

File No. 190997

Committee Item No. 3

Board Item No. \_\_\_\_\_

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date October 30, 2019

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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- Introduction Form
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#### OTHER (Use back side if additional space is needed)

- Board of Supervisors Ordinances
- \_\_\_\_\_
- \_\_\_\_\_
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Completed by: Linda Wong

Date October 25, 2019

Completed by: Linda Wong

Date \_\_\_\_\_

1 [Purchase and Sale Agreements - Retroactive - Pacific Gas & Electric Company, Southern  
2 California Edison Company - Electricity-Related Products - Not to Exceed \$26,070,118 and  
3 \$3,500,000, Respectively]

4 **Resolution retroactively authorizing two agreements for CleanPowerSF to purchase**  
5 **electricity-related products from Pacific Gas & Electric Company for a term of January**  
6 **1, 2020, through December 31, 2022, for a total cost of \$26,070,118; and retroactively**  
7 **authorizing the sale of electricity-related products to Pacific Gas & Electric Company**  
8 **and Southern California Edison Company for a term of January 1, 2020, through**  
9 **December 31, 2022, in an amount not to exceed \$3,500,000.**

10  
11 WHEREAS, State law allows cities and counties to develop community choice  
12 aggregation (CCA) programs, through which local governments supply electricity to serve the  
13 needs of participating customers within their jurisdictions while the existing utility continues to  
14 provide services such as customer billing, transmission, and distribution; and

15 WHEREAS, In May 2016, the San Francisco Public Utilities Commission (PUC)  
16 launched a CCA program called CleanPowerSF to provide San Francisco residents and  
17 businesses the option to receive cleaner, more sustainable electricity at rates comparable to  
18 those offered by Pacific Gas & Electric Company (PG&E); CleanPowerSF uses clean and  
19 renewable energy purchased from various facilities, including energy from the City's municipal  
20 utility, Hetch Hetchy Power; and

21 WHEREAS, State law requires load serving entities (LSEs) that provide electric service  
22 to customers, such as CleanPowerSF and Hetch Hetchy Power, to own or procure certain  
23 quantities of an electricity-related product known as Resource Adequacy (RA); the RA  
24 compliance obligations include annual requirements established by the California Public  
25

1 Utilities Commission (CPUC) for specific quantities of different types of RA and specific  
2 quantities of RA located in a number of different geographical areas; and

3 WHEREAS, On July 26, 2019, the CPUC provided each LSE, including  
4 CleanPowerSF, with a preliminary notice of the estimated volumes of RA the LSE is required  
5 to own or procure for the 2020 through 2022 period; on September 20, 2019, the CPUC  
6 provided final notice to each LSE, including CleanPowerSF, of the actual volumes of RA that  
7 the LSE is required to procure by October 31, 2019, in order to meet its RA compliance  
8 obligations for the period 2020 through 2022; and

9 WHEREAS, CleanPowerSF has issued multiple requests for offers for RA for the 2020  
10 through 2022 time period and has executed RA contracts with several suppliers, but the PUC  
11 has determined that in order to procure sufficient amounts of RA for the 2020 through 2022  
12 time period, CleanPowerSF has no choice but to contract with PG&E; and

13 WHEREAS, To timely meet state law requirements, the PUC executed agreements  
14 with PG&E for RA supply for the period January 1, 2020 through December 31, 2022, one  
15 agreement in the amount of \$11,070,118 and the second in the amount of \$15,000,000; and

16 WHEREAS, The CPUC's September 20, 2019 notice to CleanPowerSF materially  
17 changed the quantities of RA that CleanPowerSF is required to procure in the different  
18 geographical areas and CleanPowerSF must engage in several purchases and sales of RA in  
19 a short timeframe in order to balance its RA supplies with its RA obligations and meet the  
20 compliance deadline of October 31, 2019; and

21 WHEREAS, CleanPowerSF entered into an agreement to sell RA to PG&E in an  
22 amount not to exceed \$2,000,000 and a second agreement to sell RA to Southern California  
23 Edison Company (SCE) in an amount not to exceed \$1,500,000; and

24 WHEREAS, Both PG&E and SCE require the use of the Edison Electric Institute (EEI)  
25 form power purchase agreement for their RA purchase and sale agreements; that form

