

California Community Power

Regular Meeting of the Board of Directors of CC Power

1:00 P.M.

Wednesday, January 19, 2022

Teleconference Meeting

California Community Power

NOTICE OF REGULAR MEETING AND AGENDA

Notice is hereby given that a regular meeting of the Board of Directors of California Community Power will be held on **January 19, 2022, at 1:00 p.m. The meeting will be held via teleconference pursuant to the provisions of Assembly Bill 361.**

The following information is being provided as the forum by which members of the public may observe the meeting and offer public comment:

Phone number: 1-669-219-2599 or 1-213-338-8477

Webinar ID: 810 4816 6119

Meeting Link: <https://svcleanenergy-org.zoom.us/j/81048166119>

If a member of the public would like to make a comment during the public comment period, please use the 'Raise Hand' function and staff will note your desire to speak. Alternatively, for members of the public joining by telephone (audio only), please email your public comment to comments@cacommunitypower.org. Public comment received by email will be read within the allotted public comment period.

AGENDA

- 1 Call to Order.**
- 2 Verification of Meeting Quorum.**
- 3 Matters subsequent to posting the Agenda.**
- 4 Public Comment** – any member of the public may address the Board of Directors concerning any matter not on the agenda.
- 5 Consent Agenda.**
 - A. Minutes of the Regular Board Meeting held on December 15, 2021.
 - B. Resolution 22-01-01 *Determination that Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees as a Result of the Proclaimed State of Emergency.*
- 6 Regular Agenda Items – Discussion and Possible Action.**
 - A. General Manager's Report.
 - i. Update on LDS Projects.
 - ii. Resolution 22-01-02 *Approval of Tumbleweed LDS Project and Authorization to Execute Associated Agreements.*
 - B. Update on Firm Clean Energy Resources Request for Offers.
 - i. Resolution 22-01-03 *Approval of CC Power Non-disclosure Agreement and Exclusivity Agreement for Negotiation of Firm Clean Energy Resource Projects.*
 - ii. Resolution 22-01-04 *Approval of Firm Clean Energy Resource Phase 2 Cost Sharing Agreement and Authorization for General Manager to Execute with Participants.*
 - C. Selection of Board Officers.
 - i. Consideration and Election of Chair and Vice-Chair, Resolution 22-01-05 *Election of CC Power Chair and Vice-Chair.*
 - ii. Consideration and Appointment of Secretary and Treasurer/Controller, Resolution 22-01-06 *Appointment of CC Power Secretary and Treasurer/Controller for 2022.*
- 7 Discussion of Any Individual Member Items.**
- 8 Adjournment.**

Accessible Public Meetings - Upon request, CC Power will provide written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. Please send a written request, including your name, mailing address, phone number and brief description of the requested materials and preferred alternative format or auxiliary aid or service at least 3 days before the meeting. Requests should be sent to: Amy Freeman, 555 Capitol Mall, Suite 570, Sacramento, CA 95814 or to info@cacommunitypower.org.

California Community Power

Consent Agenda Items

- A. **Minutes of the Regular Meeting of the Directors of CC Power held on December 15, 2021.**
- B. **Resolution 22-01-01 *Determination that Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees as a Result of the Proclaimed State of Emergency.***

MINUTES OF THE SPECIAL MEETING OF THE DIRECTORS OF
CALIFORNIA COMMUNITY POWER (CC POWER)

December 15, 2021

On this date, a Regular Meeting of the Directors of CC Power was held via teleconference, pursuant to the provisions of Assembly Bill 361.

Representatives:

Member Agency	Director
Central Coast Community Energy (3CE)	Tom Habashi
Clean Power San Francisco	Barbara Hale
East Bay Community Energy (EBCE)	Nick Chaset
Marin Clean Energy (MCE)	Shalini Swaroop, Alternate
Peninsula Clean Energy (PCE)	Jan Pepper
Redwood Coast Energy Authority (RCEA)	Matthew Marshall
San José Clean Energy (SJCE)	Lori Mitchell
Silicon Valley Clean Energy (SVCE)	Girish Balachandran, Chair
Sonoma Clean Power Authority (SCP)	Geof Syphers
Valley Clean Energy	Mitch Sears

Other Participants:

Tim Haines	General Manager, Interim
Tony Braun	General Counsel
Brittany Iles	General Counsel

1. Call to Order: Chair Balachandran called the meeting to order at 1:02 p.m.
2. Verification of Meeting Quorum: Ms. Iles verified that there was a quorum to proceed, and attendance is noted above. All Directors present participated via teleconference.
3. Matters Subsequent to Posting the Agenda: None.
4. Public Comment (any matter not on the agenda): None.
5. Consent Agenda: Chair Balachandran invited comments from the Board, and there were none.

Public Comment: None.

ACTION: M/S (Sears/Pepper) to **approve the Consent Agenda**. Motion carried by a unanimous roll call vote (Absent: Director Chaset).

MINUTES OF THE SPECIAL MEETING OF THE DIRECTORS OF
CALIFORNIA COMMUNITY POWER (CC POWER)

6. Regular Agenda Items – Discussion and Possible Action:

A. General Manager’s Report – Long Duration Storage Projects & 2022 Budget Updates

i. Update on LDS Projects

Mr. Haines provided an overview of the Tumbleweed approval timeline and noted that the targeted Board approval date was January 19th. He also provided an overview and update of the Firm Clean Resources Request for Offers (RFO) timeline and informed the Board that bids were received this week in response to that RFO.

Director Pepper expressed concern regarding the Tumbleweed approval timing and noted that she would need approval from her Board before she could vote. An exchange between Chair Balachandran, Mr. Braun, Mr. Haines, and Directors Pepper, Habashi, and Hale followed regarding the timing and approval of the agreements, which resulted in clarification from Mr. Braun, who explained the following: the agreements are mutually dependent and would not be effective unless they are all executed. He further clarified that the agreements do not bind CC Power until they are fully executed. Director Chaset inquired whether he would have a vote as a non-project participant. Mr. Braun affirmed that he would.

Public Comment: Bill Nack.

ii. Resolution 21-12-02 Approval of 2022 Budget and Cash Calls.

Mr. Haines reviewed lessons learned from 2021. He also provided a review of the 2022 general and project budget breakdowns, as well as observations, expectations, and cost allocations.

Chair Balachandran noted that the 2022 budget was lower than the current budget due to an expectation of the application of lessons learned and continued sweat equity. He advised that the Budget Committee stay in place with a focus of staying within budget.

Chair Balachandran invited questions from the Board. Director Habashi commented on the General Manager allocations and noted that the General Manager’s focus going forward would be on projects. Director Syphers suggested that the budget be reevaluated in 6 months and that a full-time position be considered. Director Pepper provided additional comments and noted a discrepancy on the number of 2022 Board meetings. Mr. Braun clarified that 12 meetings had been calendared, but only 6 meetings were budgeted for, as it is anticipated 6 of the calendared meetings would be cancelled. Directors Mitchell and Hale provided additional comments.

Public Comment: None.

ACTION: M/S (Mitchell/Hale) to approve Resolution 21-12-02 Approval of 2022 Budget and Cash Calls. Motion carried by a unanimous roll call vote.

iii. Resolution 21-12-03 Approval of the Extension of Consulting Contracts in Accordance with the 2022 CC Power Budget

Ms. Iles introduced this item, providing an overview of the resolution.

Chair Balachandran invited questions from the Board, and there were none.

Public Comment: None.

MINUTES OF THE SPECIAL MEETING OF THE DIRECTORS OF
CALIFORNIA COMMUNITY POWER (CC POWER)

ACTION: M/S (Syphers/Marshall) to **approve Resolution 21-12-03 Approval of the Extension of Consulting Contracts in Accordance with the 2022 CC Power Budget.** Motion carried by a unanimous roll call vote.

B. Resolution 21-12-04 Resolution Setting the Regular Meeting Dates for 2022

Chair Balachandran introduced this item. He invited questions from the Board, and there were none.

Public Comment: None.

ACTION: M/S (Syphers/Mitchell) to **approve Resolution 21-12-04 Setting the Regular Meeting Dates for 2022.** Motion carried by a unanimous roll call vote.

7. Discussion of Any Individual Member Items: None.

The Board of Directors adjourned at 2:03 p.m.

Minutes approved on January 19, 2022.

C. Anthony Braun, Secretary

**California Community Power
Resolution 22-01-01**

**DETERMINATION THAT MEETING IN PERSON WOULD PRESENT IMMINENT RISKS TO THE
HEALTH OR SAFETY OF ATTENDEES AS A RESULT OF THE PROCLAIMED STATE OF
EMERGENCY**

WHEREAS, on March 4, 2020 the Governor of California proclaimed a state of emergency in California as a result of the threat of COVID-19; and

WHEREAS, on March 17, 2020, the Governor issued Executive Order N-29-20 authorizing exemptions to certain notice requirements under the Ralph M. Brown Act to facilitate virtual meetings of a legislative body of a local agency; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-12 extending the provisions of N-29-20 until September 30, 2021; and

WHEREAS, on September 16, 2021, the Governor of California signed Assembly Bill 361 which provides for the continued suspension of certain notice requirements for virtual meeting when a legislative body of a local agency holds a meeting during a declared state of emergency and either:

- (1) state or local officials have imposed or recommended measures to promote social distancing,
- or
- (2) the legislative body holds a meeting for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; and

WHEREAS, pursuant to AB 361, a legislative body of a local agency must, not later than 30 days after teleconferencing for the first time pursuant to AB 361, and every 30 days thereafter, reconsider the circumstances of the state of emergency and determine that the state of emergency continues to directly impact the ability of the members to meet safely in person.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of CC Power hereby determines that meeting in person continues to present imminent risks to the health or safety of attendees as a result of the proclaimed state of emergency.

PASSED AND ADOPTED by the Board of Directors of California Community Power this 19th day of January, 2022.

Chair

Attest by: Secretary

California Community Power

Agenda Item 6A

1. **Resolution 22-01-02 *Approval of Tumbleweed LDS Project and Authorization to Execute Associated Agreements.***
2. **Attachment A to Resolution 22-01-02: Energy Storage Service Agreement (Redacted).**
3. **Attachment B to Resolution 22-01-02: Tumbleweed Energy Storage Project Participation Share Agreement.**

California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacommunitypower.org

DATE: January 19, 2022

TO: Board of Directors

FROM: Tim Haines, Interim General Manager

RE: CONSIDERATION AND APPROVAL OF LONG DURATION STORAGE (LDS) PROJECT

Overview

This Memorandum provides context and background information to support the recommendation that the Board approve the Tumbleweed Long Duration Storage (LDS) Project and associated agreements. The Tumbleweed LDS project is an 8-hour discharge duration, lithium-ion battery project. The Members of CC Power were provided with Notice of Intent to bring the Tumbleweed Project to the CC Power Board at the October 8, 2021 Board Meeting.

Process Leading Up to this Recommendation

Prior to formation of CC Power, CC Power members issued a Request for Proposals and assembled a project team to examine bids and options to develop LDS projects. This effort was proactive and preceded regulatory requirements for such procurement, which have now been mandated under California Public Utilities Commission decision. CC Power assumed management, with member assistance, of this process upon formation. The process was shepherded by a Project Oversight Committee of member staff. This process involved engagement of analytic firms that assessed the relative costs and other economic ranking of project bidders, which was particularly time consuming given that the economics of storage projects are complex. The process was also led by a lead negotiator and project counsel.

The Project and Project Participants

The Tumbleweed project is a 69 MW lithium-ion project with 8 hours of discharge duration. The project is located in Kern County, CA. The anticipated commercial operations date of the project is April 15, 2026.

A Joint Powers Agency whose members are:
Central Coast Community Energy | CleanPowerSF | East Bay Community Energy | MCE | Peninsula Clean Energy |
Redwood Coast Energy Authority | San José Clean Energy | Silicon Valley Clean Energy | Sonoma Clean Power |
Valley Clean Energy

Seven Members are participating in this project, including:

- CleanPowerSF (CPSF)
- Peninsula Clean Energy (PCE)
- Redwood Coast Energy Authority (RCEA)
- San Jose Clean Energy (SJCE)
- Silicon Valley Clean Energy (SVCE)
- Sonoma Clean Power Authority (SCPA)
- Valley Clean Energy (VCE)

In the aggregate the long duration storage mandate for the participating Members, measured in Net Qualifying Capacity, is 96.5 MW. This number does not reflect any upward adjustment of that requirement when the CPUC finalizes applicable Effective Load Carrying Capability numbers for LDS resources.

LDS Enhanced Conditions

Consistent with the April 2021 CC Power Board decision, the project will be constructed under a project labor agreement, thus assuring payment of prevailing wages and use of apprenticeship programs. The project will also adhere to CC Power environmental and environmental justice conditions.

Contract Structure

This project consists of three basic agreements to which CC Power is a party and a guarantee agreement to which the participating member and the developer are parties. The LDS contract structure allocates rights and obligations, project benefits, and cost and allocation of risks and liabilities similar to when CC Power Members contract bilaterally or with partners. The joint contracting structure limits the liability of Participating Members while providing the necessary security to finance the project construction and operation. The Project Oversight Committee has been shepherding this contract development process in consultation with the lead negotiators and project counsel.

Energy Storage Service Agreement - The ESSA is between CC Power and an LDS developer and addresses issues such as (1) project requirements and milestones, (2) price, (3) quantity, (4) term, (5) payment obligations, and other key terms.

Buyer Liability Pass Through Agreements – The Intent of the BLPTA is to mirror the liability a Participating Member would have if executing the ESSA directly with an LDS developer. Through the BLPTAs, each CCA guarantees CC Power’s payment obligations in proportion to each Members’ share of the project. In exchange, the LDS developer agrees to release CC Power from liability and to limit recovery from each CCA to an amount proportionate to each CCA’s share of the project.

Project Participation Share Agreement – Under the PPSA, participating CCAs agree to fund CC Power’s payment obligations so that CC Power can make timely payments under the ESSA. The PPSA also addresses how participating CCAs will (1) share revenue from CC Power’s sales of energy and ancillary services from the LDS facility into the CAISO market, (2) direct CC Power’s actions under the ESSA, and (3) step in, with a cap, to cover any member default in order to avoid a CC Power default under the ESSA.

The contracting structure for this agreement also contemplates an Operations Agreement between CC Power and Project Participant Members. This agreement will authorize retention of a scheduling coordinator and establish a decision-making structure to direct the scheduling coordinator to dispatch the LDS facility. The Operations Agreement is currently in the process of being developed by Participating Members and is not before the Board for consideration at this meeting.

Project Voting Structure

Pursuant to Section 5.06 of the CC Power Joint Powers Agreement, Project Agreements may alter the Voting structure of the CC Power Board for project specific votes. Accordingly, the PPSA modifies the voting rules of the CC Power Board for purposes of approving or acting on any matter that is specific to the Tumbleweed project. Each CC Power Board member that represents a Project Participant shall have one vote for any matter identified in the PPSA. Any CC Power Board member representing a member that is not a Project Participant shall abstain from voting on any matter identified in the PPSA. A vote of the majority of the CC Power Board members representing Project Participants shall be sufficient to constitute action, provided a quorum is established and maintained.

Approval Process

Should the Board approve the Tumbleweed LDS Project and associated agreements, Participating Members will then follow their own review and approval of process for the

Project. Approval by Participating Members within ninety (90) days following the Effective Date is a condition precedent to the effectiveness of the agreements. However, consistent with the table below, CC Power staff is requesting that each Participating Member request approval from their individual CCA Boards for more than their allocated Entitlement Share of the project as outlined in the ESSA and PPSA. This will allow Participating Members to continue with the project by absorbing outstanding shares in the event that a Participating Member is unable to secure approval plus 25%.

CCA	% Share in ESSA/PPSA	Initial Entitlement Share MW	Recommended Authority to Seek MW
CPSF	16.06%	11.08	16.94
PCE	19.69%	13.59	20.77
RCEA	3.62%	2.50	3.82
SJCE	22.28%	15.37	23.50
SVCE	21.25%	14.66	22.41
SCPA	12.95%	8.94	13.66
VCE	4.15%	2.86	4.38
Total	100.00%	69	

Additionally, as the counter-party to the agreement, the attached ESSA must also be approved by the REV Renewables Board before the document may be executed and deemed effective. As with CC Power, although REV Renewables staff have reviewed and vetted the agreement, the agreement may not be considered final until Board approval.

Conclusion

CC Power Staff is recommending that the Board approve the Tumbleweed LDS Project as outlined above, and authorize execution of the associated agreements, which are attached in substantially final form.

**California Community Power
Resolution 22-01-02**

**APPROVAL OF TUMBLEWEED LDS PROJECT AND AUTHORIZATION
TO EXECUTE ASSOCIATED AGREEMENTS**

WHEREAS, California Community Power (“CC Power”) was created by a Joint Powers Agreement (“JPA”) to develop, acquire, construct, own, manage, contract for, engage in, finance and/or provide energy related programs for the use of and by its Members; and

WHEREAS, the current Members of CC Power began a solicitation process in 2020, in advance of CC Power formation, to consider and evaluate Long Duration Energy Storage (“LDS”) projects; and

WHEREAS, the CC Power Board accepted the Project Development Process establishing a roadmap for the development and progress of CC Power projects and programs; and

WHEREAS, the LDS Project Oversight Committee made up of CC Power member staff, along with project negotiators and project counsel (“Project Team”), has completed negotiations on the Tumbleweed LDS Project, an 8-hour discharge duration, lithium-ion battery project; and

WHEREAS, the Project Team, through the negotiation process, has developed and negotiated an Energy Storage Service Agreement, Buyer Liability Pass Through Agreement, and Project Participation Share Agreement associated with the Tumbleweed Project; and

WHEREAS, pursuant to Section 6.02 of the CC Power JPA, on October 8, 2021, the CC Power Board was provided written notice of intent to bring the Tumbleweed Project to the Board for approval; and

WHEREAS, while the structure of CC Power is predicated on voluntary project participation and not all Members will be participating in the Tumbleweed LDS project, the JPA requires action by the full Board, not simply the project participating members, to approve projects within the purview of CC Power; and

WHEREAS, it is the intent that the CC Power Board approve the Tumbleweed LDS Project and associated agreements with the understanding that approval by participating members is a condition precedent to the effectiveness of the agreements.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of CC Power hereby:

1. Approve the Tumbleweed Project as within the purpose and power of CC Power.
2. Approve the Energy Storage Service Agreement and associated Buyer Liability Pass Through Agreement, in substantially final form, attached hereto as Attachment A.
3. Approve the Project Participation Share Agreement, in substantially final form, attached hereto as Attachment B.
4. Delegate the authority to the General Manager to execute the Tumbleweed Project Agreements described above and attached hereto, on behalf of CC Power.

**California Community Power
Resolution 22-01-02**

PASSED AND ADOPTED by the Board of Directors of California Community Power this 19th day of January, 2022, by the following vote:

		Aye	No	Abstain	Absent
Central Coast Community Energy	Tom Habashi				
CleanPowerSF	Barbara Hale				
East Bay Community Energy	Nick Chaset				
Marin Clean Energy	Dawn Weisz				
Peninsula Clean Energy	Jan Pepper				
Redwood Coast Energy Authority	Matthew Marshall				
San José Clean Energy	Lori Mitchell				
Silicon Valley Clean Energy	Girish Balachandran				
Sonoma Clean Power Authority	Geof Syphers				
Valley Clean Energy	Mitch Sears				

Chair

Attest by: Secretary

Execution Version

**ENERGY STORAGE SERVICE AGREEMENT
COVER SHEET**

Seller: Tumbleweed Energy Storage, LLC, a Delaware limited liability company

Buyer: California Community Power, a California joint powers authority

Description of Facility: 69 MW/552 MWh grid-connected battery energy storage facility (CAISO Queue 1217) located near Rosamond, Kern County, California, as further described in Exhibit A.

Milestones:

Milestone	Expected Date for Completion
Evidence of Site Control	8/12/2019
Conditional Use Permit obtained	
Phase I and Phase II Interconnection study results obtained	6/1/2018
Interconnection Agreement executed	11/12/2018
Major equipment procured	
Federal and state discretionary permits issued	
Expected Construction Start Date	
Guaranteed Construction Start Date	12/31/2025
Initial Synchronization	4/1/2026
Network Upgrades completed	12/31/2025
Partial Capacity Deliverability Status sufficient to fully deliver the Facility's Guaranteed Capacity is obtained	3/16/2018
Expected Commercial Operation Date	4/15/2026
Guaranteed Commercial Operation Date	6/1/2026

Delivery Term: 15 Contract Years

Guaranteed Capacity: 69 MW of Installed Capacity at eight (8) hours of continuous discharge

Dedicated Interconnection Capacity: 69 MW

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1-15	83.3%

Contract Price:

Contract Year	Contract Price
1 – 15	\$ [REDACTED] /kW-mo. (flat) with no escalation and subject to adjustments in <u>Exhibit C</u>

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] /kW of Guaranteed Capacity

Performance Security: \$ [REDACTED] /kW of Guaranteed Capacity

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- Exhibit B Facility Construction and Commercial Operation
- Exhibit C Compensation
- Exhibit D Scheduling Coordinator Responsibilities

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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
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Exhibit K	Form of Letter of Credit
Exhibit L	Form of Buyer Liability Pass Through Agreement
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Exhibit R	Metering Diagram
Exhibit S	[Intentionally Omitted]
Exhibit T	Form of Collateral Assignment Agreement
Exhibit U	Material Permits
Exhibit V	Project Participants and Liability Shares

Approval Draft

ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement (“**Agreement**”) is entered into as of _____ (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.

“**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.

“**Ancillary Services**” means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, voltage support, and any other ancillary services, in each case that the Facility is capable of providing consistent with the Operating Restrictions set forth in Exhibit Q, as each is defined in the CAISO Tariff.

“**Approved Maintenance Hours**” means up to [REDACTED] per Contract Year of Planned Outages for Facility maintenance scheduled in accordance with Section 4.12.

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

“**Automatic 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.

“**Battery Charging Factor**” means a fraction, the numerator of which is the amount of Charging Energy absorbed by the Facility after the first ten (10) hours of the charging phase of the applicable Capacity Test, and the denominator of which is the Effective Capacity.

“**Battery Discharging Factor**” means one (1) minus a fraction, the numerator of which is the amount of Discharging Energy discharged during the first eight (8) hours of the discharging phase of the applicable Capacity Test, and the denominator of which is the Effective Capacity.

“**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 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, PMAX, 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 Grid**” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“**CAISO Tariff**” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, 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.

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

“**Capacity Attribute**” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the ability of the Facility to 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 or Efficiency Rate or, subject to the qualifications set forth in Exhibit O, any other test conducted pursuant to Exhibit O.

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

“**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. All Charging Energy not consumed in Electrical Losses or used for Station Use shall be used solely to charge the Facility.

“**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. Any instruction to charge the Storage 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 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 later of (a) the Expected Commercial Operation Date or (b) 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) ninety (90).

“**Communications Protocols**” means certain Operating Restrictions 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.

“**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 (plus, in the case of the first Contract Year only, if the Commercial Operation Date does not occur on the first day of a calendar month, the period from the Commercial Operation Date through the end of the calendar month in which the Commercial Operation Date occurs). 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 or, if the Commercial Operation Date does not occur on the first day of a calendar month, the anniversary of the first day of the first full calendar month following 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 its 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 weighted 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) one hundred twenty (120).

“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 Seller’s 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 Facility Pnode on the CAISO grid.

“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. Any instruction to discharge the Storage 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, for a specified period of time, and/or to a specified Storage Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions.

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

“Effective Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for eight (8) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point) as 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 tested 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 test has been conducted in such calendar month and different tested Efficiency Rates apply during such calendar month.

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

“**Electrical Losses**” means 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.

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

“**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. “Environmental Attributes” do not include (i) Tax Credits or other tax benefits or attributes, including any cash payments in lieu thereof, (ii) any governmental grants, subsidies or other incentive payments related to the construction, ownership or operation of the Facility, or (iii) any Emission Reduction Credits or Marketable Emission Trading 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.

“**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, 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 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.

