified transportation to majority adoption
- Key Tactic 5: Support local government initiatives to advance decarbonization

Goal 3 – Community Energy Programs, Objective B:

- Key Tactic 3: Support workforce development programs in the County

#### 4.3. EV Ride & Drives / 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 145 rebates as of January 31, 2022. 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 will consider re-starting ride & drive events again sometime this calendar year.

#### Strategic Plan:

Goal 3 – Community Energy Programs, Objective A:

- Key Tactic 1: Drive personal electrified transportation towards majority adoption

#### 4.4. E-Bikes for Everyone Rebate Program

**Background:** The Board 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 PCE as an outreach and promotional partner and local bike shops are under contract to provide the rebate as a point-of-sale discount to customers. Enrolled

bike shops include Summit Bicycles, Mike's Bikes, Sports Basement, and RidePanda (as an online retail partner).

**Status:** The second launch of the program will occur in spring 2022.

**Strategic Plan:**

Goal 3 – Community Energy Programs, Objective A:

- Key Tactic 1: Drive personal electrified transportation to majority adoption

Goal 3 – Community Energy Programs, Objective B:

- Key Tactic 1: Invest in programs that benefit underserved communities

#### **4.5. Municipal Fleet Program**

**Background:** The Board approved the Municipal Fleet Program in November 2020. This program will run for three years with a total budget of \$900,000 and is comprised of three components to help local agencies begin their fleet electrification efforts: hands-on technical assistance and resources, gap funding, and a vehicle to building resiliency demonstration that will assess the costs and benefits of utilizing fleet EVs as backup power resources for agencies in grid failures and other emergencies.

**Status:** An RFP has been released (bids due 2/8/2022) to hire a consulting team to work with Peninsula Clean Energy on providing detailed technical assistance to agencies, including project cost estimations and EV infrastructure designs. Staff expects the program to become available by mid-2022.

**Strategic Plan:**

Goal 3 – Community Energy Programs, Objective A:

- Key Tactic 2: Bolster electrification of fleets and shared transportation
- Key Tactic 5: Support local government initiatives to advance decarbonization

Goal 3 – Community Energy Programs, Objective C:

- Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

#### **4.6. Transportation Pilots**

##### ***Ride-Hail Electrification Pilot***

**Background:** This pilot, approved by the Board in March 2020, is PCE's first program for the electrification of new mobility options. The project partners with Lyft and FlexDrive, its rental-car partner, to test strategies that encourage the adoption of all-electric vehicles in ride-hailing applications.

**Status:** The pilot formally kicked off in December 2020 and PCE staff are coordinating with Lyft on development. Vehicles are anticipated to start becoming available in Q2

2022.

### ***EV Managed Charging Pilot***

**Background:** PCE contracted with startup FlexCharging to test managed charging through vehicle-based telematics. The system utilizes existing Connected Car Apps and allows PCE to manage EV charging via algorithms as a non-hardware-based approach to shift more charging to occur during off-peak hours. The proof-of-concept test ran during the first half of 2020 and was a successful demonstration.

**Status:** Staff released an RFP for the telematics-based platform for the Phase 2 pilot and are currently in contract negotiations with the finalist. The contract for the recommended winner will be brought to the Board for approval in early 2022. PCE is collaborating with an academic team from the University of California, Davis' Davis Energy Economics Program (DEEP) to develop an incentive structure experiment that will be used to inform PCE's Managed Charging Program design. The contract with UC Davis will be brought to the Board for approval in October. A Technical Advisory Committee is also informing the pilot and is kicking off in mid-February.

### **Strategic Plan:**

#### Goal 3 – Community Energy Programs

- Implement robust energy programs that reduce greenhouse gas emissions, align energy supply and demand, and provide benefits to community stakeholder groups

#### Goal 3 – Community Energy Programs, Objective A:

- Key Tactic 1: Drive personal electrified transportation to majority adoption
- Key Tactic 2: Bolster electrification of fleets and shared transportation
- Key Tactic 5: Support local government initiatives to advance decarbonization

#### Goal 3 – Community Energy Programs, Objective B:

- Key Tactic 1: Invest in programs that benefit underserved communities

#### Goal 3 – Community Energy Programs, Objective C:

- Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

**PENINSULA CLEAN ENERGY  
JPA Board Correspondence**

**DATE:** February 11, 2022  
**BOARD MEETING DATE:** February 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 – February 2022

**BACKGROUND**

This memo summarizes energy procurement agreements entered into by the Chief Executive Officer since the last regular Board meeting in January. This summary is provided to the Board for information purposes only.

**DISCUSSION**

<b>Execution Month</b>	<b>Purpose</b>	<b>Counterparty</b>	<b>Term</b>
February	Purchase of Resource Adequacy	OhmConnect, Inc	7 Months
February	Purchase of Local Resource Adequacy	San Jose Clean Energy	2 Months
February	Sale of Local Resource Adequacy	San Jose Clean Energy	2 Months
February	Sale of Resource Adequacy	Pacific Gas & Electric Company	1 Month
February	Purchase of Local Resource Adequacy	Pacific Gas & Electric Company	2 Months
February	Purchase of Local Resource Adequacy	Pacific Gas & Electric Company	4 Months
February	Sale of Local Resource Adequacy	Pacific Gas & Electric Company	5 Months

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 <sup>st</sup> 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 <sup>st</sup> 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 <sup>st</sup> 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.



## 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