1 agreement is already on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_;

2 and

3 WHEREAS, In Ordinance Nos. 75-15, 223-15, and 8-18, the Board of Supervisors  
4 authorized the PUC to use certain pro forma contracts, including the EEI form power purchase  
5 agreement, for the purchase and sale of electricity and electricity related products including  
6 the PG&E and SCE RA purchase and sale agreements; and

7 WHEREAS, PG&E and SCE each require binding arbitration in their RA agreements;  
8 the Board of Supervisors in Ordinance No. 227-18 delegated to the General Manager of the  
9 PUC the authority to enter into contracts for electricity and electricity-related products that  
10 contain a binding arbitration provision, subject to certain conditions which are satisfied in this  
11 instance; and

12 WHEREAS, The PUC considered the two agreements to purchase RA from PG&E and  
13 the two agreements to sell RA to PG&E and SCE during its public meeting on October 8,  
14 2019; and

15 WHEREAS, Section 9.118(b) of the Charter requires the Board of Supervisors to  
16 approve contracts that are estimated to cost \$10,000,000 or more and contracts with  
17 anticipated revenue of \$1,000,000 or more; now, therefore, be it

18 RESOLVED, That the Board of Supervisors hereby retroactively authorizes the  
19 General Manager of the Public Utilities Commission to enter into two RA agreements with  
20 Pacific Gas & Electric Company in amounts not to exceed \$11,070,118 and \$15,000,000 with  
21 the term of January 1, 2020, through December 31, 2022; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors hereby retroactively authorizes  
23 the General Manager of the Public Utilities Commission to enter into an agreement to sell RA  
24 to PG&E in the amount of \$2,000,000 with the term of January 1, 2020, through  
25



1 December 31, 2022, and an agreement to sell RA to SCE in the amount of \$1,500,000 with  
2 the term of January 1, 2020 through December 31, 2022; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors authorizes the General  
4 Manager of the Public Utilities Commission to make amendments to the agreements, as  
5 needed, that do not materially increase the obligations or liabilities of the City; and, be it

6 FURTHER RESOLVED, That within thirty (30) days of the agreements being fully  
7 executed by all parties, the Public Utilities Commission shall provide the final agreements to  
8 the Clerk of the Board for inclusion into the official file.

<p><b>Item 3</b> <b>File 19-0997</b></p>	<p><b>Department:</b> Public Utilities Commission (PUC)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p>	
<ul style="list-style-type: none"> <li>• The proposed resolution would retroactively approve an electricity purchase contract between San Francisco Public Utilities Commission’s (SFPUC) CleanPowerSF program and Pacific Gas &amp; Electric Company (PG&amp;E) for a term of three years, from January 2020 through December 2022, for an amount not to exceed \$11,070,118.</li> </ul>	
<p style="text-align: center;"><b>Key Points</b></p>	
<ul style="list-style-type: none"> <li>• State law requires all electric service providers, including CleanPowerSF, to maintain certain quantities of Resource Adequacy to ensure sufficient electric generation resources to meet unusually high levels of customer demand. Resource Adequacy requirements are determined by formula using demand forecasts. The California Public Utilities Commission (CPUC) has set new Resource Adequacy requirements, with retail sellers required to procure certain amounts of Resource Adequacy for three years. Retail sellers must also procure different types of Resource Adequacy products from different geographical areas.</li> <li>• In August 2019, CleanPowerSF submitted bids into PG&amp;E’s 2019 Multi-Year Resource Adequacy Sale solicitation. A bid for \$11,070,118 was accepted by PG&amp;E, and CleanPowerSF agreed to a purchase contract. On October 8, 2019, the SFPUC Commission approved the contract.</li> <li>• SFPUC is requesting retroactive approval because the contract has already been executed, as PG&amp;E only allowed for a five-day window to sign. The contract would help CleanPowerSF to meet its Resource Adequacy requirements over the three-year period.</li> </ul>	
<p style="text-align: center;"><b>Fiscal Impact</b></p>	
<ul style="list-style-type: none"> <li>• Over the three-year term of the contract, CleanPowerSF would have total expenditures of up to \$11,070,118. The Resource Adequacy purchase is already built into CleanPowerSF’s rate model and will not impact ratepayers.</li> </ul>	
<p style="text-align: center;"><b>Recommendation</b></p>	
<ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul>	

**MANDATE STATEMENT**

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

**BACKGROUND**

In May 2016, the San Francisco Public Utilities Commission (SFPUC) launched the CleanPowerSF Community Choice Aggregation (CCA)<sup>1</sup> program to provide cleaner and more sustainable electricity at comparable rates to those offered by Pacific Gas & Electric Company (PG&E). CleanPowerSF uses clean and renewable energy purchased from various sources, including SFPUC's Hetch Hetchy Power.