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

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

“**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 Capacity Attributes.

“GHG Regulations” means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

“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.

“Greenhouse Gas” or **“GHG”** has the meaning set forth in the GHG Regulations or in any other applicable Laws.

“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 maximum dependable operating capability of the Facility to discharge electric energy, as measured in MW AC at the Delivery Point for eight (8) hours of continuous discharge, as 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 Flexible Capacity (in MWs) for which a storage facility having a storage capacity of 69 MW with eight (8) hours of continuous discharging at the maximum rate of discharge, having achieved PCDS sufficient to fully deliver the Facility’s Guaranteed Capacity, and performing with

operational characteristics equal to those required by the Guaranteed Availability, Guaranteed Efficiency Rate, and the Operating Restrictions 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 69 MW with eight (8) hours of continuous discharging at the maximum rate of discharge, having achieved PCDS sufficient to fully deliver the Facility’s Guaranteed Capacity, and performing with operational characteristics equal to those required by the Guaranteed Availability, Guaranteed Efficiency Rate, and the Operating Restrictions 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, as applicable, deviates from the amount of Scheduled Energy.

“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) P_{MAX}, and (b) maximum dependable operating capacity of the Facility to discharge Energy for eight (8) hours of continuous discharge, as measured in MW AC at the Facility Meter Point by the Facility Meter and adjusted for Electrical

Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B, but in either case (a) or (b) up to but not in excess of the Guaranteed Capacity.

“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 Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

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

“ITC” means the investment tax credit established pursuant to Section 48 or other applicable provisions 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 Capacity Attributes. Seller’s lost revenue under this Agreement resulting from a Buyer Default shall not be considered to be consequential, incidental, punitive, exemplary or indirect or business interruption damages for purposes of determining Losses under this Agreement.

“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 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 level at which the Facility may be charged, expressed in MW and as set forth in Exhibit Q.

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

“**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.

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

“**Most Offer Obligations**” means the obligations to offer the Net Qualifying Capacity in order to satisfy Resource Adequacy Requirements, including under Section 40.6 of the CAISO Tariff.

“**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 “**NOC**” 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) 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**” or “**PCDS**” has the meaning set forth in the CAISO Tariff.

“**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 that satisfies, the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of energy generation or storage facilities similar to the Facility or 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.

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

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

“**Portfolio**” means the 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).

“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 Participation Share Agreement” means that certain Tumbleweed Energy 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.

“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.

“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.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric 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.

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

“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 Partial Capacity Deliverability Status sufficient to fully deliver the Facility’s Guaranteed Capacity.

“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 PCDS sufficient to fully deliver the Facility’s Guaranteed Capacity; 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, 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, 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, unless Buyer consents to accept Replacement RA from another facility, 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 issue by the CPUC, including the Resource Adequacy Rulings, or the CAISO Tariff, and shall include Flexible Capacity, and any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Capacity” or **“RA Capacity”** has the meaning set forth in the CAISO Tariff.

“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 the CPUC or the CAISO, 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 one hundred twenty-five percent (125%) of such Participant’s Initial Liability Share.

“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.

“Scheduled Energy” means the Charging Energy or Discharging Energy, as applicable, that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM

Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or CAISO dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

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

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

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

“**Seller’s 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 shall not include consequential, incidental, punitive, exemplary or indirect or business interruption damages for purposes of this Agreement, except to the extent that Seller’s lost revenue under this Agreement resulting from a Buyer Default may be included in the determination of Losses.

“**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" does not include any land rights or interests in the real property constituting the Site that relate to or are used by other projects constructed or owned by Seller or its Affiliates.

"Site Control" means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

"State of Charge" or **"SOC"** means the ratio of (a) the Storage Level of the Facility to (b) the Effective Capacity multiplied by eight (8) hours, expressed as a percentage.

"Station Use" means the Energy that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility (or as otherwise defined by the retail energy provider and CAISO Tariff) except during periods in which the Storage Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice.

"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.

"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(b).

“**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 Facility Energy onto the Transmission System.

“**Ultimate Parent**” means Rev Renewables, LLC, a Delaware limited liability company.

“**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, 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), and Buyer shall promptly return to Seller any Development Security then held by Buyer, if any, less any amounts drawn in accordance with this Agreement.

(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 expected 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 confirmation of Commercial Operation, which, if confirmed, shall be deemed to have occurred as of the date of such Notice. 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 has executed an 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 Partial Capacity Deliverability Status sufficient to fully deliver the Facility's Guaranteed Capacity, if applicable;

(d) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(e) Seller has obtained CAISO Certification for the Facility; The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;

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

(g) Seller has Site Control;

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

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

(j) 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 Seller misses a Milestone 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; *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 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 with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone; *provided*, in the event Seller misses any Milestone and Seller provides Notice to Buyer that it is not likely to be able to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date as may be extended pursuant to Exhibit B, Buyer shall have the right to terminate this Agreement and retain the Development Security as liquidated damages and as its exclusive remedy, and neither Party shall have any further liability under this Agreement arising after the date of

termination. Such termination right must be exercised, if at all, within ten (10) Business Days after Buyer's receipt of Seller's Notice that it is not likely to be able to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date (as may be extended pursuant to Exhibit B).

2.5 **Pre-Commercial Operation Actions**. The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, 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 a Dispatch Notice and nominating and scheduling the Facility for the Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date. In addition, Seller shall have the right to operate the Facility [REDACTED] prior to the Commercial Operation Date, so long as such operation does not interfere with Seller's ability to perform its obligations under this Agreement from and after the Commercial Operation Date.

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 has all rights to the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith [REDACTED] and after the Delivery Term. 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 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**. Subject to the terms and conditions of this Agreement, 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 Partial Capacity Deliverability Status sufficient to fully deliver the Facility's 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 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 Partial Capacity Deliverability Status sufficient to fully deliver the Facility's Guaranteed Capacity 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 that the Facility is capable of providing during the Delivery Term consistent with the Operating Restrictions, 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 such 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 and without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any 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 in their discretion 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 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, 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 then applicable Guaranteed Effective 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, 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;

(ii)

(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 and/or Guaranteed Flexible Capacity, as applicable, of the Facility with respect to such Showing Month, minus (ii) the expected Net Qualifying Capacity and/or Effective Flexible Capacity, as applicable, of the Facility with respect to such Showing Month; *provided*, that any Replacement RA is communicated by Seller to Buyer in a Notice substantially in the form of Exhibit M at least sixty (60) days before the RA Shortfall Month.

3.6 **Buyer's Re-Sale of Product.** Buyer shall have the exclusive right in its sole discretion 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 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 actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's obligations or liabilities under this Agreement. 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.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) Subject to the provisions of this Agreement, including Section 4.9(a),

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.

(b) Seller shall be permitted to reduce deliveries of applicable Products during periods of Planned Outages, Unplanned Outages, Force Majeure Events and Curtailment Orders and as necessary to maintain health and safety pursuant to Section 6.2.

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 sole 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.

(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 conduct such additional testing as necessary 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 the section headed “Capacity Test Notice and Frequency” in 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 is below [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 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 accurate records with respect to all Capacity Tests.

(e) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and 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 from the Delivery Point. Seller shall maintain, repair or replace 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 costs and charges of delivering the Charging Energy to the Delivery Point, including all CAISO costs and charges associated with Charging Energy.

(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, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. 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. Buyer shall be responsible for issuing all Charging Notices necessary or required in connection with the Must Offer Obligations.

(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 in connection with a Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from the Transmission Provider or 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. 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. Buyer shall be responsible for issuing all Discharging Notices necessary or required in connection with the Must Offer Obligations and all CAISO charges and penalties for failing to comply with the Must Offer Obligation.

(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 in connection with a Seller Initiated Test (including Facility

maintenance or a Storage Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority.

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Facility other than as permitted hereunder, or as is expressly addressed in this Section 4.9, it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages 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 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. 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 or Seller negligently or intentionally fails to accurately communicate to Buyer the Facility's availability, Seller shall be responsible for all CAISO charges and penalties resulting from such deviations (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 Agreement 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 shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order consistent with 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 Storage 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 Storage Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice shall not be considered Station Use, (iii) Station Use may be supplied over the same circuit as Charging Energy and Discharging Energy, and (iv) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties or charges for 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) or over the same circuit as Charging Energy and Discharging Energy as

provided in clause (iii)) is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties or charges.

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 **[Reserved].**

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 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 Products during any period of such Planned Outages.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than ninety (90) days advance Notice to Buyer, to propose changes to the Outage Schedule developed pursuant to Section 4.12(a)(i). Buyer may provide comments no later than ten (10) days after receiving Seller's Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse

impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.

(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 the lesser [REDACTED]

[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 extent commercially reasonable, 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 thirty (30) minutes following the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within thirty (30) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff. 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 (other than withholding or other Taxes imposed on Buyer's income, revenue, receipts or employees). 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) or on Charging Energy prior to its delivery to Seller. 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:

- (a) All Environmental Costs;
- (b) All taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Delivery Term, but expressly excluding any taxes, charges or fees related to Greenhouse Gases imposed on Charging Energy or Discharging Energy;
- (c) Seller's obligations listed under "Compliance Obligation" in the GHG Regulations, and
- (d) All other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with the California Global Warming Solutions Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder, including the GHG Regulations, or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by a Governmental Authority) with respect to the Facility and/or Seller.

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. Nothing herein shall limit Seller's right to replace or augment existing batteries and other equipment to maintain the capacity of the Facility.

(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) 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. Seller agrees that any 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 not attributable to a specific project or projects shall be allocated to all generating or storage facilities utilizing 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 Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements 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 shall 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 except to the extent drawn from Charging Energy or Discharging Energy. The Facility Meter shall 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.** If Seller or Buyer have reason to believe there may be a Facility Meter malfunction, Seller shall 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 (10th) day of each month for the previous calendar month. Each invoice shall reflect (a) records of metered data, including, to the extent the available, (i) CAISO metering and transaction data reflecting 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) Seller's records of metered data, including data showing a calculation of the 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; *provided*, however, that the Parties acknowledge and agree that CAISO metering and transaction data showing the amount of Product delivered by the Facility for any Settlement Period during the prior month may not be available or be final at the time each monthly invoice is delivered pursuant to this Section 8.1 and that the monthly invoice will be based on such data as are available at the time. When CAISO metering and transaction data showing the amount of Product delivered by the Facility for any Settlement Period during the applicable 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) becomes available, Seller will true up such invoices to reflect any differences between Seller's records and the data received from CAISO, and an appropriate credit or charge will be added to the next monthly invoice.

8.2 **Payment.** Buyer shall make payment to Seller of Monthly Capacity Payments for Product (and any other amounts due) 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 receipt of Project Participant Approval. Seller shall maintain the Development Security in full force and effect. 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.

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.

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.**

(a) 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; *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. 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 with Liability Shares executed by Buyer and the applicable Project Participants that incorporate the Liability Shares set forth in the amended Exhibit V. Seller shall countersign each such Buyer Liability Pass Through Agreement executed by Buyer and the applicable Project Participant 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.

(b) Within thirty (30) days following a Step-Up Event, (A) Buyer shall provide Seller with replacement Buyer Liability Pass Through Agreements from all Compliant Project

Participants executed by Buyer and the applicable Compliant Project Participants that reflect each Compliant Project Participant's Revised Liability Share following such Step Up Event, and, (B) Exhibit V will be amended to reflect the Compliant Project Participants' Revised Liability Shares following such Step Up Event. Seller shall countersign each such Buyer Liability Pass Through Agreement executed by Buyer and the applicable Compliant Project Participant within ten (10) Business Days after Buyer's delivery of such Buyer Liability Pass Through Agreements to Seller; *provided* that no delay in countersigning or failure to countersign any such Buyer Liability Pass Through Agreement shall affect 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 (excluding impacts of the disease designated COVID-19 or the related virus designated SARS-CoV-2 impacts actually known by the Party claiming the Force Majeure Event as of the Effective Date); landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy 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 from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. 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 except as provided above, (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) after all applicable extensions of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date 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 substantially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any further 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 (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.5, (B) failures related to the Monthly Capacity Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Exhibit C and Exhibit P, and (C) failure to maintain the Guaranteed Efficiency Rate, the exclusive remedies for which are set forth in Exhibit C), 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:

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

(ii) the failure by Seller to (A) achieve Construction Start on or before [REDACTED] the Guaranteed Construction Start Date, as such date may be extended by Seller’s payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended

by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any Contract Year, the simple average of the Monthly Capacity Availability calculations for such Contract Year is not equal to at least [REDACTED] of the Guaranteed Availability, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure of the simple average of the Monthly Capacity Availability calculations for such Contract Year to equal at least [REDACTED] of the Guaranteed Availability, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed [REDACTED] ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(v) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days (thirty (30) days in the case of subsection (A)) after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

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

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

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

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

(c)

(i)

(ii)

(iii)

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

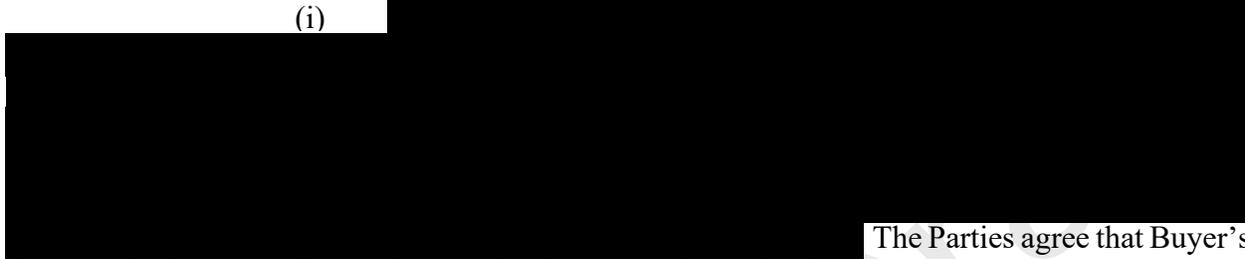
(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

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 Prior to Commercial Operation Date.** If the Early Termination Date occurs before the Commercial Operation Date, 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.

(ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal (A) the sum of (i) Seller's Losses, including Seller's lost revenue under this Agreement resulting from a Buyer Default, which shall not be considered to include consequential, incidental, punitive, exemplary, indirect, or business interruption damages for purposes of this Agreement, plus (ii) without duplication of any costs or expenses covered by preceding clause, all actual, documented and verifiable Costs that have been actually incurred, or become payable, by Seller arising out of the termination of this Agreement, less (B) Seller's Gains. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) **Termination Payment On or After the Commercial Operation Date.** The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring 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. 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.

Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.

[REDACTED]

[REDACTED]

11.7 **Rights And Remedies Are Cumulative.** Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy herein, 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.

ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) PART OF A THIRD PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S 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, INCLUDING UNDER SECTIONS 3.5, 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.

12.3 **Limitation on Pre-COD Liability.** Notwithstanding anything in this Agreement to the contrary, unless and until the Facility has achieved Commercial Operation, Seller’s aggregate liability under this Agreement for any and all reasons, including liabilities for payment of Delay Damages, Commercial Operation Delay Damages and the Damage Payment, shall not exceed [REDACTED] of the amount of the Development Security. For avoidance of doubt, this Section 12.3 shall not be applicable once the Facility has achieved Commercial Operation.

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 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) 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 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.** To the extent applicable to Seller or the Facility, 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 will request that the following or similar language be included in any Project Labor Agreement executed after the Effective Date: “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.

(d) Permits. Seller shall obtain and maintain any and all permits and approvals necessary for the construction and operation of the Facility, 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.

(e) Site Control. Seller shall maintain Site Control throughout the Delivery Term.

ARTICLE 14 ASSIGNMENT

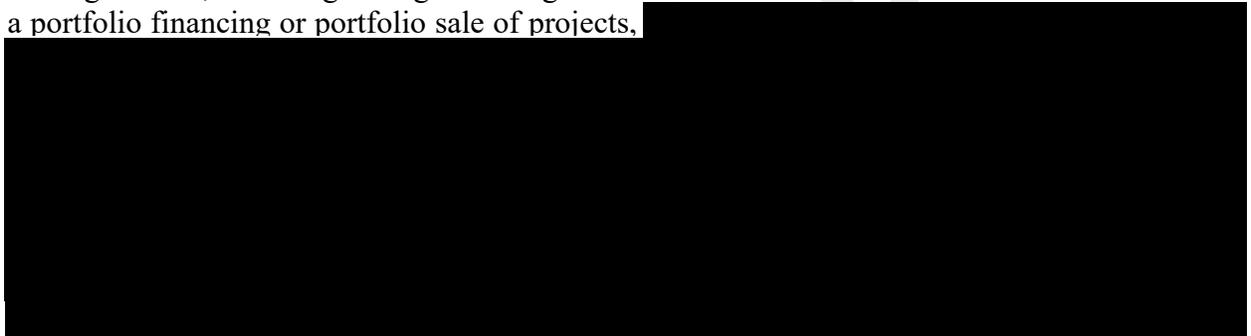
14.1 General Prohibition on Assignments. Except as provided below in this Article 14, neither Party may assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. 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. 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 provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify this Agreement.

14.3 **Permitted Assignment.**

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to: (i) an Affiliate of Seller, (ii) as part of a portfolio financing or portfolio sale of projects,



Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3(a) 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 member of Buyer that (A) has a Credit Rating of at least BBB- from S&P and Baa3 from Moody's, and (B) is a load serving entity; *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 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.

14.5 **Buyer Financing Assignment.** Buyer may assign this Agreement to a financing entity that will pre-pay all of Buyer's payment obligations under this Agreement with Seller's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned; *provided* that Seller reasonably determines that the terms and conditions of such pre-payment arrangements are satisfactory to Seller and its Lenders and do not adversely affect Seller or its arrangements with Lenders in any respect and that Seller is reimbursed for all costs and expenses incurred by Seller and its Lenders in connection with such transaction.

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) Seller's breach

of this Agreement (including inaccuracy of any Seller representation of warranty made hereunder), (ii) 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, or (iii) negligent 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) Buyer’s breach of this Agreement (including inaccuracy of any representation of warranty made hereunder), (ii) a violation of applicable Laws by Buyer or its Affiliates, or (iii) negligent or willful misconduct of Buyer or its Affiliates, its 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 One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall name 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 One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with statutory amounts, with employer's liability limits of not less than One Million Dollars (\$1,000,000.00) 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 One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name 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 Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, including Seller (and Lender, if any) as additional named 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 equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months 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 One Million Dollars (\$1,000,000); (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 one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 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, and that are authorized to do business in the State of California, 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 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 be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

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, lenders, counsel, accountants, 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 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 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 assumption 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.

TUMBLEWEED ENERGY STORAGE, LLC CALIFORNIA COMMUNITY POWER, a
California joint powers authority

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approval Draft

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Tumbleweed Energy Storage (75 MW) (CAISO Queue 1217)

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

City: [REDACTED] near Rosamond, CA

County: Kern

Zip Code: 93560

Latitude and Longitude: [REDACTED]

Facility Description: 69 MW/552 MWh grid-connected battery energy storage facility, as depicted on the following page.

Interconnection Point: The Project shall interconnect to Whirlwind Substation 230 kV

Facility Meter: See Exhibit R

Facility Metering Points: See Exhibit R

P-node: [REDACTED]

Transmission Provider: Southern California Edison (SCE)

Additional Information: The Facility may include a co-located 1 MW solar generation system which will only serve onsite load.

Site Diagram (indicative only, will change prior to construction):

[Redacted]

Approval Draft

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

- a. **“Construction Start”** will occur upon Seller’s acquisition of the conditional use permit and other applicable discretionary permits for the construction of the Facility, and once Seller has engaged one or more contractors, and ordered all long lead time equipment as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin, and has executed one or more engineering, procurement, and construction contract and issued a notice to proceed under the applicable contract that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations) at the Site. 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.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Construction Start Date for all purposes hereunder, including Section 11.1(b)(ii), 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 one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current (including any previous extensions) 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. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Commercial Operation Date for all purposes hereunder, including

Section 11.1(b)(ii), 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 ninety (90) days 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 (including any previous extensions) 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.** 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. Seller has not acquired the Material Permits by the Guaranteed Construction Start Date despite the exercise of diligent and commercially reasonable efforts by Seller; 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 connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date 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.

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 one hundred twenty (120) days, 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 one hundred eighty (180) days. Upon request from Buyer, Seller shall provide documentation reasonably demonstrating that the delays described in subsections (a) and (c) above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days 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) 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 Contract Price x Effective Capacity x Availability Adjustment x Efficiency Rate Adjustment. Such payment constitutes 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]

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

[REDACTED]

[REDACTED]

(d) Tax Credits. If, prior to the commencement of Commercial Operation of the Facility, Federal Investment Tax Credit Legislation is enacted that is applicable to the Facility, Seller shall use commercially reasonable efforts (including taking into consideration any increased costs that may be required in order to qualify for any New Tax Credit) to cause the ITC or other Tax Credits provided by such Federal Investment Tax Credit Legislation ("New Tax Credit") to be available for the Facility; *provided*, however, that the Parties' obligations hereunder, including for delivery and purchase of the Product, shall be effective regardless of whether the Facility or the sale of Product hereunder is eligible for or receives the New Tax Credit, and the Contract Price shall not be revised if Seller does not receive the New Tax Credit or if the New Tax Credit expires, ceases to apply or is repealed before it can be used by Seller.

[REDACTED]

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Unless Buyer agrees in its absolute discretion to provide Scheduling Coordinator services prior to the Commercial Operation Date, 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. 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 (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real time or other CAISO market basis that may develop after the Effective Date, as determined by Buyer.

(b) Notices. Beginning on the Commercial Operation Date, Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced 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 (in order of preference) telephonically, by electronic mail, or transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Beginning on the Commercial Operation Date, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including Charging Energy, penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including Discharging Energy, credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the 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. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the 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 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 to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

Approval Draft

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. 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, interconnected, and synchronized with the Transmission System in accordance with the Interconnection Agreement.
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 ninety-five percent (95%) 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: _____

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, (ii) a Battery Charging Factor of __%, (iii) a Battery Discharging Factor of __%, and (iv) 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: _____

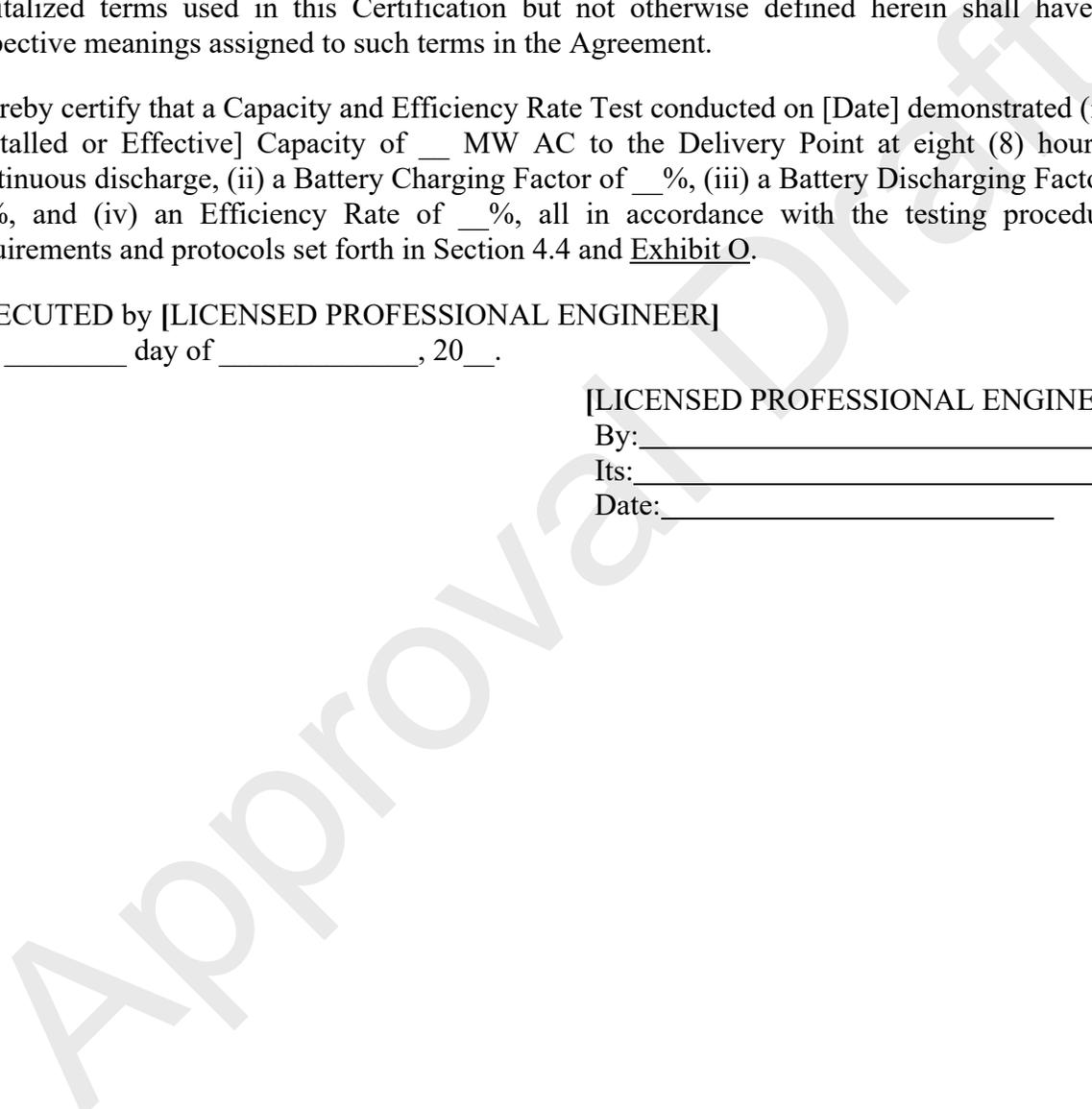


EXHIBIT J

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\$[XXXXXXXXXX]

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.