State law requires all electric service providers, including CleanPowerSF, to maintain certain quantities of Resource Adequacy to ensure sufficient electric generation resources to meet unusually high levels of customer demand. Resource Adequacy requirements are determined by formula using demand forecasts.

The California Public Utilities Commission (CPUC) has set new Resource Adequacy requirements in 2019. Retail sellers, such as the SFPUC, are now required to procure certain amounts of Resource Adequacy for three years instead of one year. Retail sellers must also procure different types of Resource Adequacy products from different geographical areas.

In August 2019, CleanPowerSF submitted bids in response to PG&E's 2019 Multi-Year Resource Adequacy sale solicitation. A bid for \$11,070,118 was accepted by PG&E, and CleanPowerSF agreed to a purchase contract. On October 8, 2019, the SFPUC Commission approved the Resource Adequacy contract with PG&E.<sup>2</sup>

**DETAILS OF PROPOSED LEGISLATION**

The SFPUC will submit an amended resolution to the October 30, 2019 Budget and Finance Committee to retroactively approve a contract with PG&E for the purchase of Resource Adequacy products for three years from January 2020 through December 2022 and a not to exceed amount of \$11,070,118. Our report is based on the SFPUC's proposed amended resolution.<sup>3</sup>

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<sup>1</sup> Community Choice Aggregation (CCA) programs enable local governments to purchase and/or develop power on behalf of the local community.

<sup>2</sup> The SFPUC Commission also approved a second purchase contract with PG&E for an amount not to exceed \$15,000,000, as well as sale contracts with PG&E and Southern California Edison for amounts not to exceed \$2,000,000 and \$1,500,000, respectively. According to Ms. Mulberg, the \$15,000,000 purchase contract was only partially accepted at an amount below \$10,000,000, which does not require Board of Supervisors approval. The sales contracts were ultimately not executed.

<sup>3</sup> File 19-0997 would retroactively approve (1) two contracts between CleanPowerSF and PG&E to purchase Resource Adequacy products for a not to exceed amount of \$26,070,118, and (2) two sale contracts between

According to SFPUC, SFPUC is requesting retroactive approval because PG&E required the contract to be signed by September 18, 2019, or would otherwise enter into contracts for the energy products with other buyers.

**FISCAL IMPACT**

The contract amount of \$11,070,118 is based on the bid price per kW (kilowatt) per month multiplied by the total kW of capacity. The actual bid price varies by the type of Resource Adequacy capacity product.

As noted above, CPUC requires retail sellers to procure different types of Resource Adequacy products from different geographical areas. According to Ms. Erin Mulberg, Power Enterprise Acting Manager of Origination and Power Supply, the energy source for the Resource Adequacy products is not currently known, but will be known 45 days before each monthly release of Resource Adequacy.

Ms. Mulberg states that Resource Adequacy capacity contracts are contracts that commit power plants to be available to the state’s grid operator, the California Independent System Operator (CAISO), when the demand for electricity in California is at it highest levels. Under these contracts, CleanPowerSF does not purchase energy from the plants. Instead, CleanPowerSF receives a commitment from the plant to make its power producing capability available to the CAISO if the state needs it to ensure electric system reliability.

Over the three-year term of the contract, CleanPowerSF would have total expenditures of up to \$11,070,118. Projected expenditures by year are shown in Table 1 below.

**Table 1: Projected Contract Expenditures by Year**

<b>Calendar Year</b>	<b>Amount</b>
2020	\$223,828
2021	5,546,290
2022	5,300,000
<b>Total</b>	<b>\$11,070,118</b>

According to Ms. Mulberg, the Resource Adequacy purchase is already built into the CleanPowerSF price model and will not impact ratepayers. Additional purchase contracts will be needed to meet CPUC’s Resource Adequacy requirements.