Attachment A to Resolution 22-01-02

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 ninety (90) 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. [XXXXXXXX] (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:

a) 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; *provided* that the Project Participant's Revised Liability Share shall not exceed one hundred twenty-five percent (125%) of the Project Participant's Initial Liability Share.

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. 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.

16. 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 16(d) through 16(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 16(d) through 16(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.

17. 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.

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.

[PROJECT PARTICIPANT]:

By: _____

Printed Name: _____

Title: _____

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

By: _____

Printed Name: _____

Title: _____

[SELLER]:

By: _____

Printed Name: _____

Title: _____

Approval Draft

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 Information¹

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		

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

Approval Draft

EXHIBIT N
NOTICES

<i>Tumbleweed Energy Storage, LLC</i> ("Seller")	California Community Power, a California joint powers authority ("Buyer")
All Notices: Street: 5000 Hopyard Road, Suite 480 City: Pleasanton, CA 94588 Attn: Contract administration Phone: C: 510-363-7124 O: 925-201-5232 Email: GBrehm@RevRenewables.com	All Notices: Street: 70 Garden Court, Suite 300 City: Monterey, CA 93940 Attn: Tim Haines Phone: 916-207-4078 Email: timhaines@powergridsymmetry.com
Scheduling: Attn: Edward Warner Phone: 925-201-5233 C: 925-519-0031 Email: EWarner@RevRenewables.com	Scheduling: Attn: TBD Phone: TBD Email: TBD
Confirmations: Attn: Greg Brehm Phone: C: 510-363-7124 O: 925-201-5232 Email: GBrehm@RevRenewables.com	Confirmations: Attn: TBD Phone: TBD Email: TBD
Invoices: Attn: Adekunle Adebayo Phone: 732-867-5910 E-mail: AAdebayo@RevRenewables.com	Invoices: Attn: TBD Phone: TBD E-mail: TBD
Payments: Attn: Adekunle Adebayo Phone: 732-867-5910 E-mail: AAdebayo@RevRenewables.com	Payments: Attn: TBD Phone: TBD E-mail: TBD
Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]	Wire Transfer: BNK: TBD ABA: TBD ACCT: TBD
Reference Numbers: Duns: N/A Federal Tax ID Number: 85-3069929	Reference Numbers: Duns: Federal Tax ID Number:
Credit and Collections: Attn: Scott Tansey Street: One Tower Center, 21st Floor City: East Brunswick, NJ 08816 Phone: 732 867-5881 Email: stansey@lspower.com	Credit and Collections:

<p><i>Tumbleweed Energy Storage, LLC</i> (“Seller”)</p>	<p>California Community Power, a California joint powers authority (“Buyer”)</p>
<p>With additional Notices of an Event of Default to: Attn: David Sass VP & Assistant General Counsel Street: One Tower Center, 21st Floor City: East Brunswick, NJ 08816 Phone: 732 867-5853 Facsimile: 732 249-7290 Email: DSass@RevRenewables.com</p>	<p>With additional Notices of an Event of Default to: Attn: Brittany Iles, Attorney Street: 555 Capitol Mall, Ste 570 City: Sacramento, CA 95814 Phone: 916 326-5812 Facsimile: 916 330-4337 Email: Iles@braunlegal.com</p>

Approval Draft

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. In addition to the annual capacity test, if Buyer has reason to believe that the Effective Capacity or the Efficiency Rate is materially less than shown by the most recent test results, 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. 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) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the 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.

- (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.
- (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.

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 Storage Capacity, and all SOC measurements associated with a Capacity Test shall be based on the Installed Capacity without taking into account any capacity that exceeds the Guaranteed Capacity.

- 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) Electrical output at maximum discharging level (MW) for eight (8) continuous hours; and
 - (2) Electrical input at maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Facility Meter (MW), as 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) The amount of Discharging Energy to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);

- (3) Net electrical energy input from the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter); and
 - (4) Storage Level (MWh).
- 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 maximum sustained discharging level for eight (8) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging level for ten (10) consecutive hours (or such lesser time as is required to reach 100% SOC) pursuant to A(2) above;
 - (4) Amount of time between the Facility's electrical output going from 0 to the maximum sustained discharging level registered 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 sustained charging level registered during the CT (for purposes of calculating the ramp rate);
 - (6) Amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC;
 - (7) Amount of Discharging Energy, registered at the Facility Meter, to go from 100% SOC to 0% SOC.
- 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.
 - (2) Abnormal Conditions. 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.
- 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 actions or inactions of Buyer 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.
- G. Test Report. Within five (5) 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, such CT shall be repeated in accordance with Part II.F.

- 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 Discharging 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) The total amount of Discharging Energy (as reported under Section II.D(7) above) divided by the total amount of Charging Energy (as reported under Section II.D(6) 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 SOC.
- (3) Command a real power charge that results in an AC power of Facility's maximum charging level and 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 SOC after the earlier of (a) the Facility has reached 100% SOC or (b) ten (10) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and store the amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC.
- (6) Following an agreed-upon rest period (not to exceed 5 minutes), command a real power discharge that results in an AC power output of the Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for eight (8) consecutive hours, or (b) the Facility has reached 0% SOC.

- (7) Record and store the SOC after eight (8) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation Capacity Test) for eight (8) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for the purposes of calculating the Battery Discharging Factor.
 - (8) Record and store the Discharging Energy 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 a 0% SOC.
 - (10) Record and store the Discharging Energy as measured at the Facility Meter from the commencement of discharging pursuant to Part III.A.6 until the Facility has reached a 0% SOC 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 Discharging Energy at the Facility Meter divided by eight (8) hours.
 - (2) The total amount of Discharging Energy (as reported under Section III.A(10) above) divided by the total amount of Charging Energy (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.

Note: The following tests (B) through (E), or alternative tests consistent with CAISO rules, may be conducted in connection with the initial Commercial Operation Capacity Test and any subsequent Capacity Test to the extent permitted under applicable Laws, including CAISO rules, but the results of these tests will not affect the determination of whether or not the Facility has passed a Capacity Test and will only be used to determine whether the Facility is performing with operational characteristics equal to those required by the Operating Restrictions.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's maximum discharging level within 1 second.
- 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 Pmax 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 full charging level within 1 second.
- 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 Pmax 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 35 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 35 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 _{m} is the total number of hours for the month;

AVAILHRS _{m} is the total number of hours, or partial hours, in the month during which the Facility was available to charge and discharge Energy between the Facility and the Delivery Point and to provide Ancillary Services at the Delivery Point. 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 _{m} for such time period shall be calculated by multiplying such AVAILHRS _{m} by a percentage determined by dividing (a) 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 _{m} is the total number of hours, or partial hours, in the month that are not included as AVAILHRS _{m} due to Approved Maintenance Hours, Buyer Dispatched Tests, Operating Restrictions in Exhibit Q, Buyer breach or default, or any circumstances at the high-voltage side of the Delivery Point or beyond that point 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 unavailable during any applicable hour, or partial hour, the EXCUSEDHRS _{m} for such time period shall be calculated by multiplying such EXCUSEDHRS _{m} by a percentage determined by dividing (a) 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 _{m} plus EXCUSEDHRS _{m} for any hour, or partial hour, shall never exceed 1.

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.

File Update Date:	[XX/XX/20XX]	
Technology:	Lithium-ion	
Storage Unit Name:	[Unit Name and Number]	
A. Contract Capacity		
Guaranteed Capacity (MW):	69	
Effective Capacity (MW):	69	
B. Total Unit Dispatchable Range Information		
Interconnect Voltage (kV)	230	
Maximum State of Charge (SOC) during Charging	100%	
Minimum State of Charge (SOC) during Discharging	0%	
Maximum Storage Level (MWh):	552	
Minimum Storage Level (MWh):	0	
Maximum Charging Capacity (MW):	69	
Maximum Discharging Capacity (MW):	69	
C. Daily/Monthly/Annual Cycles		
Maximum annual Cycles:	365	
D. Charge and Discharge Rates		
Mode	Ramp Rate (MW/minute) Description	
Energy	40 MW/minute to 80 MW/minute	
E. Ancillary Services		
Frequency regulation is included:	yes	
Spinning reserve is included:	yes	
Non-spinning reserve is included:	yes	
Regulation up is included:	yes	
Regulation down is included:	yes	
Black start is included:	no	
Voltage support is included:	yes, in form of Automatic Voltage Regulation (AVR)	

EXHIBIT R
METERING DIAGRAM

[Redacted]

Approval Draft

EXHIBIT S

[INTENTIONALLY OMITTED]

Approval Draft

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 Storage Units (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 ninety (90) 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 ninety (90) 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 two hundred seventy (270) 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 (i) be a permitted assignee under the ESSA or (ii) have demonstrated to CCP's reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience *[TBD]* (a "Permitted Transferee"). 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.

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, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another 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 demonstrated to CCP's reasonable satisfaction 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.

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 demonstrated to CCP’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

1.7 Assumption of Obligations.

(a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to 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, 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, 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 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, 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. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of CCP and Project Company:

5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

SECTION 6. MISCELLANEOUS

6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the 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

Attachment A to Resolution 22-01-02

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>By:</p> <p>_____</p> <p><i>[Name]</i> <i>[Title]</i></p> <p>Date: _____</p>	<p>By:</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>By:</p> <p>_____</p> <p><i>[Name]</i> <i>[Title]</i></p> <p>Date: _____</p>	

Approval Draft

SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

Approval Draft

EXHIBIT U
MATERIAL PERMITS

<i>No.</i>	<i>Permits</i>
1	[REDACTED]
2	[REDACTED]

Approval Draft

EXHIBIT V**PROJECT PARTICIPANTS AND LIABILITY SHARES**

Project Participant	Liability Share
Clean Power San Francisco	16.06%
Peninsula Clean Energy	19.69%
Redwood Coast Energy Authority	3.62%
San Jose Clean Energy	22.28%
Silicon Valley Clean Energy	21.25%
Sonoma Clean Power	12.95%
Valley Clean Energy	4.15%

**TUMBLEWEED ENERGY STORAGE
PROJECT PARTICIPATION SHARE AGREEMENT**

among

**CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH ITS
PUBLIC UTILITIES COMMISSION CLEANPOWERSF**

and

PENINSULA CLEAN ENERGY

and

REDWOOD COAST ENERGY AUTHORITY

and

CITY OF SAN JOSÉ, ADMINISTRATOR OF SAN JOSÉ CLEAN ENERGY

and

SILICON VALLEY CLEAN ENERGY

and

SONOMA CLEAN POWER

and

VALLEY CLEAN ENERGY

and

CALIFORNIA COMMUNITY POWER

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**TUMBLEWEED ENERGY STORAGE
PROJECT PARTICIPATION SHARE AGREEMENT**

PREAMBLE

This Project Participation Share Agreement (“**Agreement**”) is entered into as of _____ (the “**Effective Date**”), by and among the City and County of San Francisco acting by and through its Public Utilities Commission, CleanPowerSF, Peninsula Clean Energy, a California joint powers authority, Redwood Coast Energy Authority, a California joint powers authority, City of San José, a California municipality, Silicon Valley Clean Energy, a California joint powers authority, Sonoma Clean Power, a California joint powers authority, and Valley Clean Energy, a California joint powers authority (each individually a “**Project Participant**” and collectively referred to as the “**Project Participants**”) and California Community Power (“**CCP**”), a California joint powers authority. CCP and the Project Participants 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 CCP is a Joint Powers Authority, was formed for the purpose of developing, acquiring, constructing, owning, managing, contracting for, engaging in, or financing electric energy generation and storage projects, and for other purposes; and

WHEREAS, the Project Participants have participated with CCP in the negotiation of an agreement for purchase of the certain energy storage products of Tumbleweed Energy Storage (the “**Project**” as defined in Exhibit A of the ESSA), and CCP is to enter into an Energy Storage Service Agreement (“**ESSA**”), which is incorporated herein by this reference, with Tumbleweed Energy Storage, LLC, a Delaware limited liability company (“**Project Developer**”), providing for purchase of the energy storage products, and associated rights, benefits, and credits from the Project on behalf of the Project Participants.

WHEREAS, pursuant to this Agreement, CCP shall cause to deliver to each Project Participant the Project Participant’s associated share of the energy storage products and associated rights, benefits, and credits of the Project.

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

“**AC**” means alternating current.

“**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.

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

“**Amended Annual Budget**” means the budget approved by the Project Committee and adopted by the CCP Board pursuant to Section 5.1(c) of this Agreement.

“**Ancillary Services**” means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Facility is capable of providing consistent with the Operating Restrictions set forth in Exhibit Q of the ESSA, as each is defined in the CAISO Tariff.

“**Annual Budget**” means the budget approved by the Project Committee and adopted by the CCP Board pursuant to Section 5.1(c) of this Agreement.

“**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.

“**Billing Statement**” has the meaning set forth in Section 9.2 of this Agreement.

“**Buyer Liability Pass Through Agreement**” or “**BLPTA**” means, for each Project Participant, the form set forth in Exhibit L of the ESSA, as executed by such Project Participant, countersigned by CCP, and delivered to the Project Developer.

“**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.

“**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, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures, and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) 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.

“Capital Improvements” means any unit of property, property right, land or land right which is a replacement, repair, addition, improvement or betterment to the Project or any transmission facilities relating to, or for the benefit of, the Project, the betterment of land or land rights or the enlargement or betterment of any such unit of property constituting a part of the Project or related transmission facilities which is (i) consistent with Prudent Utility Practices and determined necessary and/or desirable by the CCP Board or (ii) required by any governmental agency having jurisdiction over the Project.

“CCP Board” means the Board of Directors of California Community Power.

“CCP Manager” means the General Manager of California Community Power.

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

“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.

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

“Chairperson” has the meaning set forth in Exhibit D.

“Change of Control” has the meaning set forth in Section 1.1 of the ESSA.

“**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 CCP’s SC or the CAISO to Project Developer, 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.

“**Commercial Operation**” has the meaning set forth in Section 1.1 of the ESSA.

“**Commercial Operation Date**” or “**COD**” has the meaning set forth in Section 1.1 of the ESSA.

“**Commercial Operation Delay Damages**” has the meaning set forth in Section 1.1 of the ESSA.

“**Communications Protocols**” has the meaning set forth in Section 1.1 of the ESSA.

“**Community Choice Aggregator**” has the meaning set forth in California Public Utilities Code § 331.1.

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

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

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

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

“**Contract Term**” has the meaning set forth in Section 2.1 of the ESSA.

“**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.

“**Coordinated Operations Agreement**” means the agreement by and among CCP and all Project Participants for purposes of operating the Project.

“**Costs**” means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant’s Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Project Participant in terminating any arrangement pursuant to which it has hedged its obligations; and all reasonable attorneys’ fees and expenses incurred by the Project Participant in connection with the Step-Up Allocation.

“**CPUC**” means the California Public Utilities Commission, or successor entity.

“**Cured Payment Default**” means a Payment Default that has been cured in accordance with Section 12.4 of this Agreement.

“**Daily Delay Damages**” has the meaning set forth in Section 1.1 of the ESSA.

“**Damage Payment**” means the amount to be paid by the ESSA Defaulting Party to the ESSA 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) of the ESSA.

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

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

“**Defaulting Project Participant**” has the meaning set forth in Section 12.1.

“**Delivery Point**” means the Facility Pnode on the CAISO grid.

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

“**Designated Fund**” has the meaning set forth in Section 10.5.

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

“**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 CCP’s SC or the CAISO to the Facility, directing the Facility to discharge Facility Energy at a specific MW rate for a specified period of time or to an amount of MWh.

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

“**Electrical Losses**” means 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 Facility Energy.

“**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 or Megawatt-hours or multiple units thereof.

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

“**Energy Storage Service Agreement**” or “**ESSA**” means the agreement between CCP and Project Developer for the purchase of energy storage products of Tumbleweed Energy Storage, executed on _____.

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

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

“**Entitlement Share**” means the percentage entitlement of each Project Participant as set forth in Exhibit B of this Agreement (entitled “Schedule of Project Participant Entitlement Shares and Step-Up Allocation Caps”) attributable to each such Project Participant, as may be amended pursuant to Section 4.2 or 12.8.

“**Entitlement Share Reduction Amount**” has the meaning set forth in Exhibit C.

“**Entitlement Share Reduction Compensation Amount**” has the meaning set forth in Exhibit C.

“**Entitlement Share Reduction Notice**” has the meaning set forth in Exhibit C.

“**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.

“**Estimated Monthly Project Cost**” has the meaning set forth in Section 8.1.

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

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

“**Facility**” means the energy storage facility described on the Cover Sheet of the ESSA and in Exhibit A of the ESSA, 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 of the ESSA.

“**Facility Energy**” means the Energy delivered from the Facility to the Delivery Point 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 or Station Use.

“**Facility Meter**” has the meaning set forth in Section 1.1 of the ESSA.

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

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

“**Flexible Capacity**” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“**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 of the ESSA.

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

“**Full Capacity Deliverability Status Finding**” means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

“**Gains**” means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant’s Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from such Step-Up Allocation for the remaining Contract Term of the ESSA, determined in a commercially reasonable manner. Factors used in determining the economic benefit to such Project Participant may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of such Project Participant, 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.

“**GHG Regulations**” means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

“**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, except to the extent that the Party is acting solely in its governmental capacity.

“**Greenhouse Gas**” or “**GHG**” has the meaning set forth in the GHG Regulations or in any other applicable Laws.

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

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

“**Installed Capacity**” means the lesser of (a) P_{MAX}, and (b) maximum dependable operating capacity of the Facility to discharge Energy for eight (8) hours of continuous discharge, as measured in MW AC at the Facility Meter Point by the Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I of the ESSA, as such capacity may be adjusted pursuant to Section 5 of Exhibit B of the ESSA.

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

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

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

“**Invoice Amount**” has the meaning set forth in Section 9.2.

“**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 CCP 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.

“**Late Payment Notice**” means a notice issued by CCP to a Project Participant pursuant to Section 9.7.

“**Late Payment Charge**” has the meaning set forth in Section 9.7.

“**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.

“**Letter(s) of Credit**” has the meaning set forth in Section 1.1 the ESSA.

“**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 requirements in other regulatory proceedings or legislative actions.

“**Losses**” means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant’s Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from such Step-Up Allocation for the remaining Contract Term of the ESSA, determined in a commercially reasonable manner. Factors used in determining economic loss to such Project Participant may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Project Participant, 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 of the ESSA 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)).

“**Month**” means a calendar month.

“**Monthly Costs**” has the meaning set forth in Section 9.1.

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

“**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.

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

“**Non-Defaulting Project Participant**” has the meaning set forth in Section 12.1.

“**Normal Vote**” has the meaning set forth in Exhibit D.

“**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).

“**Operating Account**” means an account established by CCP for each Project Participant pursuant to Section 8.2.

“**Operating Cost**” means the share of the Annual Budget or Amended Annual Budget attributable to the applicable Month for a Billing Statement.

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

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

“**Payment Default**” has the meaning set forth in Section 12.2.

“**Payment Default Termination Deadline**” has the meaning set forth in Section 12.6.

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

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

“**Permitted Transferee**” has the meaning set forth in Section 1.1 of the ESSA.

“**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.

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

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

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

“**Product**” has the meaning set forth in Section 3.1

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

“**Project**” shall be broadly construed to entail the aggregate of rights, liabilities, interests, and obligations of CCP pursuant to the ESSA, including but not limited to all rights, liabilities, interests, and obligations associated with the Product, all rights, liabilities, interests and obligations associated with the Facility, and including all aspects of the operation and administration of the Facility and the ESSA and the rights, liabilities, interests and obligations associated therewith.

“**Project Committee**” means the committee established in accordance with Section 6.1.

“**Project Developer**” means Tumbleweed Energy Storage, LLC, a Delaware limited liability company, or assignee as permitted under the ESSA.

“**Project Participants**” means those entities executing this Agreement, as identified in the Preamble, together in each case with each entity’s successors or assigns.

“**Project Revenue Rights**” means all rights of a Project Participant under this Agreement to any revenue associated with the Facility Energy or Ancillary Services associated with the Facility.

“**Project Rights**” means all rights and privileges of a Project Participant under this Agreement, including but not limited to its Entitlement Share, its right to receive the Product from the Facility, and its right to vote on Project Committee matters.

“**Project Rights and Obligations**” means the Project Participants’ Project Rights and obligations under the terms of this Agreement.

“**Proposed Entitlement Share Reduction Compensation Amount**” has the meaning set forth in Exhibit C.

“**Prudent Operating Practice**” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric 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.

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

“RA Compliance Showing” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) 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” has the meaning set forth in Section 1.1 of the ESSA.

“RA Guarantee Date” means the date by which the Facility is expected to achieve Full Capacity Deliverability Status, which is the Commercial Operation Date.

“RA Shortfall Month” has the meaning set forth in Section 1.1 of the ESSA.

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

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

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

“Remedial Action Plan” has the meaning set forth in Section 2.4 of the ESSA.

“Replacement RA” has the meaning set forth in Section 1.1 of the ESSA.

“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 issue 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” has 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, 21-06-035 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.

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

“**Scheduled Energy**” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule(s), FMM Schedule(s) (as defined in the CAISO Tariff), and/or any other financially binding Schedule(s), market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

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

“**Scheduling Coordinator Services Agreement**” means the agreement between CCP and a Scheduling Coordinator that was approved by the CCP Board pursuant to Section 5.2(a)(xiii).

“**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 Facility 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 the Project Developer for electric generation or storage facilities owned by Project Developer other than the Facility.

“**Showing Month**” means the calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, that is the subject of the 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**” has the meaning set forth in Section 1.1 of the ESSA, as further described in Exhibit A of the ESSA.

“**Station Use**” means the Energy that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility.

“**Step-Up Allocation Cap**” has the meaning set forth in Section 12.8(a).

“**Step-Up Invoice**” means an invoice sent to a Non-Defaulting Project Participant as a result of a Defaulting Project Participant’s Payment Default, which invoice shall separately

identify any amount owed with respect to the monthly Billing Statement of the Defaulting Project Participant, as the case may be, pursuant to Section 12.7.

“Step-Up Invoice Amount” has the meaning set forth in Section 12.7.

“Step-Up Invoice Amount Cap” has the meaning set forth in Section 12.7.

“Step-Up Reserve Account” has the meaning set forth in Section 12.7(a)(i).

“Storage Level” means, at a particular time, the amount of electric Energy in the Facility available to be discharged as Facility Energy, expressed in MWh.

“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.

“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 state, local and/or 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.

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

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

“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 Facility 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.

“Unanimous Vote” has the meaning set forth in Exhibit D.

“Uncontrollable Forces” means any Force Majeure event and any cause beyond the control of any Party, which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, epidemic or pandemic (excluding impacts of the disease designated COVID-19 or the related virus designated

SARS-CoV-2 impacts actually known by the Party claiming the Force Majeure Event as of the Effective Date), an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, licenseor permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the ESSA, as defined therein.

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;

(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; and

(n) in the event of any conflict or inconsistency between the terms of this Agreement and the terms of the ESSA or the Coordinated Operations Agreement, the terms and provisions of this Agreement shall control.

ARTICLE 2

EFFECTIVE DATE AND TERM

2.1. Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the occurrence of all of the following: (i) the termination of the ESSA and (ii) the termination of the Buyer Liability Pass Through Agreement for all the Project Participants, and (iii) all Parties have met their obligations under this Agreement (“**Term**”).

(b) Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. All indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

ARTICLE 3

AGREEMENT

3.1. Transaction. Subject to the terms and conditions of this Agreement, the Project Participants authorize CCP to purchase all Facility Energy, Capacity Attributes, Ancillary Services, and Environmental Attributes associated with the Facility and any Replacement RA provided pursuant to the ESSA (collectively the “**Product**”), on behalf of the Project Participants. Pursuant to the procedures set forth in the Coordinated Operations Agreement, CCP shall cause Project Developer to deliver each Project Participant’s Entitlement Share of the Product to such Project Participant, including but not limited to (i) any revenue associated with the Facility Energy, Capacity Attributes, Ancillary Services, or Environmental Attributes associated with the Facility, and (ii) the Capacity Attributes and Environmental Attributes associated with the Facility or

otherwise provided to CCP pursuant to the ESSA. CCP shall administer the ESSA and oversee the operation of the Project. CCP shall not sell, assign, or otherwise transfer any Product, or any portion thereof, to any third party other than to the Project Participants, unless authorized by the Project Participants pursuant to this Agreement.

ARTICLE 4
ENTITLEMENT SHARE

4.1. Initial Entitlement Share. Each Project Participant's initial Entitlement Share as of the Effective Date shall be set forth in Column B of the Table provided in Exhibit B of this Agreement (entitled "Schedule of Project Participant Entitlement Shares and Step-Up Allocation Caps"). Any revisions to the Entitlement Share specified in Exhibit B pursuant to Section 4.2. or Section 12.8 shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

4.2. Change of Entitlement Share. Any Project Participant may reduce its Entitlement Share of the Project pursuant to the process set forth in Exhibit C.

4.3. Reduction of Entitlement Share to Zero. If any Project Participant's Entitlement Share is reduced to zero through any process specified in Exhibit C, such Project Participant shall remain a Party to this Agreement and shall be subject to all rights, obligations, and liabilities of this Agreement, including but not limited to any liabilities for Monthly Capacity Payments, Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts under the ESSA.

ARTICLE 5
OBLIGATIONS OF CCP; ROLE OF CCP BOARD AND CCP MANAGER

5.1. Obligations of CCP.

(a) CCP shall take such commercially reasonable actions or implement such commercially reasonable measures as may be necessary or desirable for the utilization, maintenance, or preservation of the rights and interests of the Project Participants in the Project including, if appropriate, such enforcement actions or other measures as the Project Committee or CCP Board deems to be in the Project Participants' best interests. To the extent not inconsistent with the ESSA or other applicable agreements, CCP may also be authorized by the Project Participants to assume responsibilities for planning, designing, financing, developing, acquiring, insuring, contracting for, administering, operating, and maintaining the Project to effectuate the conveyance of the Product to Project Participants in accordance with Project Participants' Entitlement Shares.

(b) To the extent such services are available and can be carried forth in accordance with the ESSA, CCP shall also provide such other services, as approved by the Project Committee or CCP Board, as may be deemed necessary to secure the benefits and/or satisfy the obligations associated with the ESSA.

(c) Adoption of Annual Budget. The Annual Budget and any amendments to the Annual Budget shall be prepared and approved in accordance with this Section 5.1(c).

(i) The CCP Manager will prepare and submit to the Project Committee a proposed Annual Budget at least ninety (90) days prior to the beginning of each Contract Year during the term of this Agreement. The proposed Annual Budget shall be based on the prior Contract Year's actual costs and shall include reasonable estimates of the costs CCP expects to incur during the applicable Contract Year in association with the administration of the ESSA, including the cost of insurance coverages that are determined to be attributable to the Project by action of the CCP Board. Upon approval of the proposed Annual Budget by a Normal Vote of the Project Committee, the CCP Manager shall present the proposed Annual Budget to the CCP Board. The CCP Board shall adopt the Annual Budget no later than thirty (30) days prior to the beginning of such Contract Year and shall cause copies of such adopted Annual Budget to be delivered to each Project Participant.

(ii) At any time after the adoption of the Annual Budget for a Contract Year, the CCP Manager may prepare and submit to the Project Committee a proposed Amended Annual Budget for and applicable to the remainder of such Contract Year. The proposal shall (A) explain why an amendment to the Annual Budget is needed, (B) compare estimated costs against actual costs, and (C) describe the events that triggered the need for additional funding. Upon approval of the proposed Amended Annual Budget by a Normal Vote of the Project Committee, the CCP Manager shall present the proposed Amended Annual Budget to the CCP Board. Upon adoption of the Amended Annual Budget by the CCP Board, such Amended Annual Budget shall apply to the remainder of the Contract Year and the CCP Board shall cause copies of such adopted Amended Annual Budget to be delivered to each Project Participant.

(iii) Reports. CCP will prepare and issue to Project Participants the following reports each quarter of a year during the Term:

(A) Financial and operating statement relating to the Project.

(B) Variance report comparing the costs in the Annual Budget versus actual costs, and the status of other cost-related issues with respect to the Project.

(d) Records and Accounts. CCP will keep, or cause to be kept, accurate records and accounts of the Project as well as of the operations relating to the Project, all in a manner similar to accepted accounting methodologies associated with similar projects. All transactions of CCP relating to the Project with respect to each Contract Year shall be subject to an annual audit. Each Project Participant shall have the right at its own expense to examine and copy the records and accounts referred to above on reasonable notice during regular business hours.

(e) Information Sharing. Upon CCP's request, each Project Participant agrees to coordinate with CCP to provide such information, documentation, and certifications that are reasonably necessary for the design, financing, refinancing, development, operation, administration, maintenance, and ongoing activities of the Project, including information required to respond to requests for such information from any federal, state, or local regulatory body or other authority.

(f) Consultants and Advisors Available. CCP shall make available to the Project Committee all consultants and advisors, including financial advisors and legal counsel that

are retained by CCP, and such consultants, counsel and advisors shall be authorized to consult with and advise the Project Committee on Project matters. CCP agrees to waive any conflicts of interest or any other applicable professional standards or rules as required by consultants, counsel, and advisors to advise the Project Committee on Project matters.

(g) Deposit of Insurance Proceeds. CCP shall promptly deposit any insurance proceeds received by CCP from any insurance obtained pursuant to this Agreement or otherwise associated with the Project into the Operating Accounts of the Project Participants based on each Project Participants' Entitlement Shares.

(h) Liquidated and Other Damages. Any amounts paid to CCP, or applied against payments otherwise due by CCP pursuant to the ESSA or each Project Participant's respective BLPTA, by the Project Developer shall be deposited on a pro rata share, based on each Project Participant's Entitlement Share into each Project Participant's Operating Account. Liquidated Damages include, but are not limited to Daily Delay Damages, RA Deficiency Amount, Damage Payment, and Termination Payment.

(i) Charging and Discharging Energy. Subject to the direction of the Project Committee, CCP shall reasonably coordinate, schedule, and do all other things necessary or appropriate, except as otherwise prohibited under this Agreement, to provide for the delivery of Charging Energy from the grid to the Point of Delivery to enable CCP to exercise its rights and obligations in connection with Charging Energy in accordance with the requirements of the ESSA. Subject to the direction of the Project Committee, CCP shall reasonably coordinate, schedule, and do all other things necessary or appropriate, except as otherwise prohibited under this Agreement, to provide for the delivery of Discharging Energy from the Point of Delivery to the grid to enable CCP to maximize the value of the ESSA to the Project Participants in accordance with the requirements of the ESSA.

(j) Resale of Product. Any Project Participant may direct CCP to remarket such Project Participant's Entitlement Share of the Product, or such Project Participant's Entitlement Share of any part of the Product. If CCP incurs any expenses associated with the remarketing activities pursuant to this Section 5.1(j), then CCP shall include the total amount of such expenses as a Monthly Cost on the Project Participant's next Billing Statement. Prior to offering the Project Participant's Entitlement Share of the Product, or the Project Participant's Entitlement Share of any part of the Product to any third party, CCP shall first offer the Product or portion of the Product to the other Project Participants. The amount of compensation paid to the selling Project Participant shall be negotiated and agreed to between the selling Project Participant and the purchasing Project Participant or third party. Any payments for any resold Product pursuant to this Section 5.1(j) shall be transmitted directly from the purchasing Project Participant or purchasing third party to the reselling Project Participant. Any such resale to a third party shall not convey any rights or authority over the operation of the Project, and the Project Participant shall not make a representation to the third party that the resale conveys any rights or authority over the operation of the Project.

(k) Uncontrollable Forces. CCP shall not be required to provide, and CCP shall not be liable for failure to provide, the Product, Replacement RA, or other service under this Agreement when such failure, or the cessation or curtailment of, or interference with, the

service is caused by Uncontrollable Forces or by the failure of the Project Developer, or its successors or assigns, to obtain any required governmental permits, licenses, or approvals to acquire, administer, or operate the Project; provided, however, that the Project Participants shall not thereby be relieved of their obligations to make payments under this Agreement except to the extent CCP is so relieved pursuant to the ESSA, and provided further that CCP shall pursue all applicable remedies against the Project Developer under the ESSA and distribute any remedies obtained pursuant to Section 5.1(h).

(l) **Insurance.** Within one hundred and eighty days (180) of the Effective Date of this Agreement, CCP shall secure and maintain, during the Term, insurance coverage as follows:

(i) **Commercial General Liability.** CCP shall maintain, or cause to be maintained, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering CCP's obligations under this Agreement and including each Project Participant as an additional insured.

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

(iii) **Workers' Compensation Insurance.** CCP, if it has employees, shall also maintain at all times during the Term workers' compensation and employers' liability insurance coverage in accordance with statutory amounts, with employer's liability limits of not less than One Million Dollars (\$1,000,000.00) for each accident, injury, or illness; and include a blanket waiver of subrogation.

(iv) **Business Auto Insurance.** CCP shall maintain at all times during the Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of CCP'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 name each Project Participant as an additional insured and contain standard cross-liability and severability of interest provisions.

(v) **Public Entity Liability Insurance.** CCP shall maintain public entity liability insurance, including public officials' liability insurance, public entity reimbursement insurance, and employment practices liability insurance in an amount not less than One Million Dollars (\$1,000,000) per claim, and an annual aggregate of not less than One Million Dollars (\$1,000,000) and CCP shall maintain such coverage for at least two (2) years from the termination of this Agreement.

(m) **Evidence of Insurance.** Within ten (10) days after the deadline for securing insurance coverage specified in Section 5.1(l), and upon annual renewal thereafter, CCP shall deliver to each Project Participant certificates of insurance evidencing such coverage with insurers with ratings comparable to A-VII or higher, and that are authorized to do business in the State of

California, in a form evidencing all coverages set forth above. Such certificates shall specify that each Project Participant shall be given at least thirty (30) days prior Notice by CCP in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of each Project Participant. Any other insurance maintained by CCP not associated with this Agreement is for the exclusive benefit of CCP and shall not in any manner inure to the benefit of Project Participants. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of each Project Participant for all work performed by CCP, its employees, agents and sub-contractors.

5.2. Role of CCP Board.

(a) The rights and obligations of CCP under the ESSA shall be subject to the ultimate control at all times of the CCP Board. The CCP Board, shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:

(i) Dispute Resolution. The CCP Board shall review, discuss and attempt to resolve any disputes among CCP, any of the Project Participants, and the Project Developer relating to the Project, the operation and management of the Facility, and CCP's rights and interests in the Facility.

(ii) ESSA. The CCP Board shall have the authority to review, modify, and approve, as appropriate, all amendments, modifications, and supplements to the ESSA.

(iii) Capital Improvements. The CCP Board shall review, modify, and approve, if appropriate, all Capital Improvements undertaken with respect to the Project and all financing arrangements for such Capital Improvements. The CCP Board shall approve those budgets or other provisions for the payments associated with the Project and the financing for any development associated with the Project.

(iv) Committees. The CCP Board shall exercise such review, direction, or oversight as may be appropriate with respect to the Project Committee and any other committees established pursuant to this Agreement.

(v) Budgeting. Upon the submission of a proposed Annual Budget or proposed Amended Annual Budget, approved by a Normal Vote of the Project Committee, the CCP Board shall review, modify, and approve each Annual Budget and Amended Annual Budget in accordance with Section 5.1(c) of this Agreement.

(vi) Early Termination of ESSA. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(ii) of this Agreement, as to an early termination of the ESSA pursuant to Section 11.2 of the ESSA.

(vii) Assignment by Project Developer. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(iii) of this Agreement, as to any assignment by Project Developer pursuant to Section 14.1 of the ESSA other than any assignment pursuant to Sections 14.2 or 14.3 of the ESSA.

(viii) Buyer Financing Assignment. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(iv) of this Agreement, as to an assignment by CCP to a financing entity pursuant to Section 14.5 of the ESSA.

(ix) Change of Control. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(v) of this Agreement, as to any Change of Control requiring CCP's consent, as specified in Section 14.1 of the ESSA.

(x) Supervening Authority of the Board. The CCP Board has complete and plenary supervening power and authority to act upon any matter which is capable of being acted upon by the Project Committee or which is specified as being within the authority of the Project Committee pursuant to the provisions of this Agreement.

(xi) Other Matters. The CCP Board is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Project Committee or CCP Manager as may be provided for under this Agreement and under the ESSA, or as may otherwise be appropriate.

(xii) Periodic Audits. The CCP Board or the Project Committee may arrange for the annual audit by certified accountants, selected by the CCP Board and experienced in electric generation or electric utility accounting, of the books and accounting records of CCP, the Project Developer to the extent authorized under the ESSA, and any other counterparty under any agreement to the extent allowable, and such audit shall be completed and submitted to the CCP Board as soon as reasonably practicable after the close of the Contract Year. CCP shall promptly furnish to the Project Participant copies of all audits. No more frequently than once every calendar year, each Project Participant may, at its sole cost and expense, audit, or cause to be audited the books and cost records of CCP, and/or the Project Developer to the extent authorized under the ESSA.

(xiii) Scheduling Coordinator Services Agreement. Upon a recommendation by Normal Vote of the Project Committee pursuant to Section 6.4(b)(vi), the CCP Board shall review, modify, and approve, or delegate the authority to approve, a Scheduling Coordinator Services Agreement or amendment thereto.

(b) Pursuant to Section 5.06 of the Joint Powers Agreement, this Agreement modifies the voting rules of the CCP Board for purposes of approving or acting on any matter identified in this Agreement, as follows:

(i) Quorum. A quorum shall consist of a majority of the CCP Board members that represent Project Participants.

(ii) Voting. Each CCP Board member that represents a Project Participant shall have one vote for any matter identified in this Agreement. Any CCP Board member representing a CCP member that is not a Project Participant shall abstain from voting on any matter identified in this Agreement. A vote of the majority of the CCP Board members

representing Project Participants that are in attendance shall be sufficient to constitute action, provided a quorum is established and maintained.

5.3. Role of CCP Manager.

(a) In addition to the duties and responsibilities set forth elsewhere in this Agreement, the CCP Manager is delegated the following authorities and responsibilities:

(i) Request for Tax Documentation. Respond to any requests for tax-related documentation by the Project Developer.

(ii) Request for Financial Statements. Provide the Project Developer with Financial Statements as may be required by the ESSA.

(iii) Request for Information by Project Participant. Respond to any request by a Project Participant for information or documents that are reasonably available to allow the Project Participant to respond to requests for such information from any federal, state, or local regulatory body or other authority.

(iv) Coordinate Response to a Request for Confidential Information. Upon a request or demand by any third person that is not a Party to the ESSA or a Project Participant, for Confidential Information as described in Section 18.2 of the ESSA, the CCP Manager shall notify the Project Developer and coordinate the response of CCP and Project Participants.

(v) Invoices. The CCP Manager shall review each invoice submitted by Project Developer and shall request such other data necessary to support the review of such invoices.

ARTICLE 6
PROJECT COMMITTEE

6.1. Establishment and Authorization of the Project Committee. The Project Committee is hereby established and duly authorized to act on behalf of the Project Participants as provided for in this Section 6 for the purpose of (a) providing coordination among, and information to, the Project Participants and CCP, (b) making any recommendations to the CCP Board regarding the administration of the Project, and (c) execution of the Project Committee responsibilities set forth in Section 6.4.

6.2. Project Committee Membership. The Project Committee shall consist of one representative from each Project Participant. The CCP Manager shall be a non-voting member of the Project Committee. Within thirty (30) days after the Effective Date, each Project Participant shall provide notice to each other of such Project Participant's representative on the Project Committee. Alternate representatives may be appointed by similar written notice to act on the Project Committee, or on any subcommittee established by the Project Committee, in the absence of the regular representative. An alternate representative may attend all meetings of the Project Committee but may vote only if the representative for whom they serve as alternate for is absent.

No Project Participant's representative shall exercise any greater authority than permitted by the Project Participant which they represent.

6.3. Project Committee Operations, Meetings, and Voting. Project Committee operations, meetings, and voting shall be in accordance with the procedures and requirements specified in Exhibit D.

6.4. Project Committee Responsibilities. The Project Committee shall have the following responsibilities:

(a) General Responsibilities of the Project Committee.

(i) Provide a liaison between CCP and the Project Participants with respect to the ongoing administration of the Project.

(ii) Exercise general supervision over any subcommittee established pursuant to Section 6.5.

(iii) Oversee, as appropriate, the completion of any Project design, feasibility, or planning studies or activities.

(iv) Review, discuss, and attempt to resolve any disputes among the Project Participants relating to this Agreement or the ESSA.

(v) Perform such other functions and duties as may be provided for under this Agreement, the ESSA, or as may otherwise be appropriate or beneficial to the Project or the Project Participants.

(b) Recommendations to the CCP Board by a Normal Vote.

(i) Budgeting. Review, modify, and approve by a Normal Vote each proposed Annual Budget and proposed Amended Annual Budget for submission to the CCP Board for final approval.

(ii) Early Termination of ESSA. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding an early termination of the ESSA pursuant to Section 11.2 of the ESSA.

(iii) Assignment by Project Developer. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding any assignment by Project Developer pursuant to Section 14.1 of the ESSA other than any assignment pursuant to Sections 14.2 or 14.3 of the ESSA.

(iv) Buyer Financing Assignment. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding an assignment by CCP to a financing entity pursuant to Section 14.5 of the ESSA.

(v) Change of Control. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding any Change of Control requiring CCP's consent, as specified in Section 14.1 of the ESSA.

(vi) Scheduling Coordinator. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding the selection of a Scheduling Coordinator and the form of the Scheduling Coordinator Services Agreement, including any amendments thereto. Such Scheduling Coordinator Services Agreement shall: (i) require that the scheduling and dispatch of the Project is in accordance with the criteria set forth in Exhibit C of the Coordinated Operations Agreement; (ii) include the Scheduling Coordinator responsibilities specified in Exhibit D of the Coordinated Operations Agreement; and (iii) address requirements relating to CAISO settlements, the Operating Restrictions, and communications and reporting from the Scheduling Coordinator to the Project Participants.

(c) Actions Delegated to the Project Committee by this Agreement Subject to a Unanimous Vote.

(i) Project Design. Review, modify, and approve by a Unanimous Vote any recommendations to the Project Developer on the design of the Project.

(ii) Extension of Guaranteed Construction Start Date and Guaranteed Commercial Operation Date. Review and confirm that requirements of Exhibit B of the ESSA have been satisfied, such that the Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date has been extended.

(iii) Event of Default. Direct CCP to exercise its rights under the ESSA if an Event of Default has occurred under Section 11.1 of the ESSA or under the Scheduling Coordinator Services Agreement.

(d) Actions Delegated to the Project Committee by this Agreement Subject to a Normal Vote.

(i) Make recommendations to the CCP Manager, the CCP Board, the Project Participants or to the Project Developer, as appropriate, with respect to the development, operation, and ongoing administration of the Project.

(ii) Review, develop, and, if appropriate, modify and approve rules, procedures, and protocols for the administration of the Project, including rules, procedures, and protocols for the management of the costs of the Facility and the scheduling, handling, tagging, dispatching, and crediting of the Product, the handling and crediting of Environmental Attributes associated with the Facility and the control and use of the Facility.

(iii) Review, develop, and, if appropriate, modify rules, procedures, and protocols for the monitoring, inspection, and the exercise of due diligence activities relating to the operation of the Facility.

(iv) Review, and, if appropriate, modify or otherwise act upon, the form or content of any written statistical, administrative, or operational reports, Facility-related data and

storage information, technical information, facility reliability data, transmission information, forecasting, scheduling, dispatching, tagging, parking, firming, exchanging, balancing, movement, or other delivery information, and similar information and records, or matters pertaining to the Project which are furnished to the Project Committee by the CCP Manager, the Project Developer, experts, consultants or others.

(v) Review, formulate, and, if appropriate, modify, or otherwise act upon, practices and procedures to be followed by Project Participants for, among other things, the production, scheduling, tagging, transmission, delivery, firming, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale, or disposition of the Product, including the control and use of the Facility, and the supply, scheduling, and use of Charging Energy.

(vi) Review and act upon any matters involving any arrangements and instruments entered into by the Project Developer or any affiliate thereof to, among other things, secure certain performance requirements, including, but not limited to, the ESSA, the Development Security or the Performance Security and any other letter of credit delivered to, or for the benefit of, CCP by the Project Developer and take such actions or make such recommendations as may be appropriate or desirable in connection therewith.

(vii) Review, and, if appropriate, recommend, modify, or approve policies or programs formulated by CCP or Project Developer for determining or estimating storage resources or the values, quantities, volumes, or costs of the Product from the Facility.

(viii) Review, and where appropriate, recommend the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of the Product to the Point of Delivery (directly or through the Facility).

(ix) Review, to the extent permitted by this Agreement, the ESSA, or any other relevant agreement relating to the Project, modify and approve or disapprove the specifications, vendors' proposals, bid evaluations, or any other matters with respect to the Facility.

(x) Review and approve any Remedial Action Plan submitted by Project Developer to CCP pursuant to Section 2.4 of the ESSA.

(xi) Review and approve the submission of the written acknowledgement of the Commercial Operation Date in accordance with Section 2.2 of the ESSA.

(xii) Review and approve the return of the Development Security to Project Developer in accordance with Section 8.7 of the ESSA.

(xiii) Review and approve the return of any unused Performance Security to Project Developer in accordance with Section 8.8 of the ESSA.

(xiv) Review Progress Reports provided by Project Developer to CCP pursuant to Section 2.3 of the ESSA and participate in any associated regularly scheduled meetings with Project Developer to discuss construction progress.

(xv) Direct CCP to collect any liquidated damages owed by Project Developer to CCP under the ESSA, and to the extent authorized by ESSA, draw upon the Development Security or Performance Security.

(xvi) Review invoices received by CCP from the Project Developer and, if appropriate, direct CCP to dispute an invoice pursuant to Section 8.5 of the ESSA.

(xvii) Review invoices received by CCP from the Scheduling Coordinator and, if appropriate, direct CCP to collect any damages owed by the Scheduling Coordinator to CCP under the Scheduling Coordinator Services Agreement or to take any action permitted by law to enforce its rights under the Scheduling Coordinator Services Agreement, including but not limited to bringing any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement, or obligation against the Scheduling Coordinator.

6.5. Subcommittees. The CCP Manager may establish as needed subcommittees including, but not limited to, auditing, legal, financial, engineering, mechanical, weather, geologic, diurnal, barometric, meteorological, operating, insurance, governmental relations, environmental, and public information subcommittees. The authority, membership, and duties of any subcommittee shall be established by the CCP Manager; provided, however, such authority, membership or duties shall not conflict with the provisions of the ESSA or this Agreement.

6.6. Representative's Expenses. Any expenses incurred by any representative of any Project Participant or group of Project Participants serving on the Project Committee or any other committee in connection with their duties on such committee shall be the responsibility of the Project Participant which they represent and shall not be an expense payable under this Agreement.

6.7. Inaction by Committee. It is recognized by CCP and Project Participants that if the Project Committee is unable or fails to agree with respect to any matter or dispute which it is authorized to determine, resolve, approve, disapprove or otherwise act upon after a reasonable opportunity to do so, or within the time specified herein or in the ESSA, then CCP may take such commercially reasonable action as CCP determines is necessary for its timely performance under any requirement pursuant to the ESSA or this Agreement, pending the resolution of any such inability or failure to agree, but nothing herein shall be construed to allow CCP to act in violation of the express terms of the ESSA or this Agreement.

6.8. Delegation. To secure the effective cooperation and interchange of information in a timely manner in connection with various administrative, technical, and other matters which may arise from time to time in connection with administration of the ESSA, in appropriate cases, duties and responsibilities of the CCP Board or the Project Committee, as the case may be under this Section 6, may be delegated to the CCP Manager by the CCP Board upon notice to the Project Participants.

ARTICLE 7

OPERATING COMMITTEE

7.1. Operating Committee. The Operating Committee is established through the Coordinated Operations Agreement, as may be subsequently amended.

7.2. Operating Committee Responsibilities. In addition to any specific roles and responsibilities identified in the Coordinated Operations Agreement, the Project Committee may, through a Normal Vote, assign additional tasks to the Operating Committee as long as such additional tasks are within the scope of the Operating Committee's authority set forth in the Coordinated Operations Agreement.

ARTICLE 8

OPERATING ACCOUNT

8.1. Calculation of Estimated Monthly Project Cost.

(a) No later than one hundred and eighty (180) days after the Effective Date, the CCP Manager shall present to the Project Committee a proposed Estimated Monthly Project Cost, which shall be equal to a forecast of expected Monthly Capacity Payments over an entire Contract Year, divided by twelve (12). The Project Committee shall review, and, if appropriate, recommend, modify, or approve through a Normal Vote, the proposed Estimated Monthly Project Cost.

8.2. Operating Account. CCP shall establish an Operating Account for each Project Participant that is accessible to and can be drawn upon by both CCP and the applicable Project Participant. Such Operating Accounts are for the purpose of providing a reliable source of funds for the payment obligations of the Project and, taking into account the variability of costs associated with the Project for the purpose of providing a reliable payment mechanism to address the ongoing costs associated with the Project.

(a) Operating Account Amount. The Operating Account Amount for each Project Participant shall be an amount equal to the Estimated Monthly Project Cost multiplied by three, the product of which is multiplied by such Project Participant's Entitlement Share ("**Operating Account Amount**").

(b) Initial Funding of Operating Account. By no later than three hundred and sixty-five (365) days after the Effective Date, each Project Participant shall deposit into such Project Participant's Operating Account an amount equal to that Project Participant's Operating Account Amount.

(c) Use of Operating Account. CCP shall draw upon each Project Participant's Operating Account each month in an amount equal to the Monthly Costs multiplied by such Project Participant's Entitlement Share. As required by Section 9.5, each Project Participant must deposit sufficient funds into such Project Participant's Operating Account by the deadline specified in Section 9.5.

(d) Final Distribution of Operating Account. Following the expiration or earlier termination of the ESSA, and upon payment and satisfaction of any and all liabilities and obligations to make payments of the Project Participants under this Agreement and upon satisfaction of all remaining costs and obligations of CCP under the ESSA, any amounts then remaining in any Project Participant's Operating Account shall be paid to the associated Project Participant.

ARTICLE 9
BILLING

9.1. Monthly Costs. The amount of Monthly Costs for a particular Month shall be the sum of the Project Participant's Entitlement Share multiplied by the Monthly Capacity Payments for the Product, as specified in Section 8.2 of the ESSA for such Month and to the extent such payment is made by CCP to the Project Developer, plus the Project Participant's Entitlement Share multiplied by the Operating Cost for such Month and subtracting the Project Participant's Entitlement Share multiplied by the positive revenue associated with the sale of any Facility Energy or Ancillary Services net of any CAISO costs or Scheduling Coordinator costs for such Month, as shown in the following formula:

Monthly Cost = ((Project Participant's Entitlement Share) × (Monthly Capacity Payments)) + ((Project Participant's Entitlement Share) × (Operating Costs)) – ((Project Participant's Entitlement Share) × (revenue from sale of Facility Energy or Ancillary Services, net of any CAISO costs or Scheduling Coordinator costs))

9.2. Billing Statements. By no later than ten (10) calendar days after CCP receives an invoice from Project Developer for the prior Month of each Contract Year pursuant to Section 8.1 of the ESSA, CCP shall issue to each Project Participant a copy of the invoice and a "Billing Statement," which specifies such Project Participant's Monthly Costs, itemized by each part of such Monthly Cost. The amount of Monthly Costs attributable to a Project Participant, and specified in such Billing Statement, shall be the "Invoice Amount."

9.3. Disputed Monthly Billing Statement. A Project Participant may dispute, by written Notice to CCP, any portion of any Billing Statement submitted to that Project Participant by CCP pursuant to Section 9.2, provided that the Project Participant shall pay the full amount of the Billing Statement when due. If CCP determines that any portion of the Billing Statement is incorrect, CCP will deposit the difference between such correct amount and such full amount, if any, including interest at the rate received by CCP on any overpayment into the Project Participant's Operating Account. If CCP and a Project Participant disagree regarding the accuracy of a Billing Statement, CCP will give consideration to such dispute and will advise all Project Participants with regard to CCP's position relative thereto within thirty (30) days following receipt of written Notice by Project Participant of such dispute.

9.4. Payment Adjustments; Billing Errors. If CCP or Project Developer determines that a prior invoice or Billing Statement was inaccurate, CCP shall credit against or increase as appropriate each Project Participant's subsequent Monthly Costs according to such adjustment. The accompanying Billing Statement shall describe the cause of such adjustment and the amount of such adjustment.

9.5. Payment of Invoice Amount. Each Project Participant shall deposit the Invoice Amount for the applicable Month into such Project Participant's Operating Account by no later than the twentieth (20th) calendar day of the following Month after the Billing Statement is issued, unless CCP has failed to issue the Billing Statement by the deadline specified in Section 9.2, in which case, each Project Participant shall deposit the Invoice Amount for the applicable Month by no later than thirty (30) days after the date on which CCP issues the Billing Statement to the Project Participant.

9.6. Withdrawal of Invoice Amount from Operating Account. No sooner than five (5) calendar days after CCP issues a Billing Statement to a Project Participant or a Step-Up Invoice to a Project Participant, CCP shall withdraw the Invoice Amount or the Step-Up Invoice Amount from each Project Participant's Operating Account. If the Monthly Cost attributable to such Project Participant is a negative number, CCP shall deposit such funds into the Operating Account of that Project Participant.

9.7. Late Payments.

(a) If any Project Participant fails to deposit the Invoice Amount into the Project Participant's Operating Account by the deadline specified in Section 9.5, then CCP will issue such Project Participant a Late Payment Notice within five (5) days of the deadline specified in Section 9.5 directing the Project Participant to immediately deposit the Invoice Amount into the Project Participant's Operating Account and informing the Project Participant that such Project Participant must pay a charge ("**Late Payment Charge**"). Upon issuing a Late Payment Notice to any Project Participant, CCP shall promptly provide Notice of such occurrence to all other Project Participants.

(b) The Late Payment Charge shall be equal to the Invoice Amount minus any partial payment that was deposited into such Project Participant's Operating Account multiplied by the Interest Rate specified in Section 8.2 of the ESSA for the period from the deadline specified in Section 9.5 until the date on which the Project Participant deposits the Invoice Amount plus the Late Payment Charge into such Project Participant's Operating Account. Upon payment, CCP shall withdraw the full amount of such Late Payment Charge from the Project Participant's Operating Account and deposit any such Late Payment Charge into the Operating Accounts of all other Project Participants on a pro rata share, based on such other Project Participants' Entitlement Shares.

ARTICLE 10

**UNCONDITIONAL PAYMENT OBLIGATIONS; AUTHORIZATIONS; CONFLICTS;
LITIGATION.**

10.1. Unconditional Payment Obligation. Beginning with the earliest of (i) the date CCP is obligated to pay any portion of the costs of the Project, (ii) the date of the COD, or (iii) the date of the first delivery of the Product to Project Participants and continuing through the term of this Agreement, Project Participants shall pay CCP the amounts of Monthly Costs set forth in the Billing Statements submitted by CCP to Project Participants in accordance with the provisions of Section 9, whether or not the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output or the provision of Facility products are suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever, provided that the obligation of Project Participants to pay amounts associated with the Monthly Capacity Payment shall be limited to the amount of Monthly Capacity Payment charged by the Project Developer to CCP and paid by CCP to the Project Developer.

10.2. Authorizations. Each Project Participant hereby represents and warrants that no order, approval, consent, or authorization of any governmental or public agency, authority, or person, is required on the part of such Project Participant for the execution and delivery by the Project Participant, or the performance by the Project Participant of its obligations under this Agreement except for such as have been obtained.

10.3. Conflicts. Each Project Participant represents and warrants to CCP as of the Effective Date that, to the Project Participant's knowledge, the execution and delivery of this Agreement by the Project Participants and the Project Participants' performance hereunder will not constitute a default under any agreement or instrument to which it is a party, or any order, judgment, decree or ruling of any court that is binding on the Project Participant, or a violation of any applicable law of any governmental authority, which default or violation would have a material adverse effect on the financial condition of the Project Participant.

10.4. Litigation. Each Project Participant represents and warrants to CCP that, as of the Effective Date, to the Project Participant's knowledge, except as disclosed, there are no actions, suits or proceedings pending against the Project Participant (service of process on the Project Participant having been made) in any court that questions the validity of the authorization, execution or delivery by the Project Participant of this Agreement, or the enforceability on the Project Participant of this Agreement.

10.5. San José Clean Energy.

(a) 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 of San José 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 Agreement.

(b) Limited Obligations. The City of San José's payment obligations under this Agreement are special limited obligations of San José Clean Energy 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.

10.6. Clean Power San Francisco. With regard to Clean Power San Francisco only, (1) obligations under this Agreement are special limited obligations of Clean Power San Francisco payable solely from the revenues of Clean Power San Francisco, and shall not be a charge upon the revenues or general fund of the San Francisco Public Utilities Commission or the City and County of San Francisco or upon any non-Clean Power San Francisco moneys or other property of the San Francisco Public Utilities Commission or the City and County of San Francisco, (2) cannot exceed the amount certified by the San Francisco City Controller for the purpose and period stated in such certification, and (3) absent an authorized emergency per the San Francisco City Charter or Code, no San Francisco City representative is authorized to offer or promise, nor is San

Francisco required to honor, any offered or promised payments under this Agreement for work beyond the agreed upon scope or in excess of the certified maximum amount without the San Francisco City Controller having first certified the additional promised amount.

ARTICLE 11
PROJECT SPECIFIC MATTERS AND PROJECT PARTICIPANTS' RIGHTS AND OBLIGATIONS UNDER THE ESSA.

11.1. CCP Rights and Obligations under the ESSA. Notwithstanding anything to the contrary contained in this Agreement: (i) the obligation of CCP to cause the delivery of the Project Participants' Entitlement Shares of the Product during the Delivery Term of this Agreement is limited to the Product which CCP receives from the Facility (or the Project Developer, as applicable); (ii) the obligation of CCP to pay any amount to Project Participants hereunder or to give credits against amounts due from Project Participants hereunder is limited to amounts CCP receives in connection with the transaction to which the payment or credit relates (or is otherwise available to CCP in connection with this Agreement for which such payment or credit relates); (iii) any purchase costs, operating costs, energy costs (including costs related to Charging Energy), capacity costs, Facility costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges for which CCP is responsible under the ESSA shall be considered purchase costs, operating costs, energy costs, capacity costs, Facility costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges incurred by CCP and payable by Project Participants as provided in this Agreement; (iv) CCP shall carry out its obligations and exercise its rights under the ESSA in a commercially reasonable manner; (v) all remedies provided to CCP pursuant to the ESSA or the Scheduling Coordinator Services Agreement shall be provided to Project Participants in accordance with Section 5.1(h); and (vi) any Force Majeure under the ESSA or other event of force majeure affecting the delivery of Product pursuant to applicable provisions of the ESSA shall be considered an event caused by Uncontrollable Forces affecting CCP with respect to the delivery of the Product hereunder and CCP forwarding to Project Participants notices and information from the Project Developer concerning an event of Force Majeure upon receipt thereof shall be sufficient to constitute a Notice that Uncontrollable Forces have occurred pursuant to Section 5.1 of this Agreement. Any net proceeds received by CCP from the sale of the Product by the Project Developer to any third-party as a result of a Force Majeure event or failure by CCP to accept delivery of Product pursuant to the ESSA and any reimbursement received by CCP for purchase of Replacement RA shall be remitted by CCP to the Project Participants in accordance with their respective Entitlement Shares.

ARTICLE 12
NONPERFORMANCE AND PAYMENT DEFAULT.

12.1. Nonperformance by Project Participants. If a Project Participant fails to perform any covenant, agreement, or obligation under this Agreement or shall cause CCP to be in default with respect to any undertaking entered into for the Project or to be in default under the ESSA ("**Defaulting Project Participant**"), CCP may, in the event the performance of any such obligation remains unsatisfied after thirty (30) days' prior written notice thereof to such Project Participant and a demand to so perform, take any action permitted by law to enforce its rights under this Agreement, including but not limited to termination of such Project Participant's rights under

this Agreement including any rights to its Entitlement Share of the Product, and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against such Project Participant with regard to its failure to so perform. Any Project Participant that is not the Defaulting Project Participant (“**Non-Defaulting Project Participant**”) may submit Notice directly to the CCP Board, if such Non-Defaulting Project Participant determines that CCP is or may not be fully taking appropriate actions to enforce CCP’s rights under this Agreement against a Defaulting Project Participant. The CCP Board shall consider such Notice and direct CCP to take appropriate action, if any.

12.2. Payment Default. If any Project Participant fails to deposit the Invoice Amount into the Project Participant’s Operating Account by the deadline specified in Section 9.5, and if such Participant has not deposited the Invoice Amount plus the Late Payment Charge into such Project Participant’s Operating Account within ten (10) calendar days of the issuance of the Late Payment Notice to such Project Participant by CCP, then such occurrence shall constitute a “**Payment Default.**”

12.3. Payment Default Notice. Upon the occurrence of a Payment Default, CCP shall issue a Notice of Payment Default to the Project Participant notifying such Project Participant that as a result of a Payment Default, it is in default under this Agreement and has assumed the status of a Defaulting Project Participant and that such Defaulting Project Participant’s Project Revenue Rights have been suspended and that such Defaulting Project Participant’s Project Rights are subject to termination and disposal in accordance with Sections 12.6 and 12.8 of this Agreement. CCP shall provide a copy of such Notice of Default to all other Project Participants within five (5) calendar days after the issuance of the written Notice of Payment Default by CCP to the Defaulting Project Participant.

12.4. Cured Payment Default. If after a Payment Default, the Defaulting Project Participant cures such Payment Default within forty-five (45) calendar days after the issuance of the Late Payment Notice by CCP, the Defaulting Project Participant’s Project Revenue Rights shall be reinstated and its Project Rights shall not be subject to termination and disposal as provided for in Sections 12.6 and 12.8. In order to cure a Payment Default, the Defaulting Project Participant must deposit the full amount of any unpaid Invoice Amounts and any associated Late Payment Penalties into its Operating Account.

12.5. Suspension of Project Participant’s Project Revenue Rights and Treatment of Capacity Attributes.

(i) Upon the occurrence of a Payment Default, the Defaulting Project Participant’s Project Revenue Rights shall be suspended until such time as such Defaulting Project Participant cures the Payment Default pursuant to the requirements of Section 12.4. Any revenue associated with the Facility Energy or Ancillary Services associated with the Facility shall be deposited by CCP into the Step-Up Reserve Account, as specified in Section 12.7.

(ii) For any Month where the funds remaining in a Defaulting Project Participant’s Operating Account are sufficient to pay the entire Invoice Amount, CCP shall withdraw the Invoice Amount from such Defaulting Project Participant’s Operating Account and shall cause the delivery of the Defaulting Project Participant’s Entitlement Share of the Capacity

Attributes and Environmental Attributes associated with the Facility or otherwise provided for pursuant to the ESSA. For any Month where the funds remaining in a Defaulting Project Participant's Operating Account are less than the amount necessary to pay the entire Invoice Amount, CCP shall withdraw all remaining funds from the Defaulting Project Participant's Operating Account, and to the extent reasonably possible, in CCP's sole discretion, CCP shall cause the delivery of a quantity of Capacity Attributes and Environmental Attributes proportionate to the portion of the Invoice Amount that the remaining funds were sufficient to pay for. For any Month where the Defaulting Project Participant's Operating Account has no funds remaining, the Defaulting Project Participant shall have no right to any such Capacity Attributes or Environmental Attributes associated with the Facility or otherwise provided for under the ESSA.

12.6. Termination and Disposal of Project Participant's Project Rights. If a Defaulting Project Participant has not cured a Payment Default within forty-five (45) calendar days after the payment deadline specified in Section 9.5 by CCP ("**Payment Default Termination Deadline**"), then all Project Rights and Obligations pursuant to this Agreement shall be terminated and disposed in accordance with Sections 12.6 and 12.8 of this Agreement; provided, however, that the Defaulting Project Participant shall be liable for all outstanding payment obligations accrued prior to the Payment Default Termination Deadline and shall remain subject to all rights, obligations, and liabilities of this Agreement, including but not limited to any liabilities for Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts under the ESSA. CCP shall provide to the Defaulting Project Participant a separate monthly invoice of any such payment obligations of such Defaulting Project Participant. CCP shall immediately notify the other Project Participants of such termination of the Defaulting Project Participant's Project Rights and Obligations.

12.7. Step-Up Invoices.

(a) Upon the occurrence of a Payment Default, CCP shall, concurrently with the Late Payment Notice issued pursuant to Section 9.7(a), issue a Step-Up Invoice to each Non-Defaulting Project Participant that specifies such Non-Defaulting Project Participant's pro rata payment obligation, calculated based on the Entitlement Share of such Non-Defaulting Project Participant, of the amount of the Payment Default for the Defaulting Project Participant (the "**Step-Up Invoice Amount**"); provided, however, that a Non-Defaulting Project Participant's Step-Up Invoice Amount shall not exceed twenty-five percent (25%) of such Non-Defaulting Project Participant's Invoice Amount for the same month for which the Payment Default occurred (the "**Step-Up Invoice Amount Cap**").

(i) Each Non-Defaulting Project Participant shall deposit the Step-Up Invoice Amount into such Non-Defaulting Project Participant's Operating Account by the later of the twentieth (20th) calendar day of the following Month or thirty (30) days after the date on which CCP issues the Step-Up Invoice to the other Project Participants. No sooner than five (5) calendar days after CCP issues the Step-Up Invoice, CCP may withdraw the amount of the Step-Up Invoice from each Project Participant's Operating Account and deposit such funds in a separate account ("**Step-Up Reserve Account**"), which shall be accessible only by CCP, and which CCP may in its sole discretion draw upon in order to ensure that CCP can meet the payment obligations of the ESSA. CCP first shall withdraw all funds from a Defaulting Project Participant's Operating Account before withdrawing funds from the Step-Up Reserve Account.

(ii) Application of Moneys Received from a Defaulting Project Participant. If a Defaulting Project Participant cures a Payment Default on or before the Payment Default Termination Deadline, any funds remaining in the Step-Up Reserve Account shall be deposited into the Operating Accounts of the other Project Participants on a pro rata share, based on the Entitlement Share of such other Project Participant. If a Defaulting Project Participant fails to cure a Payment Default and the Defaulting Project Participant's Project Rights and Obligations are terminated and disposed of in accordance with Section 12.8, any funds remaining in the Step-Up Reserve Account shall be deposited into the Operating Accounts of the Non-Defaulting Project Participants on a pro rata share, based on the Entitlement Share, subject to the Step-Up Invoice Amount Cap, of such other Project Participant. If any Non-Defaulting Project Participant has not deposited the full amount of its share of the Step-Up Invoice Amount into its Operating Account by the deadline specified in Section 12.7(a)(i), then such occurrence shall be a Late Payment as specified in Section 9.7(a) and is subject to a Late Payment Charge pursuant to Section 9.7(b), and any such Non-Defaulting Project Participant shall not be entitled to its share of any moneys received from the Defaulting Project Participant or any funds remaining in the Step-Up Reserve Account in accordance with this Section 12.7(a)(ii) until such Non-Defaulting Project Participant has deposited the full amount of its Step-Up Invoice Amount and the Late Payment Charge into its Operating Account.

12.8. Step-Up Allocation of Project Participant's Project Rights. In the event that a Defaulting Project Participant's Project Rights are terminated pursuant to Section 12.6, then such Defaulting Project Participant's Entitlement Share shall be allocated to the other Project Participants ("**Step-Up Allocation**") pursuant to the process set forth in this Section 12.8. If a Project Participant has defaulted in the performance of any of its obligations under its BLPTA, and any applicable cure periods under the BLPTA have expired, the Project Participants shall, to the extent required by each respective Project Participant's BLPTA, utilize the procedures set forth in this Section 12.8 to allocate the Project Rights and Obligations of the Project Participant that has defaulted under the BLPTA to the Project Participants that have not defaulted under the BLPTA, subject to the Step-Up Allocation Cap specified in Section 12.8(a).

(a) Step-Up Allocation Cap. If a Defaulting Project Participant's Entitlement Share is allocated to the Non-Defaulting Project Participants pursuant to this Section 12.8, no individual Non-Defaulting Project Participant shall be obligated to assume an allocation that exceeds that Project Participant's Step-Up Allocation Cap set forth in Column E of the Table in Exhibit B of this Agreement. Each Non-Defaulting Project Participant's initial Step-Up Allocation Cap shall be equal to the Non-Defaulting Project Participant Entitlement Share as of the Effective Date and set forth in Column B of the Table in Exhibit B of this Agreement, multiplied by one hundred and twenty-five percent (125%). If a Project Participant modifies its Entitlement Share pursuant to Section 4.2 of this Agreement, then that Project Participant's Step-Up Allocation Cap shall be equal to the Project Participant's Entitlement Share as modified pursuant to Section 4.2 multiplied by one hundred and twenty-five percent (125%). Upon a modification of a Project Participant's Entitlement Share pursuant to Section 4.2, the CCP Manager shall cause the Step-Up Allocation Cap specified in Column E of the Table in Exhibit B of this Agreement to be modified in accordance with this Section 12.8(a). For avoidance of doubt, if a Project Participant's Entitlement Share is increased pursuant to Section 12.8(b) or (c), then such Project Participant's Step-Up Allocation Cap shall not be modified.

(b) Step-Up Allocation Share. If a Defaulting Project Participant's Project Rights are terminated pursuant to Section 12.6, then such Defaulting Project Participant's Entitlement Share shall be allocated to each Non-Defaulting Project Participant based on such Non-Defaulting Project Participant's pro rata share, calculated based on its Entitlement Share of the entire project minus the Entitlement Share of the Defaulting Project Participant, unless such allocation would cause any individual Non-Defaulting Project Participant to exceed its Step-Up Allocation Cap, in which case Section 12.8(c) shall apply. Upon allocation of a defaulting Project Participant's Entitlement Share pursuant to this Section 12.8(b), the CCP Manager shall cause each affected Project Participant's Entitlement Share specified in Column D of the Table in Exhibit B to be modified in accordance with this Section 12.8.

(c) Voluntary Allocation of Project Rights in Excess of the Step-Up Allocation Caps. If the allocation of a Defaulting Project Participant's Entitlement Share pursuant to Section 12.8(b) would cause any Non-Defaulting Project Participant's Entitlement Share to exceed its Step-Up Allocation Cap, then no allocation shall occur pursuant to Section 12.8(b). In such case, the CCP Manager shall oversee the offering of the total amount of the Defaulting Project Participant's Entitlement Share to the Non-Defaulting Project Participants on a voluntary basis. The initial offering shall be to each Non-Defaulting Project Participant on a pro rata share, based on such Non-Defaulting Project Participant's Entitlement Share. Each Project Participant may accept or reject the portion of the Defaulting Project Participant's Entitlement Share. If any portion of the Defaulting Project Participant's Entitlement Share remains unclaimed after the initial offering, then the remaining portion shall be offered to any Non-Defaulting Project Participant that accepted its full share of the Defaulting Project Participant's Entitlement Share in the initial offering on a pro rata share, based on such Non-Defaulting Project Participant's Entitlement Share as a percentage of the total Entitlement Shares of all Project Participants that are participating in the subsequent round of offerings. The CCP Manager shall conduct subsequent offering rounds until either the total amount of the Defaulting Project Participant's Entitlement Share is accepted by one or more of the Non-Defaulting Project Participants or some portion of the Defaulting Project Participant's Entitlement Share remains, but all Non-Defaulting Project Participants have rejected such remaining amount.

(d) Step-Up Allocation Damage Payment. A Defaulting Project Participant shall owe to each Non-Defaulting Project Participant that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c) a "**Step-Up Allocation Damage Payment**" equal to the Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Project Participant's Costs and Losses exceed its Gains, then the Step-Up Allocation Damage Payment shall be an amount owing to such Non-Defaulting Project Participant. If the Non-Defaulting Project Participant's Gains exceed its Costs and Losses, then the Step-Up Allocation Damage Payment shall be zero dollars (\$0). A Defaulting Project Participant shall not be entitled to any Step-Up Allocation Damage Payment or any other damages otherwise authorized under this Agreement from any other Project Participant. The Step-Up Allocation Damage Payment does not include consequential, incidental, punitive, exemplary, or indirect or business interruption damages. Each Non-Defaulting Project Participant that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c) shall calculate, in a commercially reasonable manner, the Step-Up Allocation Damage Payment for the Defaulting Project Participant's Entitlement Share assumed by the Non-Defaulting Project Participant as of the effective date of such Step-Up

Allocation. 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. If the Defaulting Project Participant disputes the Non-Defaulting Project Participant's calculation of the Step-Up Allocation Damage Payment, in whole or in part, the Defaulting Project Participant shall, within five (5) Business Days of receipt of the Non-Defaulting Project Participant's calculation of the Step-Up Allocation Damage Payment, provide to the Non-Defaulting Project Participant a detailed written explanation of the basis for such dispute. Disputes regarding the Step-Up Allocation Damage Payment shall be determined in accordance with Article 16. Each Party agrees and acknowledges that (i) the actual damages that the other Project Participant would incur in connection with a Step-Up Allocation would be difficult or impossible to predict with certainty, (ii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is a reasonable and appropriate approximation of such damages, and (iii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is the exclusive remedy of a Project Participant in connection with a Step-Up Allocation pursuant to the process set forth in Sections 12.8(b) or 12.8(c) against a Defaulting Project Participant but shall not otherwise act to limit any of the Non-Defaulting Project Participant's rights or remedies under this Agreement.

(e) Remarketing of Unclaimed Defaulting Project Participant's Entitlement Share. If after the process set forth in Section 12.8(c), some portion of the Defaulting Project Participant's Entitlement Share remains unclaimed, the CCP Manager, in their discretion or as directed by the Non-Defaulting Project Participants, may take any action to generate revenue from such unclaimed Entitlement Share in order to meet CCP's payment obligation under the ESSA. For avoidance of doubt, the CCP Manager shall not be limited by the requirements of Section 4.2 or 5.1(j) of this Agreement in remarketing or generating revenue base on the unclaimed share.

12.9. Elimination or Reduction of Payment Obligations. Notwithstanding anything to the contrary in this Agreement, upon termination of a Defaulting Project Participant's Project Rights pursuant to Section 12.6 and the disposal of such Defaulting Project Participant's Project Rights and Obligations pursuant to Section 12.8, such Defaulting Project Participant's obligation to make payments under this Agreement (notwithstanding anything to the contrary herein) shall not be eliminated or reduced; provided, however, such payment obligations for the Defaulting Project Participant may be eliminated or reduced to the extent permitted by law, through an amendment to this Agreement, which shall be subject to the consent and approval of all Parties to this Agreement.

ARTICLE 13 **LIABILITY**

13.1. Project Participants' Obligations Several. No Project Participant shall be liable under this Agreement for the obligations of any other Project Participant or for the obligations of CCP incurred on behalf of other Project Participants. Each Project Participant shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise provided for herein. The obligation of Project Participants to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants.

13.2. No Liability of CCP or Project Participants, Their Directors, Officers, Etc.; CCP, The Project Participants' and CCP Manager's Directors, Officers, Employees Not Individually Liable. Except as provided for under Section 13.5 herein, the Parties agree that neither CCP, Project Participants, nor any of their past, present or future directors, officers, employees, board members, agents, attorneys or advisors (collectively, the “**Released Parties**”) shall be liable to any other of the Released Parties for any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of Project Participants, CCP, or third persons) suffered by any Released Party as a result of the action or inaction or performance or non-performance by the Project Developer under the ESSA. Except as provided for under Section 13.5 herein, each Party shall release each of the other Released Parties from any claim or liability that such Party may have cause to assert as a result of any actions or inactions or performance or non-performance by any of the other Released Parties under this Agreement (excluding gross negligence and willful misconduct, which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Notwithstanding the foregoing, no such action or inaction or performance or non-performance by any of the Released Parties shall relieve CCP or any Project Participants from their respective obligations under this Agreement, including, without limitation, the Project Participants' obligation to make payments required under Section 9.5 of this Agreement and CCP's obligation to make payments under Section 8.2 of the ESSA. The provisions of this Section 13.2 shall not be construed so as to relieve the CCP or the Project Developer from any obligation or liability under this Agreement or the ESSA.

13.3. Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 13.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, any Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of any other Party, and each Party shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment, underpayment or other monetary damages owed by the other Party in accordance with the terms of this Agreement.

13.4. No General Liability of CCP. The undertakings under this Agreement by CCP shall not constitute a debt or indebtedness of CCP within the meaning of any provision or limitation of the Constitution or statutes of the State of California, and shall not constitute or give rise to a charge against its general credit.

13.5. Indemnification. Each Party shall indemnify, defend, protect, hold harmless, and release the other Parties, their directors, board members, officers, employees, agents, attorneys and advisors, past, present or future, from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise, which include, without limitation, death, bodily injury, or personal injury to any person or damage or destruction to any property of Project Participants, CCP, or third persons, that may be imposed on, incurred by or

asserted against any Party arising by manner of any breach of this Agreement, or the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of any Party or any Party's directors, board members, officers, employees, agents and advisors, past, present or future.

ARTICLE 14
NOTICES

14.1. 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 A or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

14.2. 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, five (5) 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 5:00 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 15
ASSIGNMENT

15.1. General Prohibition on Assignments. No Party may assign this Agreement, or its rights or obligations under this Agreement, without the prior written consent of all other Parties, in each Party's sole discretion.

ARTICLE 16
GOVERNING LAW AND DISPUTE RESOLUTION

16.1. Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced, and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any 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 all Parties, or in the absence of mutual agreement, the County of San Francisco.

16.2. 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 or in equity.

ARTICLE 17
MISCELLANEOUS

17.1. Entire Agreement; Integration; Exhibits. This Agreement, together with the Exhibits attached hereto constitutes the entire agreement and understanding by and among the Parties 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. 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.

17.2. Amendments. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of all Parties; *provided*, this Agreement may not be amended by electronic mail communications. Any revisions to the Entitlement Share specified in Exhibit B pursuant to Section 4.2. or Section 12.8 shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

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

17.4. 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.

17.5. 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.

17.6. 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.

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

17.8. Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and that the Parties 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.

17.9. City of San Francisco Standard Provisions.

(a) False Claims. Pursuant to San Francisco Administrative Code § 21.35, any Party to this Agreement who submits a false claim shall be liable to the City and County of San Francisco for the statutory penalties set forth in that section. A Party will be deemed to have submitted a false claim to the City and County of San Francisco if the Party: (a) knowingly presents or causes to be presented to an officer or employee of the City and County of San Francisco a false claim or request for payment or approval; (b) 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 and County of San Francisco; (c) conspires to defraud the City and County of San Francisco by getting a false claim allowed or paid by the City and County of San Francisco; (d) 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 and County of San Francisco; or (e) is a beneficiary of an inadvertent submission of a false claim to the City and County of San Francisco, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City and County of San Francisco within a reasonable time after discovery of the false claim.

(b) Political Activity. In performing its responsibilities under this Agreement, CCP shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City and County of San Francisco for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure.

(c) Non-discrimination Requirements.

(i) Non-discrimination in Contracts. CCP shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. CCP 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. CCP is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(ii) Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. CCP does not as of the date of this Agreement, and will not during the term of this Agreement, 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.

(d) Consideration of Criminal History in Hiring and Employment Decisions. CCP 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 CCP’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, 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. 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.

(e) 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.

(f) 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, CCP shall not provide any items to the City in performance of this Agreement which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of CCP to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

17.10. City of San José Standard Provisions.

(a) Nondiscrimination/Non-Preference. The Parties 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. The Parties will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Parties from providing a reasonable accommodation to a person with a disability; (ii) the City of San José's Compliance Officer may require the Parties to file, and cause any Party'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.

(b) Conflict of Interest. The Parties represent that they are familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Parties certify that, as of the Effective Date, are unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Parties shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Parties have the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and a Party shall immediately notify the City of San José in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. A Party's violation of this Section 17.10(b) is a material breach.

(c) Environmentally Preferable Procurement Policy. Parties shall perform its obligations under this Agreement 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 17.10(c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle the City of San José to terminate this Agreement.

(d) Gifts Prohibited. The Parties represent that they are 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. The Parties shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. A Party's violation of this Section 17.10(d) is a material breach.

(e) Disqualification of Former Employees. The Parties represent that they are 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. Parties shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

17.11. 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]

DRAFT

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

<p>California Community Power</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Clean Power San Francisco</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
<p>Peninsula Clean Energy</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Redwood Coast Energy Authority</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>

<p>San José Clean Energy</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Silicon Valley Clean Energy</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
<p>Sonoma Clean Power</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Valley Clean Energy</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>

EXHIBIT A
NOTICES

Party	<i>All Notices</i>	<i>Invoices</i>
California Community Power	<p>California Community Power Tim Haines _____ _____ timhaines@powergridsymmetry.com</p>	
Clean Power San Francisco	<p>Clean Power San Francisco Barbara Hale, Assistant General Manager, Power San Francisco Public Utilities Commission 525 Golden Gate Ave, 13th Floor San Francisco, CA 94102 bhale@sfwater.org</p>	
Peninsula Clean Energy	<p>Peninsula Clean Energy Jan Pepper, CEO Peninsula Clean Energy 2075 Woodside Road Redwood City, California 94061 jpepper@peninsulacleanenergy.com</p>	
Redwood Coast Energy Authority	<p>Redwood Coast Energy Authority Matthew Marshall, CEO Redwood Coast Energy Authority 633 3rd Street Eureka, CA 95501 mmarshall@redwoodenergy.org</p>	

Party	<i>All Notices</i>	<i>Invoices</i>
San José Clean Energy	San José Clean Energy Lori Mitchell, Director cc: Luisa Elkins, Senior Deputy City Attorney San José Clean Energy 200 E. Santa Clara Street, 14th Floor San José, CA 95113 Lori.Mitchell@sanjoseca.gov Luisa.Elkins@sanjoseca.gov	
Silicon Valley Clean Energy	Silicon Valley Clean Energy Girish Balachandran, CEO Silicon Valley Clean Energy Authority 333 W. El Camino Real, Suite 330 Sunnyvale, CA 94087 girish@svcleanenergy.org	
Sonoma Clean Power	Sonoma Clean Power Geof Syphers, CEO Sonoma Clean Power 50 Santa Rosa Avenue, 5th Floor Santa Rosa, CA 95404 gsyphers@sonomacleanpower.org	
Valley Clean Energy	Valley Clean Energy Gordon Samuel Assistant General Manager & Director of Power Resource 604 2nd Street Davis, CA 95616 gordon.samuel@valleycleanenergy.org	

EXHIBIT B**SCHEDULE OF PROJECT PARTICIPANT ENTITLEMENT SHARES
AND STEP-UP ALLOCATION CAPS***Dated:* _____

A	B	C	D	E
Project Participant	Entitlement Share <i>As of Effective Date</i>	Entitlement Share <i>As Modified Pursuant to Section 4.2</i>	Entitlement Share <i>As Modified Pursuant to Section 12.8(b) or 12.8(c)</i>	Step-Up Allocation Cap <i>125% multiplied by Column B or C as applicable</i>
Clean Power San Francisco	16.06%			
Peninsula Clean Energy	19.69%			
Redwood Coast Energy Authority	3.62%			
San José Clean Energy	22.28%			
Silicon Valley Clean Energy	21.25%			
Sonoma Clean Power	12.95%			
Valley Clean Energy	4.15%			
Total	100%			

Instructions: If the CCP Manager modifies one or more Project Participant's Entitlement Share pursuant to Section 4.2, the CCP Manager shall prepare an updated Exhibit B that shows the prior Entitlement Share (Column B or D) in ~~strikeout~~ and specifies the new Entitlement Share values and the effective date of such modification in Column C. If the CCP Manager modifies one or more Project Participant's Entitlement Share pursuant to Section 12.8, the CCP Manager shall prepare an updated Exhibit B that shows the prior Entitlement Share (Column B or Column C) in ~~strikeout~~ and specifies the new Entitlement Share values and the effective date of such modification in Column D.

EXHIBIT C

**PROCEDURE FOR VOLUNTARY REDUCTION OF
PROJECT PARTICIPANT'S ENTITLEMENT SHARE**

(a) Offer to Other Project Participants. A Project Participant proposing to reduce its Entitlement Share of the Project shall provide Notice to all other Project Participants and CCP specifying the quantity of the proposed reduction of Entitlement Share ("**Entitlement Share Reduction Amount**") and the first Month for which the Project Participant Proposes that the change of Entitlement Share would become effective (such Notice referred to as the "**Entitlement Share Reduction Notice**").

(i) Upon receiving an Entitlement Share Reduction Notice from any Project Participant, the CCP Manager shall promptly do all of the following:

(A) Establish Entitlement Share Reduction Compensation Amount. The CCP Manager shall secure at least one (1), but no more than three (3), valuations of the net present value of the Entitlement Share Reduction Amount over the remaining term of the ESSA from one or more qualified firm(s) with the requisite experience to determine such valuation. The valuation, or if more than one valuation is obtained, the average of all valuations received, shall be the "**Proposed Entitlement Share Reduction Compensation Amount.**" The CCP Manager shall call a meeting of the Project Committee and present the Proposed Entitlement Share Reduction Compensation Amount to the Project Committee. The Project Committee shall by a Normal Vote either approve the Proposed Entitlement Share Reduction Compensation Amount or direct the CCP Manager to secure additional valuations. The Proposed Entitlement Share Reduction Compensation Amount approved by the Project Committee shall be the "**Entitlement Share Reduction Compensation Amount.**" The Project Participant proposing to reduce its Entitlement Share may modify the quantity of the Entitlement Share Reduction Amount associated with its proposal or withdraw its proposal at any time prior to the initiation of the process set forth in paragraph (a)(i)(B).

(B) Oversee the Offering of the Entitlement Share Reduction Amount to Other Project Participants. The CCP Manager shall facilitate the offering of the Entitlement Share Reduction Amount to the other Project Participants through multiple rounds of offerings.

a) The initial offering shall be to each Project Participant on a pro rata share, based on such Project Participant's Entitlement Share. Each Project Participant may accept or reject the portion of the Entitlement Share Reduction Amount offered to the Project Participant through this process. If any portion of the Entitlement Share Reduction Amount remains after the initial offering, then the remaining portion shall be offered to any Project Participant that accepted the share of the Entitlement Share Reduction Amount offered in the initial offering on a pro rata share, based on such Project Participant's Entitlement Share as a percentage of the total Entitlement Shares of all Project Participants that accepted the portion of the Entitlement Share Reduction Amount offered to them in the initial offering.

b) The CCP Manager shall conduct subsequent offering rounds until either the total Entitlement Share Reduction Amount is accepted by one or more of the other Project Participants or some portion of the Entitlement Share Reduction Amount remains, but all Project Participants have rejected such amount.

c) Any Project Participant accepting a share of the offered Entitlement Share Reduction Amount shall either pay the offering Project Participant or be compensated by the offering Project Participant at the Entitlement Share Reduction Compensation Amount multiplied by the quantity of the portion being accepted.

d) Before a transfer of all or a portion of any Project Participant's Entitlement share to another Project Participant can become effective, the proposed transfer must be submitted to and approved by the Project Committee through a Normal Vote.

e) After acceptance and payment for such portion of the Entitlement Share Reduction Amount, and upon approval of such transfer by the Project Committee, the CCP Manager shall cause the Entitlement Share specified in Exhibit B to be modified accordingly, and such modification shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

(C) Oversee the Offering of the Entitlement Share Reduction Amount to CCP Members that are not Project Participants. If there is any portion of the Entitlement Share Reduction Amount that remains unaccepted after the process specified in paragraph (a)(i)(B) is complete, then the Project Participant proposing to reduce its Entitlement Share may request that the CCP Manager offer the remaining portion of the Entitlement Share Reduction Amount to CCP Members that are not Project Participants. If any CCP Member wishes to accept any or all of the remaining portion of the Entitlement Share Reduction Amount, such action shall require the CCP Member to become a Project Participant through an amendment to this Agreement, which shall be subject to the consent and approval of all Parties to this Agreement and the CCP Member becoming a Project Participant. The compensation amount associated with the CCP Member accepting the remaining portion of the Entitlement Share Reduction Amount shall be negotiated between the CCP Member and the offering Project Participant.

(D) Oversee the Offering of the Entitlement Share Reduction Amount to a Community Choice Aggregator that is not a CCP Member. If there is any portion of the Entitlement Share Reduction Amount that remains unaccepted after the process specified in both paragraphs (a)(i)(B) and (a)(k)(C) is complete, then the Project Participant proposing to reduce its Entitlement Share, may request that the CCP Manager offer the remaining portion of the Entitlement Share Reduction Amount to a community choice aggregator that is not a CCP Member. If any community choice aggregator wishes to accept any or all of the remaining portion of the Entitlement Share Reduction Amount, such action shall require the community choice aggregator to become a CCP Member, and subsequent to becoming a CCP Member, to become a Project Participant through an amendment to this Agreement that is subject to the consent and approval of all Parties to this Agreement and the community choice aggregator becoming a Project Participant. The compensation amount associated with the community choice aggregator accepting the remaining portion of the Entitlement Share Reduction Amount shall be negotiated between the community choice aggregator and the offering Project Participant.

EXHIBIT D

PROJECT COMMITTEE OPERATIONS, MEETINGS, AND VOTING

(a) Chairperson of Project Committee. The chairperson of the Project Committee (“**Chairperson**”) shall be the CCP Manager. The Chairperson shall be responsible for calling and presiding over meetings of the Project Committee in a manner and to the extent permitted by law.

(b) Conducting Meetings. Conducting of Project Committee meetings and actions taken by the Project Committee may be taken by vote given in an assembled meeting, by telephone, by video conferencing, or by any combination thereof, to the extent permitted by law.

(c) Calling of Meetings.

(i) The Chairperson may call a meeting of the Project Committee at their discretion.

(ii) The Chairperson shall promptly call a meeting of the Project Committee at the request of any representative of a Project Participant.

(d) Unanimous Votes. Certain actions, as designated in Section 6.4(c), require a unanimous affirmative vote by all Project Participants (“**Unanimous Vote**”). No such vote may be taken unless a representative from every Project Participant is present at the meeting of the Project Committee. If any Project Participant’s Entitlement Share is reduced to zero through the process specified in Exhibit C, such Project Participant shall not be required to be present or be entitled to vote in order for such vote to be a Unanimous Vote.

(e) Normal Votes. All actions not designated as requiring unanimous vote, shall proceed pursuant to the “**Normal Vote**” process set forth in this paragraph (e).

(i) Quorum. No Normal Vote of the Project Committee shall be taken unless a representative is present for at least fifty percent (50%) of the total number of Project Participants, without regard to each Project Participant’s Entitlement Share.

(ii) Initial Normal Vote. Unless a representative requests an Alternate Normal Vote, pursuant to paragraph (e)(iii), all actions requiring a Normal Vote, as specified in Section 6.4(b) or 6.4(d), shall require an affirmative vote of at least fifty-one percent (51%) of the total number of Project Participants, without regard to each Project Participant’s Entitlement Share.

(iii) Alternate Normal Vote. Any representative may request that any Normal Vote be taken on an Entitlement Share basis (referred to as an “**Alternate Normal Vote**”). If a representative requests an Alternate Normal Vote, then the following vote requirements shall apply:

(A) If any individual Project Participant has an Entitlement Share exceeding fifty percent (50%), then all actions for which an Alternate Normal Vote is taken shall require that the Project Participant with an Entitlement Share exceeding fifty percent (50%) plus any other Project Participant vote in the affirmative.

(B) If no individual Project Participant has an Entitlement Share exceeding fifty percent (50%), then all actions for which an Alternate Normal Vote is taken shall require an affirmative vote of Project Participants having Entitlement Shares aggregating at least fifty-one percent (51%) of the total Entitlement Shares.

DRAFT

California Community Power

Agenda Item 6B

1. **Firm Clean Resources Cooperation Protocol.**
2. **Resolution 22-01-03 *Approval of CC Power Non-disclosure Agreement and Exclusivity Agreement for Negotiation of Firm Clean Energy Resource Projects.***
3. **Attachment A to Resolution 22-01-03: Non-disclosure Agreement.**
4. **Attachment B to Resolution 22-01-03: Exclusivity Agreement for Power Purchase Agreement Negotiation.**

Firm Clean Resources Cooperation Protocol

This document sets out how Community Choice Aggregators (CCAs) that are members of California Community Power (CCPower) and are interested in participating in the Firm Clean Resources (FCR) solicitation will proceed with a CCPower FCR solicitation. To moderate costs, the CCAs will maximize the use of CCA contributions and minimize the use of paid consultants and CCPower staff.

The CCPower General Manager (GM) and staff of San Jose Clean Energy (SJCE) made an initial presentation to the CCPower Board setting forth an approach and timeline on September 15, 2021. In accordance with that approach, a Project Oversight Committee (POC) has been formed, and a Request for Offers was issued on October 25, 2021, with responses due on December 13, 2021.

This protocol memorializes in more detail the approach described at a high level on September 15, 2021, as further discussed by the CCPower Board at the December 15, 2021 CCPower Board meeting, and consistent with the budget approved by the CCPower Board on December 15, 2021. This Protocol was developed by SJCE and SCP and circulated to all Participating CCAs.

1. Participating CCAs: SJCE, Sonoma Clean Power (SCP), Silicon Valley Clean Energy (SVCE), CleanPowerSF (CPSF), Peninsula Clean Energy (PCE), Valley Clean Energy (VCE), Central Coast Community Energy (3CE), Marin Clean Energy (MCE), Redwood Coast Energy Authority (RCEA). While East Bay Clean Energy (EBCE) initially indicated it would participate in the effort, EBCE has since withdrawn from participation.

Participating CCAs may determine to withdraw from the effort at any time by notifying SJCE and SCP that they no longer wish to participate in the effort. However, after the cost-sharing agreement for Phase 2 is signed, Participating CCAs will be expected to pay their share of the budget even if they subsequently choose to withdraw from the effort.

2. Project Oversight Committee: On September 15, 2021, SJCE informed the CCPower Board that it would organize a POC for the FCR effort. Since then, a POC has been operating with at least one representative from each of the Participating CCAs. The CC Power GM attends the POC meetings as an observer.

3. Product pursued: ~ 200MW of FCR as defined by the California Public Utilities Commission (CPUC) in Decision 21-06-35, Ordering Paragraph (OP) 2(b), as well as existing projects that otherwise meet the requirements of OP 2(b). All RPS products must be PCC1.

4. Schedule:



5. Budget

	<u>Business Issues</u>	<u>Technical Support (Carrie)</u>	<u>Legal (Kevin)</u>	<u>CC Power (GM & GC)</u>
Evaluation	Participating CCAs coordinated by SJCE/SCP with support of POC	\$8,000 (in kind contributions)	\$8,000 (in kind contribution)	\$5,000
Shortlisting	Participating CCAs coordinated by SJCE/SCP with support of POC	\$0	\$0	\$5,000
Negotiations including Exclusivity Agreements	Undertaken by SJCE/SCP; POC will be kept informed every two weeks	\$30,000	\$80,000	\$10,000
Project management and Quality Control	SJCE and SCP	\$0	\$0	\$0
Final Review by GM/GC and Presentation to Board		\$0	\$0	\$20,000
Total		\$30,000	\$80,000	\$40,000

6. Respective Roles and Responsibilities:

6.a. Throughout the effort:

SJCE: Will lead the effort and provide monthly Board reports.

SCP: Will assist in coordination and provide quality control.

GM: Will maintain current budget records, obtain Board authority, and execute contracts as recommended by SJCE.

6.b. Phase 1, including RFO issuance, response evaluation and shortlisting:

RFO issuance: Done

Response evaluations:

- SJCE: Coordinate evaluation and shortlisting
Contribute up to \$7,500 worth of time by Kevin Fox including for preparation of an exclusivity agreement.
Evaluate Labor
If appropriate, sanity check economic analysis
- SCP: Assist in coordination of evaluation and shortlisting
Undertake economic analysis of RFO Responses
Evaluate project risk with VCE
- SVCE: Contribute up to \$8,000 worth of time by Carrie Bentley to advise the group on interconnections/transmission issues
As needed, plan for and undertake publicity with CPSF
Evaluate Offeror Experience
- VCE: Evaluate Project Risk with SCP
- PCE: Evaluate Environmental Impacts
Evaluate Labor
- RCEA: Evaluate Biomass responses

Shortlisting: SJCE shall undertake shortlisting taking into consideration POC input, subject to authority from the CCPower Board (to be requested during the January Board meeting).

Coordination with the POC and the GM: SJCE will hold meetings every week to keep POC members and the GM abreast of developments.

6.c. Phase 2, including negotiating agreements and obtaining project approvals.

Cost Sharing Agreement

During Phase I, SJCE will coordinate drafting and signature of a Cost-Sharing Agreement for a budget of \$150,000 for Phase 2, coordinating with the GM and General Counsel (GC) as needed.

Costs will be allocated as follows below to the Participating CCAs, unless a Participating CCA withdraws prior to signing the Cost-Sharing Agreement. If a Participating CCA withdraws from the effort prior to signing the Cost-Sharing Agreement, that CCA's share of the costs will be divided between the remaining CCAs based on their proportionate share of the target capacity. After signing the Cost-Sharing

Agreement, a Participating CCA will be responsible for their share of the costs, even if they subsequently withdraw from the effort.

CCA	CPUC LL	FCR Req.	Desired Amt.	Allocation %	Cost Allocation
3CE	51	25.5	20	14%	\$20,761
CPSF	31	15.5	18	12%	\$18,685
MCE	58	29	15	10%	\$15,571
PCE	38	19	22	15%	\$22,837
RCEA	7	3.5	3.5	2%	\$3,633
SCP	25	12.5	14	10%	\$14,533
SJCE	43	21.5	25	17%	\$25,952
SVCE	41	20.5	17	12%	\$17,647
VCE	8	4	10	7%	\$10,381
Total	302	151	144.5	100%	\$150,000

Negotiating Agreements

SCP: Lead negotiator

SJCE: Assists lead negotiator

Kevin Fox: Attorney

Carrie Bentley: Technical Support

Kevin Fox will develop a proposed power purchase agreement (PPA) based on the term sheet used for the RFO, and a draft agreement provided by SJCE/SCP. The lead negotiators will negotiate PPAs with shortlisted projects. Lead negotiators will coordinate with the POC and seek input as described below but are empowered to obtain the best deal possible, subject to the right of each Participating CCA to ultimately decide whether or not to join in the project and sign any PPA so negotiated.

Coordination with the POC

SJCE will organize POC meetings every week to keep members abreast of progress. The GM will attend the POC meetings to also stay abreast of progress, and coordinate with SJCE who will keep the General Counsel (GC) updated as necessary and appropriate.

Direction of Kevin Fox and Carrie Bentley

To focus limited resources on the negotiations and POC priorities, SCP will direct Kevin and Carrie in the first instance with support from SJCE as needed. Members of the POC should not contact Kevin or Carrie directly. Kevin and Carrie will not participate in the POC meetings unless such participation is deemed appropriate by SCP or SJCE to fully inform POC members of progress on particular issues. If POC members have questions for Kevin or Carrie, they should direct these to SCP or SJCE so that outreach to these limited resources is as efficient as possible and remains focused on the POC's priorities.

7. Applicable Policies (See Board Resolution 21-09-10)

1. Workforce

- a. Require payment of prevailing wages.
- b. Encourage the use of apprenticeship programs.
- c. State a preference, but not a requirement, for a Project Labor Agreement (PLA) allowing up to 5 points in the evaluation ranking process. (Note that adopting a PLA demonstrates meeting the requirements of payment of prevailing wages and use of apprenticeship programs.)
- d. For projects that do not implement a PLA, require an audit to ensure compliance with payment of prevailing wages and to evaluate use of apprenticeship programs.
- e. Encourage the use of local labor.

2. Environmental

- a. All projects must meet the permitting requirements of the appropriate governing authority/authorities.
- b. State a preference for projects that avoid sensitive habitat areas.

3. Environmental Justice

- a. Require the developer to attest to not using forced labor in its supply chain which can be demonstrated by signing on to the SEIA pledge.
- b. Require developers to identify project benefits to local communities.

8. Final Approvals: No agreement shall be final or effective unless and until approved by the CCPower Board and executed by the GM, and the individual Participating CCAs that opt to participate in a project, in accordance with the CCPower bylaws.

California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacommunitypower.org

January 19, 2022

TO: CC Power Board
FROM: BBSW, General Counsel
RE: Firm Clean Energy Resource (FCR) Exclusivity and Non-Disclosure Agreements

In the Board packet Board members will find two documents for consideration and possible approval. These documents are intended to continue progress associated with consideration of the FCR Projects consistent with the 2022 CC Power FCR Request for Offers approved by the CC Power Board on September 15, 2021. These agreements are relatively routine and are summarized briefly below.

Non-Disclosure Agreement

CC Power expects to enter into a Non-Disclosure Agreement (NDA) with short-listed developers to govern the communications and confidential information exchanged between the parties during negotiations. We will want this NDA in place as early in the process as possible once short-listed projects are identified.

Exclusivity Agreement

CC Power anticipates entering into an exclusivity agreement to bind developers to negotiate solely with CC Power for relevant short listed projects, until such time as the negotiation period terminates per the terms of the exclusivity agreement. This is a relatively standard agreement that has been prepared by project counsel.

**California Community Power
Resolution 22-01-03**

**APPROVAL OF CC POWER NON-DISCLOSURE AGREEMENT AND EXCLUSIVITY AGREEMENT
FOR NEGOTIATION OF FIRM CLEAN ENERGY RESOURCE PROJECTS**

WHEREAS, California Community Power (“CC Power”) was created by a Joint Powers Agreement (“JPA”) to develop, acquire, construct, own, manage, contract for, engage in, finance and/or provide energy related programs for the use of and by its Members; and

WHEREAS, the Members of CC Power are engaged in an ongoing solicitation for Firm Clean Energy Resource (“FCR”) projects, contemplated to be procured through CC Power; and

WHEREAS, JPA Section 4.01 provides that CC Power shall be administered by a Board of Directors, which shall be vested with the powers set forth in the JPA, and shall have the authority to provide for the general management and oversight of the affairs, property and business of CC Power; and

WHEREAS, JPA Section 4.07 states that the General Manager may enter into and execute contracts in accordance with the policies established and direction provided by the Board.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of CC Power hereby:

1. Approve the CC Power Non-disclosure Agreement, in substantially final form, attached hereto as Attachment A.
2. Approve the Exclusivity Agreement, in substantially final form, attached hereto as Attachment B.
3. Delegate the authority to the General Manager to finalize shortlisting of the FCR Projects utilizing criteria created by and in consultation with the FCR Project Oversight Committee and execute these agreements in order to proceed with negotiations with the shortlisted developers.

PASSED AND ADOPTED by the Board of Directors of California Community Power this 19th day of January, 2022, by the following vote:

		Aye	No	Abstain	Absent
Central Coast Community Energy	Tom Habashi				
CleanPowerSF	Barbara Hale				
East Bay Community Energy	Nick Chaset				
Marin Clean Energy	Dawn Weisz				
Peninsula Clean Energy	Jan Pepper				
Redwood Coast Energy Authority	Matthew Marshall				
San José Clean Energy	Lori Mitchell				
Silicon Valley Clean Energy	Girish Balachandran				
Sonoma Clean Power Authority	Geof Syphers				
Valley Clean Energy	Mitch Sears				

Chair

Attest by: Secretary

California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacommunitypower.org

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (this “**Agreement**”) is entered into as of [REDACTED], 2022 (the “**Effective Date**”) between and among California Community Power, a California joint powers authority (“**CC Power**”), and [REDACTED], a [state and type of legal formation] (“**Respondent**”).

The parties to this Agreement intend to enter into discussions regarding a potential transaction resulting from Respondent’s offer submitted into the recent CC Power 2021 Request for Offers for Firm Clean Energy Resources (the “**Transaction**”). In connection with the Transaction, the parties may receive certain Confidential Information (as defined below) from each other, the confidentiality of which the parties desire to protect. For purposes of this Agreement, the party making the disclosure of Confidential Information is referred to as “**Disclosing Party**” and the party receiving such Confidential Information is referred to as “**Receiving Party**.” For purposes of this Agreement, “**Affiliate**” means, as to either party, any person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that party. Affiliate also includes each member of CC Power. For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. **Confidential Information.**

(a) **Defined.** “**Confidential Information**” means all proprietary, confidential or otherwise nonpublic information of or relating to a party or its Affiliates, in any form whether written, electronic, visual or oral, and all notes, analyses, compilations, studies, reports, interpretations, or other material prepared by Receiving Party or its employees or agents which contain or reflect or are based upon, in whole or in part, the foregoing, that is designated by the Disclosing Party as “confidential.” In order to designate information as confidential, the Disclosing Party must clearly label and identify the specific portion of the material designated with the word “Confidential”.

(b) **Exclusions.** Confidential Information does not include information (i) that is or becomes generally known to the public other than as a result of disclosure by Receiving Party or any of its Representatives (as defined below) in violation of the terms of this Agreement; (ii) that is in the possession of Receiving Party at the time of disclosure by Disclosing Party, as reasonably evidenced by a prior or contemporaneous writing and other than as a result of Receiving Party’s breach of any legal obligation; (iii) that becomes known to Receiving Party through disclosure by sources other than Disclosing Party which, to the knowledge of Receiving Party, are not subject to any obligation of confidentiality or other duty not to disclose such information; or (iv) that is independently developed by Receiving Party without reference to the Confidential Information and through persons who have not had, either directly or indirectly, access to or knowledge of such Confidential Information, as reasonably evidenced in writing by Receiving Party.

2. **Obligation of Confidentiality.** Receiving Party will not use or disclose any Confidential Information of Disclosing Party except as reasonably necessary for purposes of negotiating and implementing, the Transaction, except that Receiving Party may disclose such Confidential Information where it is under a legal or regulatory obligation to do so. Subject to the foregoing, without the prior written consent of Disclosing Party, Receiving Party will not disclose any portion of the Confidential Information to any person, other than to employees, directors, officers, consultants, Affiliates and their Representatives (as defined below), advisors, attorneys, auditors, lenders, financial investors or agents of Receiving Party who have a need to know in connection with the Transaction or otherwise (collectively, to the extent Receiving Party discloses, or provides access to, Confidential Information to any of the foregoing, its “**Representatives**”), provided such Representatives are informed of this Agreement and agree to be bound by the terms hereof or are otherwise bound by obligations of confidentiality with regard to the Confidential Information which are at least as protective as the confidentiality obligations set forth herein. Receiving Party shall be responsible for any breach of this Agreement by any of its Representatives.

3. To the extent that any Confidential Information that is exchanged between Disclosing Party and Receiving Party concerns pending or threatened legal proceedings, governmental investigations, or regulatory proceedings, the parties understand and agree that they have a commonality of interest with respect to such material, and it is their intention and mutual understanding that such material shall be subject to confidentiality or protection

under attorney-client privilege, work product doctrine, or other applicable privilege. All Confidential Information provided by the Disclosing Party that is entitled to protection under any such privilege or doctrine shall remain entitled to protection under such privileges, doctrines, this Agreement, and the joint defense doctrine and the sharing of such material shall not constitute a waiver of such privilege or doctrine. Nothing in this Agreement obligates any party to disclose any material subject to attorney-client privilege, work product doctrine, or any other applicable privilege.

4. **Compliance with the Law.** If Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of Disclosing Party, Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. In the event such protective order or other remedy is not timely obtained and communicated to Receiving Party, Receiving Party or its Representatives shall only disclose such portion of the Confidential Information which is legally required to be disclosed to the person seeking disclosure, and shall require to the extent possible that any Confidential Information so disclosed will be accorded confidential treatment. Each party hereto acknowledges and agrees that information and documentation provided in connection with the Transaction may be subject to the California Public Records Act (Government Code Section 6250 et seq.).

5. **Return of Materials.** Upon termination of the Agreement or upon the earlier written request of Disclosing Party, Receiving Party shall, and shall cause its Representatives to, promptly upon the written request of Disclosing Party, deliver to Disclosing Party all documents, files or other materials furnished by or on behalf of Disclosing Party to Receiving Party constituting Confidential Information, without retaining any copies of them. Receiving Party shall then and shall cause its Affiliates and relevant Representatives to destroy all other documents, files or materials constituting Confidential Information of Disclosing Party (including all electronic records containing or describing any Confidential Information) and shall confirm in writing to Disclosing Party that all Confidential Information and records have been returned or destroyed. The obligations of Receiving Party contained in this Agreement shall survive any return or destruction of documents, files or other materials containing Confidential Information; provided, however, an archival copy of the Confidential Information and copies, notes, summaries, or extracts may be retained (and subsequently destroyed) in the files of Receiving Party in accordance with its record retention policies and procedures and legal requirements, so long as such policy does not conflict with the terms of protection of Receiving Party for the periods described in this Agreement. Any Confidential Information so retained shall remain subject to the terms of this Agreement and shall not be accessed, used or reproduced by the Receiving Party and its Representatives for any purpose not expressly permitted under this Agreement or otherwise required by law.

6. **Governing Law and Jurisdiction.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without regard to conflicts of laws. The parties hereby consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in San Francisco County for the purposes of adjudicating any matter arising from or in connection with this Agreement. Neither party shall be liable to the other for special, indirect, consequential or punitive damages.

7. **No Obligation.** Until a definitive written agreement is executed and delivered by the parties, no agreement providing for the Transaction shall be deemed to exist, and neither party is under any legal obligation to enter into the Transaction because of this Agreement.

8. **No Representation, Warranty or Obligation.** Disclosing Party makes no representation or warranty, express or implied, as to the Confidential Information, including without limitation to any warranty against infringement, accuracy or completeness, and Disclosing Party shall have no liability based upon the Confidential Information; provided, that Disclosing Party represents it has the right to disclose the Confidential Information to Receiving Party hereunder. Nothing in this Agreement obligates Disclosing Party to make any particular disclosure of Confidential Information or to complete, revise or update any Confidential Information. Nothing herein obligates either party to enter into or continue discussions or transactions related to the Transaction or prevents Disclosing Party from disclosing its Confidential Information to any other person or entity.

9. **Term.** This Agreement will continue in full force and effect for a term of two (2) years from the Effective Date. This Agreement, including the duty of Receiving Party to maintain the confidentiality of all Confidential Information received by it during the term of this Agreement as provided for herein, shall survive any change or termination of the parties' business relationship.

10. **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.

11. **Miscellaneous.** The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement. This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter hereof. This Agreement supersedes all prior written and oral agreements and all other communications between the parties. Amendments and modifications to this Agreement will be effective only if written and signed by both parties. This Agreement shall not be assigned without the written consent of the other party. This Agreement shall be binding upon and inure to the benefit of each party's successors or permitted assigns. Except as expressly stated herein, each party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties hereto, and their successors and permitted assigns. If any provision in this Agreement is invalid or unenforceable in any circumstances, its application in any other circumstances and the remaining provisions of this Agreement will not be affected thereby. All notices, requests, consents and other communications required or permitted to be delivered hereunder must be made in writing and delivered by hand, via overnight delivery service or by registered or certified mail, postage prepaid. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this Agreement delivered by e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Each party represents and warrants that the individual signing below has the necessary authority to bind the party set forth below.

IN WITNESS WHEREOF, the parties hereto have executed this Non-Disclosure Agreement as of the Effective Date.

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

By: _____
Name:
Title:

[Respondent]

By: _____
Name:
Title:

California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacommunitypower.org

_____, 2022

[Respondent Address]

Attention: [name of recipient]

Subject: Exclusivity Agreement for Power Purchase Agreement Negotiation

Regarding: [Project Name]

Dear Respondent:

California Community Power, a California joint powers authority (“**CC Power**”) is pleased to confirm that the offer submitted by [name of entity that submitted offer], a [state and type of legal formation] (“**Respondent**”) for the [project name] (the “**Project**”) in the recent [name/title of RFO] (“**RFO**”) has been placed on the shortlist for further negotiations. If you wish to proceed with negotiations for a power purchase agreement (“**PPA**”) under the terms and conditions set forth below (the “**Exclusivity Agreement**”), please countersign where provided below and return it to [E-mail] no later than [seven (7)] business days after the date set forth above. “**Offer**” shall mean the [description of offer, project size, product description, contract price, and COD date].

I. Representations and Warranties

In accepting a position on the shortlist, Respondent hereby makes the following representations and warranties:

- (a) Respondent and its affiliates have not engaged and will not engage in oral, written, or any other form of communication with any third party under which such third party, or any of such third party’s affiliates may agree, conditionally or unconditionally, to enter into an agreement for the sale of the product associated with the Offer.
- (b) Respondent and its affiliates have not engaged and will not engage in oral, written, or any other form of communication with any other entity submitting an offer to CC Power in response to the RFO with respect to the terms of Respondent’s Offer or such other entities’ offer(s) in the RFO; and
- (c) Respondent will promptly notify CC Power of any material change in circumstances that may affect Respondent’s ability to fulfill the terms of its Offer, at any time from Offer submission to CC Power’s acceptance of the Offer, as evidenced by CC Power’s execution of PPA(s), or Respondent’s withdrawal of the Offer.

Respondent understands and agrees that any breach by Respondent of the above representations and warranties is grounds for immediate disqualification of Respondent from the RFO and constitutes a material breach under this Exclusivity Agreement.

California Community Power

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II. Exclusivity

In consideration of its shortlist position, Respondent hereby grants CC Power exclusivity with respect to the Offer until the earlier of the following events (the “**Exclusivity Deadline**”):

- (a) CC Power’s termination of negotiations of the PPA; and
- (b) **Ninety (90)** days after the execution date of this Exclusivity Agreement.

The Exclusivity Deadline shall be extended automatically if the parties are continuing to negotiate in good faith with respect to the Offer; provided, however, that after the initial ninety (90) day period, Respondent may at any time terminate exclusivity and cause the occurrence of the Exclusivity Deadline on ten (10) business days’ prior written notice to CC Power. Respondent agrees that, prior to the Exclusivity Deadline, it shall not enter into any agreements nor otherwise discuss the sale of output of the Project associated with the Offer with any third party under which it or its affiliates may agree, conditionally or unconditionally, to enter into an PPA for the output of the Project associated with the Offer. Such activity constitutes a material breach under this Exclusivity Agreement.

As a condition of CC Power’s obligations under this Exclusivity Agreement, Respondent agrees to provide CC Power with a deposit in the form of either (a) cash or (b) a letter of credit in a form reasonably acceptable to CC Power in the amount of **[\$3.00/kW times the Project’s guaranteed capacity set forth in the Offer]** (the “**Shortlist Deposit**”) within three (3) business days of Respondent’s countersignature of this Exclusivity Agreement. “**Letter of Credit**” means an irrevocable standby letter of credit, in a form reasonably acceptable to CC Power, issued either by (i) a U.S. commercial bank, or (ii) a U.S. branch of a foreign commercial bank that meets the following conditions: (A) it has sufficient assets in the U.S. as determined by CC Power, and (B) it is acceptable to CC Power in its sole discretion. The issuing bank must have a credit rating of at least A- from S&P or A3 from Moody’s, with a stable outlook designation. All costs of the Letter of Credit shall be borne by Respondent. The Letter of Credit should be sent by overnight delivery to:

Attn: **[name of CC Power representative]**
California Community Power
[address for receipt of letter of credit]
[address for receipt of letter of credit]

CC Power will provide wire instructions to Respondent if Respondent requests to post the Shortlist Deposit in the form of cash.

The Shortlist Deposit will be promptly returned to Respondent in its entirety under one or more of the following conditions: (i) following execution of the PPA and provision of the required security in accordance with the terms of such PPA, (ii) CC Power’s rejection of Respondent’s Offer following shortlist selection, (iii) failure of both CC Power and Respondent to agree on the terms of an PPA, (iv) CC Power’s termination of the RFO process, or (v) termination of exclusivity following occurrence of the Exclusivity Deadline as provided for in this Exclusivity Agreement.

Notwithstanding the foregoing, Respondent hereby acknowledges and agrees that Respondent will forfeit its Shortlist Deposit and CC Power shall have the right to draw on the Shortlist Deposit in its entirety, as its sole and exclusive remedy, if (i) it is determined that Respondent made any material misrepresentations in the Offer, (ii) Respondent materially breaches its obligations under the Exclusivity Agreement, (iii)

California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacomunitypower.org

Respondent unilaterally withdraws the Offer or attempts to materially modify the terms of its Offer prior to the Exclusivity Deadline, or (iv) prior to the Exclusivity Deadline, Respondent enters into discussions with any third party under which such third party, or any of such third party’s affiliates may agree, conditionally or unconditionally, to enter into a PPA for the sale of the capacity associated with the Offer.

This Exclusivity Agreement does not obligate CC Power to enter into an PPA or any other agreement with respect to Respondent’s Offer. Respondent agrees that CC Power will not be obligated to enter into any transaction with Respondent unless and until a final negotiated PPA has been submitted for, and received, approval from the board of CC Power, as applicable, and fully executed by the parties thereto.

This Exclusivity Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without regard to conflicts of laws. The parties hereby consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in San Francisco County for the purposes of adjudicating any matter arising from or in connection with this Exclusivity Agreement. Neither party shall be liable to the other for any lost or prospective profits or any other consequential, incidental, special, punitive, indirect or exemplary damages under or in respect to this Exclusivity Agreement.

Very truly yours,

CALIFORNIA COMMUNITY POWER,
a California Joint Powers Authority

By: _____
Name: _____
Title: _____

Acknowledged and Agreed:

Respondent

By: _____
Name: _____
Title: _____
Date: _____

California Community Power

Agenda Item 6Bii

1. **Resolution 22-01-04 *Approval of Firm Clean Energy Resource Phase 2 Cost Sharing Agreement and Authorization for General Manager to Execute with Participants.***
2. **Attachment A to Resolution 22-01-04: Phase 2 Cost Sharing Agreement, California Community Power and Indicated Members to Consider, Negotiate, and Develop Agreements for Firm Clean Energy Resources.**

California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacommunitypower.org

January 19, 2022

To: CC Power Board of Directors
From: BBSW, General Counsel
RE: Firm Clean Resources Phase 2 Cost Sharing Agreement

CC Power, led by San José Clean Energy and Sonoma Clean Power in coordination with the *ad hoc* Project Oversight Committee (“POC”), is currently in the process of evaluating and shortlisting developers who responded to the Firm Clean Resource (“FCR”) Request for Offers. Once the developers have been shortlisted, Phase 2 of CC Power’s project development process begins. Phase 2 includes, in part, the development and negotiation of project agreements with the shortlisted developers, participation agreements with the member participants, and potentially certain operations agreements. SJCE, SCP and the Members participating in the FCR project will use the services from consultants and legal counsel retained by CC Power to develop the necessary agreements and evaluations for Phase 2.

In order to move forward with Phase 2 of the FCR project, Members who are participating in the FCR project have agreed to reimburse CC Power for costs incurred in connection with Phase 2. Pursuant to the attached Phase 2 Cost Sharing Agreement, CC Power will enter into contracts for Services, and participating Members will reimburse CC Power for the costs associated with those contracts. The aggregate costs for Phase 2 were approved by the Board at the Regular Board meeting on December 15, 2021 as part of the 2022 Budget and are detailed in the agreement. While the aggregate costs for Phase 2 are consistent with the Board approved Budget, the participating members have subsequently made changes to their desired contract capacity and associated allocated costs. Therefore, approval of this Resolution will also constitute approval of an update to the 2022 Budget to reflect these updated allocated costs.

The Phase 2 Cost Sharing Agreement further establishes the terms for the treatment of Confidential Information that is received as part of the FCR project consideration and negotiation process.

The attached Phase 2 Cost Sharing Agreement is materially the same as the cost sharing agreement used for the Long Duration Storage Projects. Staff is recommending to the Board that it approve the attached Phase 2 Cost Sharing Agreement and authorize the General Manager to

execute this agreement and any further amendments to this agreement consistent with Board action.

**California Community Power
Resolution 22-01-04**

**APPROVAL OF FIRM CLEAN ENERGY RESOURCE PHASE 2 COST SHARING AGREEMENT AND
AUTHORIZATION FOR GENERAL MANAGER TO EXECUTE WITH PARTICIPANTS**

WHEREAS, California Community Power (“CC Power”) was created by a Joint Powers Agreement (“JPA”) to develop, acquire, construct, own, manage, contract for, engage in, finance and/or provide energy related programs for the use of and by its Members; and

WHEREAS, CC Power is engaged in an ongoing solicitation for Firm Clean Energy Resource (“FCR”) projects, contemplated to be procured through CC Power; and

WHEREAS, JPA Section 4.01 provides that CC Power shall be administered by a Board of Directors, which shall be vested with the powers set forth in the JPA, and shall have the authority to provide for the general management and oversight of the affairs, property and business of CC Power; and

WHEREAS, as CC Power will manage the use of professional services contracts to fulfill the objections of the FCR solicitation and consider FCR projects; and

WHEREAS, an agreement is needed to set forth the obligations of CC Power to administer the project and the obligation of participating members to assist and fund this effort, and for other purposes; and

WHEREAS, the aggregate costs for Phase 2 of the FCR project process, along with desired contract capacity and associated allocated costs, were approved by the CC Power Board at the Regular Board meeting on December 15, 2021; and

WHEREAS, CC Power Members participating in the FCR project process have subsequently made changes to their desired contract capacity and associated allocated costs; and

WHEREAS, the updated contract capacity and associated allocated costs are detailed in this Agreement;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of CC Power hereby:

1. Approve the Firm Clean Energy Resource Phase 2 Cost Sharing Agreement, in substantially final form, attached hereto as Attachment A.
2. Delegate the authority to the General Manager to execute this Agreement on behalf of CC Power.
3. Approve adjustments to the 2022 CC Power Budget FCR allocated costs as detailed in Exhibit A of Attachment A.

**California Community Power
Resolution 22-01-04**

PASSED AND ADOPTED by the Board of Directors of California Community Power this 19th day of January, 2022, by the following vote:

		Aye	No	Abstain	Absent
Central Coast Community Energy	Tom Habashi				
CleanPowerSF	Barbara Hale				
East Bay Community Energy	Nick Chaset				
Marin Clean Energy	Dawn Weisz				
Peninsula Clean Energy	Jan Pepper				
Redwood Coast Energy Authority	Matthew Marshall				
San José Clean Energy	Lori Mitchell				
Silicon Valley Clean Energy	Girish Balachandran				
Sonoma Clean Power Authority	Geof Syphers				
Valley Clean Energy	Mitch Sears				

Chair

Attest by: Secretary

**PHASE 2 COST SHARING AGREEMENT
CALIFORNIA COMMUNITY POWER AND INDICATED
MEMBERS TO CONSIDER, NEGOTIATE, AND
DEVELOP AGREEMENTS FOR FIRM CLEAN ENERGY
RESOURCES**

This Phase 2 Cost Sharing Agreement (“Agreement”) is made between and among the California Community Power (“CC Power”) and certain Members (“Indicated Members”), effective upon execution by CC Power and all Indicated Members, whom have chosen to participate in ongoing activities to evaluate offers for firm clean energy resources and to negotiate, and develop potential agreements for firm clean energy resources. Indicated Members have agreed to reimburse CC Power for costs incurred in this process, and to otherwise participate and assume other obligations in connection with the consideration, negotiation, and development of Firm Clean Energy Resource (“FCR”) agreements. In this Agreement, CC Power and each Indicated Member are referred to individually as “Party” and collectively as “the Parties.”

RECITALS

- A. The Parties seek to jointly procure FCR to cost effectively enhance the integration of each Party’s respective renewable energy portfolios into the California Independent System Operator (“CAISO”) grid and to aid in meeting the mandate of the California Public Utilities Commission (“CPUC”) to procure long lead-time clean resources, as defined in CPUC Decision 21-06-035.
- B. CC Power, a Joint Powers Authority, was formed for the purpose of developing, acquiring, constructing, owning, managing, contracting for, engaging in, or financing electric energy generation and storage projects, and for other purposes.
- C. CC Power issued a Request for Offer (the “FCR RFO”) and received offers for firm clean resources. The Parties intend to consider the offers for potential procurement of one or more such firm clean resources through CC Power, in accordance with the CC Power Agency Joint Powers Agreement dated January 29, 2021 (“JPA Agreement”).
- D. The Parties desire to use the services from consultants and legal counsel (“Professionals”) retained by Parties to consider the offers received from the FCR RFO, and to negotiate and develop potential agreements necessary to procure FCR resources, including but not limited to, power purchase agreements, operation agreements, and project participation agreements between CC Power, project developers, and the Indicated Members. (“Services”).
- E. The Parties have agreed to share the costs of Professionals, whose Services will benefit the Parties as provided in this Agreement.
- F. The Parties seek to establish ground rules for the use of Confidential Information and related matters, as that term is defined herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties mutually agree to the following:

1. Recitals. The Recitals stated above are true and correct and are incorporated by this reference into this Agreement.
2. Not to Exceed. The Parties agree that each Party's individual amount shall not exceed the amount set forth in Exhibit A, without the express written consent of the Parties.
3. Role of the Parties. Each of the Parties that will be participating in the cost-sharing arrangement for the various contracts for Services are the "Indicated Members." CC Power is the administrator of the various contracts for Services. The Indicated Members, for whom Professionals will perform Services under contract with CC Power, are third party beneficiaries of the various contracts for Services for the purposes of this Agreement. As third-party beneficiaries, each Indicated Member, will be given reasonable access to the results of the Services, such as the relevant advice, information and analysis, and will be bound as to that information by the confidentiality requirements of this Agreement.
4. Responsibilities of the Parties.
 - a. CC Power, as the responsible party for the contracts for Service, (each a "Contract") will do all of the following:
 - i. Enter into a Contract with Professionals to perform all Services, to the extent the Contract is not already executed.
 - ii. Manage the provision of Services contracted to ensure the cost of Services shall not exceed the Aggregate Not to Exceed limit provided in Section 3 above.
 - iii. Make timely payments to Professionals under the terms of the Contract and administer and manage the Contract.
 - iv. In the event that CC Power determines that it is in the best interests of the Parties to terminate the Contract, CC Power will consult with the Indicated Members before making any recommendations to the CC Power Board.
 - v. Subject to the confidentiality provisions described below in Section 6, CC Power will maintain and make available to the Indicated Members, during regular business hours, accurate books and accounting records relating to this Agreement. CC Power will permit the Indicated Members to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. CC Power shall maintain such data and records in an accessible location and condition for a

period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later.

- b. The Indicated Member/Members for the Contract will do all of the following:
- i. Reimburse, the CC Power for the cost of the payments made by CC Power to Professionals pursuant to the Contract. With regard to San Jose Clean Energy only, (1) obligations under this Agreement are special limited obligations payable solely from the Designated Fund (being the San José Energy Operating Fund established pursuant to City of San José Municipal Code, Title 4, Part 63, Section 4.80.4050 et. seq.), and shall not be a charge upon the revenues or general fund of the City of San José or upon any non-SJCE moneys or other property of the City of San José or its Community Energy Department, and (2) cannot exceed the limitations on the contract authority of the City of San José’s City Manager (established pursuant to City of San José Municipal Code, Title 4, Chapter, Section 4.04.020) without the prior approval of the City Council. With regard to CleanPowerSF only, (1) obligations under this Agreement are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF, and shall not be a charge upon the revenues or general fund of the San Francisco Public Utilities Commission or the City and County of San Francisco or upon any non-CleanPowerSF moneys or other property of the San Francisco Public Utilities Commission or the City and County of San Francisco, (2) cannot exceed the amount certified by the San Francisco City Controller for the purpose and period stated in such certification, and (3) absent an authorized emergency per the San Francisco City Charter or Code, no San Francisco City representative is authorized to offer or promise, nor is San Francisco required to honor, any offered or promised payments under this Agreement for work beyond the agreed upon scope or in excess of the certified maximum amount without the San Francisco City Controller having first certified the additional promised amount. Each Indicated Member must pay its share within thirty (30) days of receiving an invoice or invoices from CC Power.
 - ii. Work cooperatively with CC Power in CC Power’s (1) negotiation, administration and management of the Contract and (2) supervision of the Services provided by Professionals.

5. Confidential Treatment of Information.

As part of the FCR project consideration and negotiation process, CC Power shall enter into a Non-Disclosure Agreement (“NDA”) approved by the CC Power Board with each project developer. The terms of which shall apply to all Parties to this Agreement.

The Parties understand and agree that all materials, documents and information (including meetings and discussions) received subject to the NDA or received in relation to the FCR

negotiation and labeled as set forth in subsection a. below shall be confidential (“Confidential Information”).

a. Limited Use of Confidential Information

The Parties understand and agree that the Confidential Information will be used exclusively for the purposes of negotiating potential agreements for one or more FCR projects. The Parties understand and agree that they may receive analysis or other work product from Professionals for the limited purposes of considering and negotiating potential agreements associated with the FCR projects. Parties agree to keep any such analysis or work product marked “Proprietary” or “Confidential” by the Professionals or other Parties, in the strictest confidence and treat confidentially and in accordance with Section 7 below any analysis or work product marked “Proprietary” or “Confidential.”

The Parties expressly acknowledge and agree that they will not use Confidential Information to negotiate or facilitate any commercial agreements with any FCR RFO respondents prior to CC Power’s release of the FCR RFO project.

Each Party to this Agreement is responsible for maintaining the confidentiality and appropriate use of the Confidential Information to at least the same degree of care that the Party would protect its own confidential information.

b. Obligations of Parties

The Confidential Information will be kept confidential and not disclosed by any Party to any other person, except that Confidential Information may be disclosed to any of the Parties’ affiliates, directors, officers, board members, employees, attorneys and consultants (collectively, its “Representatives”) who require access to such information in connection with each of the Party’s participation in the FCR RFO.

Each of the Parties agrees that any of its Representatives to whom Confidential Information is disclosed will be informed of the confidential or proprietary nature thereof and of the Party’s obligations under this Agreement. Each Party shall be responsible for any use of Confidential Information by any of its Representatives. Indicated Members recognize that the relative positions on commercial terms of other individual Indicated Members are particularly sensitive and shall not be shared with third-party consultants.

c. Requests for Confidential Information

Upon any receipt of any request for Confidential Information the Party receiving the request (the “Receiving Party”) shall notify the other Parties of the request and take reasonable steps to assert all privileges or exemptions that might apply to prevent disclosure of such Confidential Information.

Prior to any disclosure of Confidential Information, the Receiving Party shall provide a

reasonable opportunity to all other Parties to seek a court order preventing disclosure of the Confidential Information at the sole cost and expense of the Parties seeking such order.

The Parties to this Agreement are subject to the requirements of the California Public Records Act as set forth at California Government Code sections 6250 et seq.

6. Specific Party Provisions. Terms of this agreement specific to individual Parties are incorporated herein as Exhibit B.
7. Term. The term of this Agreement will commence on the effective date above and terminate after the Parties have determined the FCR RFO to be completed and all required reimbursements to CC Power for Services have been made. For clarity, completion of the FCR RFO shall mean the procurement, through executed power purchase agreements, or release of all FCR RFO projects.
8. Hold Harmless and Indemnification. Each Party shall defend, save harmless, and indemnify the other Party or Parties, and their directors, officers, agents, and employees, from any and all claims for injuries or damage to persons and/or property which arise out of the conditions of this Agreement which are caused by the sole negligent acts or omissions or other wrongful conduct of the other Party, its directors, officers, agents and/or employees; provided that, with regard to SJCE, such duty to defend, save harmless, and indemnify extends only to, and in no circumstances will exceed, the Designated Fund for SJCE, and shall not be a charge upon the revenues or general fund of the City of San José or upon any non-SJCE moneys or other property of the City of San José or its Community Energy Department.
9. Amendment and Waiver. Except with regards to Exhibit A which may be amended through action of the CC Power Board, no change or modification of this Agreement shall be valid unless the same is in writing and signed by all Parties, and no verbal understanding or agreement not incorporated herein shall be binding on any Party hereto.
10. Governing Law. This Agreement shall be construed and governed by the laws of the State of California, and any suit or action initiated by any Party shall be brought in the Superior Court for the County of Santa Clara, California, or the United States District Court for the Northern District of California.
11. Time of Essence. Time is of the essence for every provision hereof in which time is a factor.
12. Benefit of Parties. The terms of this Agreement shall be binding and inure to the benefit of the Parties hereto and their successors and assigns. No Party shall assign this Agreement or any portion thereof to a third party without the prior written consent of all of the other Parties. Any such assignment without prior written consent by one Party shall give any or all of the other Parties the right to automatically and immediately terminate this Agreement with respect to the Party making the unauthorized assignment without advance notice.
13. No Waiver; Reservation of Rights. This Agreement is limited as specified and the execution, delivery and effectiveness of this Agreement shall not operate as a modification, amendment

or waiver of any provision of the CC Power JPA Agreement. This Agreement does not obligate any Party to participate in any Project, and all Members retain their rights under Article VI, whereby all Members have the right, but not the obligation, to participate in a pro-rata share in the Project as determined by the Project Agreement, and all Indicated Members who elect not to participate in a Project have no obligations under the Project. Notwithstanding anything contained in this Agreement to the contrary, the Parties expressly reserve the right to exercise any and all of their rights and remedies under the JPA Agreement.

- 14. Entire Agreement of the Parties. This Agreement supersedes any and all agreements, either oral or written, between the Parties with respect to the subject matter of this Agreement and contains all of the representations, covenants, and agreements between the Parties with respect to the subject matter of this Agreement.
- 15. Independent Counsel. Each Party has had the opportunity to consult with its own attorney with respect to this Agreement, and in the event that any language contained herein is construed to be vague or ambiguous, this Agreement shall not be strictly construed against any Party.
- 16. Notice. Notice given under or regarding this Agreement shall be deemed given upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), or reputable overnight commercial delivery service. Notice shall be sent to the respective Party at the address indicated below or to any other address as a Party may designate from time to time by a notice given in accordance with this paragraph.

If to CC Power: Tim Haines, Interim General Manager
 Central Coast Community Energy 70
 Garden Court, 3rd Floor Monterey,
 CA 93940
 timhaines@powergridsymmetry.com

If to 3CE: Tom Habashi, CEO
 Central Coast Community Energy
 70 Garden Court, 3rd Floor
 Monterey, CA 93940
 thabashi@3ce.org

If to CPSF: Barbara Hale, Assistance General Manager, Power
 San Francisco Public Utilities Commission
 525 Golden Gate Ave, 13th Floor
 San Francisco, CA 94102
 bhale@sflower.org

If to MCE: Dawn Weisz, CEO

MCE
125 Tamalpais Avenue
San Rafael, CA 94547
dweisz@mcecleanenergy.org

If to PCE: Jan Pepper, CEO
Peninsula Clean Energy
2075 Woodside Road
Redwood City, California 94061
jpepper@peninsulacleanenergy.com

If to RCEA: Matthew Marshall, CEO
Redwood Coast Energy Authority
633 3rd Street
Eureka, CA 95501
mmarshall@redwoodenergy.org

If to SJCE: Lori Mitchell, Director
cc: Luisa Elkins, Senior Deputy City Attorney
San José Clean Energy
200 E. Santa Clara Street, 14th Floor
San José, CA 95113
Lori.Mitchell@sanjoseca.gov
Luisa.Elkins@sanjoseca.gov

If to SVCE: Girish Balachandran, CEO
Silicon Valley Clean Energy Authority
333 W. El Camino Real, Suite 330
Sunnyvale, CA 94087
girish@svcleanenergy.org

If to SCPA: Geof Syphers, CEO
Sonoma Clean Power
50 Santa Rosa Avenue, 5th Floor
Santa Rosa, CA 95404
gsyphers@sonomacleanpower.org

If to VCE: Mitch Sears, Interim General Manager
Valley Clean Energy
604 2nd Street
Davis, CA 95616
Mitch.sears@valleycleanenergy.org

17. Invalid Provision. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
18. Headings and Captions. The headings and captions used in this Agreement are for convenience only and shall in no way define, limit, or describe the scope or intent of the Agreement or any part thereof.
19. Counterparts. This Agreement may be executed in counterpart originals, each of which is deemed to be an original for all purposes.

Approval Draft

IN WITNESS WHEREOF, the Parties have executed this Agreement below on the effective date written above.

CC Power

By: _____

Approved as to form by counsel for CC Power:

By: _____

Central Coast Community Energy

By: _____

Approved as to form by counsel for 3CE:

By: _____

CleanPowerSE

By: _____

Approved as to form by counsel for CPSF:

By: _____

Marin Clean Energy

By: _____

Approved as to form by counsel for MCE:

By: _____

Peninsula Clean Energy Authority

By: _____

Approved as to form by counsel for PCE:

By: _____

Redwood Coast Energy Authority

By: _____

Approved as to form by counsel for RCEA:

By: _____

City of San José, Chief of Staff Office of the City Manager

By: _____

Approved as to form by counsel for SJCE:

By: _____

Silicon Valley Clean Energy Authority

By: _____

Approved as to form by counsel for SVCE:

By: _____

Sonoma Clean Power

By: _____

Approved as to form by counsel for SCP:

By: _____

Valley Clean Energy

By: _____

Approved as to form by counsel for SCP:

By: _____

Approval Draft

Exhibit A

Table A-1: Not to Exceed Cost Allocation

PARTICIPANT	TARGET CAP.	ALLOCATION	FCR
	(MW)	(%)	TOTAL
3CE	20	13.8	\$ 20,690
CPSF	18.5	12.8	\$ 19,138
MCE	15	10.3	\$ 15,517
PCE	22	15.2	\$ 22,758
RCEA	3.5	2.4	\$ 3,621
SCPA	14	9.7	\$ 14,483
SJCE	25	17.2	\$ 25,862
SVCE	17	11.7	\$ 17,586
VCE	10	6.9	\$ 10,345
TOTAL	145	100	\$ 150,000

Exhibit B

1. Specific Party Provisions

a. Provisions Specific to CleanPowerSF.

- i. False Claims. Pursuant to San Francisco Administrative Code §21.35, any Party to this agreement who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A Party will be deemed to have submitted a false claim to the City if the Party: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) 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; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) 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 (e) 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.
- ii. Political Activity. In performing its responsibilities under this Agreement, Responsible Party shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure.

California Community Power

Agenda Item 6C

1. Resolution 22-01-05 *Election of CC Power Chair and Vice-Chair.*
2. Resolution 22-01-06 *Appointment of CC Power Secretary and Treasurer/Controller for 2022.*

**California Community Power
Resolution 22-01-05**

ELECTION OF CC POWER CHAIR and VICE-CHAIR

WHEREAS, California Community Power (“CC Power”) was created by a Joint Powers Agreement (“JPA”); and

WHEREAS, JPA Section 4.06 provides that, at its first meeting in each calendar year, the Board shall elect or re-elect a Chair and Vice-Chair each of whom shall be selected from among the Directors of CC Power.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of CC Power hereby:

1. Elects _____ as Chair of CC Power.

2. Elects _____ as Vice-Chair of CC Power.

PASSED AND ADOPTED by the Board of Directors of California Community Power this 19th day of January, 2022, by the following vote:

		Aye	No	Abstain	Absent
Central Coast Community Energy	Tom Habashi				
CleanPowerSF	Barbara Hale				
East Bay Community Energy	Nick Chaset				
Marin Clean Energy	Dawn Weisz				
Peninsula Clean Energy	Jan Pepper				
Redwood Coast Energy Authority	Matthew Marshall				
San José Clean Energy	Lori Mitchell				
Silicon Valley Clean Energy	Girish Balachandran				
Sonoma Clean Power Authority	Geof Syphers				
Valley Clean Energy	Mitch Sears				

_____ Chair

_____ Attest by: Secretary

**California Community Power
Resolution 22-01-06**

**APPOINTMENT OF CC POWER SECRETARY AND
TREASURER/CONTROLLER FOR 2022**

WHEREAS, California Community Power (“CC Power”) was created by a Joint Powers Agreement (“JPA”); and

WHEREAS, JPA Section 4.06 provides that, at its first meeting in each calendar year, the Board shall appoint or re-appoint a Secretary and a Treasurer/Controller each of whom may, but need not, be selected from among the Directors; and

WHEREAS, JPA Section 4.06b provides that the Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Controller, neither of whom needs to be a Director.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of CC Power hereby:

1. Confirm the appointment of Brittany Iles, Braun Blaising Smith Wynne, P.C., as Secretary of CC Power for 2022.
2. Confirm the appointment of Tom Habashi, CEO, Central Coast Community Energy, as Treasurer and Controller of CC Power for 2022.

PASSED AND ADOPTED by the Board of Directors of California Community Power this 19th day of January, 2022, by the following vote:

		Aye	No	Abstain	Absent
Central Coast Community Energy	Tom Habashi				
CleanPowerSF	Barbara Hale				
East Bay Community Energy	Nick Chaset				
Marin Clean Energy	Dawn Weisz				
Peninsula Clean Energy	Jan Pepper				
Redwood Coast Energy Authority	Matthew Marshall				
San José Clean Energy	Lori Mitchell				
Silicon Valley Clean Energy	Girish Balachandran				
Sonoma Clean Power Authority	Geof Syphers				
Valley Clean Energy	Mitch Sears				

Chair

Attest by: Secretary