**RECOMMENDATION**

Approve the proposed resolution.

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CleanPowerSF and Southern California Edison Company and between CleanPowerSF and PG&E, for a total not to exceed amount of \$3,500,000. As noted above, the SFPUC (1) amended the contract with PG&E for \$15,000,000 to an amount less than \$10,000,000, and (2) did not execute the two sales contracts, totaling \$3,500,000.

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# Master Power Purchase & Sale Agreement

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Version 2.1 (modified 4/25/00)

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# MASTER POWER PURCHASE AND SALES AGREEMENT

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**MASTER POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET**

This *Master Power Purchase and Sale Agreement* ("*Master Agreement*") is made as of the following date: \_\_\_\_\_ ("*Effective Date*"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "*Agreement*." The Parties to this *Master Agreement* are the following:

Name ("\_\_\_\_\_ " or "Party A")  
All Notices:  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Attn: Contract Administration  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Duns: \_\_\_\_\_  
Federal Tax ID Number: \_\_\_\_\_

**Invoices:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Scheduling:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Payments:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Wire Transfer:**  
BNK: \_\_\_\_\_  
ABA: \_\_\_\_\_  
ACCT: \_\_\_\_\_

**Credit and Collections:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With additional Notices of an Event of Default or Potential Event of Default to:  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

Name ("Counterparty" or "Party B")  
All Notices:  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Attn: Contract Administration  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Duns: \_\_\_\_\_  
Federal Tax ID Number: \_\_\_\_\_

**Invoices:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Scheduling:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Payments:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Wire Transfer:**  
BNK: \_\_\_\_\_  
ABA: \_\_\_\_\_  
ACCT: \_\_\_\_\_

**Credit and Collections:**  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With additional Notices of an Event of Default or Potential Event of Default to:  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_



The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff \_\_\_\_\_ Dated \_\_\_\_\_ Docket Number \_\_\_\_\_

Party B Tariff Tariff \_\_\_\_\_ Dated \_\_\_\_\_ Docket Number \_\_\_\_\_

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**Article Two**

Transaction Terms and Conditions  Optional provision in Section 2.4. If not checked, inapplicable.

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**Article Four**

Remedies for Failure to Deliver or Receive  Accelerated Payment of Damages. If not checked, inapplicable.

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**Article Five**

Events of Default; Remedies  Cross Default for Party A:  
 Party A: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_  
 Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_  
 Cross Default for Party B:  
 Party B: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_  
 Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_
- Option C (No Setoff)

---

**Article 8**

Credit and Collateral Requirements 8.1 Party A Credit Protection:  
(a) Financial Information:  
 Option A  
 Option B Specify: \_\_\_\_\_  
 Option C Specify: \_\_\_\_\_  
(b) Credit Assurances:  
 Not Applicable  
 Applicable  
(c) Collateral Threshold:  
 Not Applicable  
 Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ \_\_\_\_\_

Party B Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party B is not rated by either S&P or Moody's

Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party B: \_\_\_\_\_

Guarantee Amount: \_\_\_\_\_

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: \_\_\_\_\_
- Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ \_\_\_\_\_

Party A Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party A is not rated by either S&P or Moody's
- Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party A: \_\_\_\_\_

Guarantee Amount: \_\_\_\_\_

---

**Article 10**

Confidentiality

Confidentiality Applicable      If not checked, inapplicable.

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**Schedule M**

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

**Other Changes**

Specify, if any: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name

Party B Name

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

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

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

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

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

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

**DISCLAIMER:** This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

## GENERAL TERMS AND CONDITIONS

### ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

1.3 “Bankrupt” means with respect to any entity, such entity (i) 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, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) 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 (v) is generally unable to pay its debts as they fall due.

1.4 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

1.8 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 “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 a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 “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 issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

1.20 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 “Event of Default” has the meaning set forth in Section 5.1.

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

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "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 a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "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 a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.



1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

## **ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS**

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

### **ARTICLE THREE: OBLIGATIONS AND DELIVERIES**

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

#### **ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE**

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

#### **ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES**

5.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

- (b) 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;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) 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;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
  - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
  - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

#### 5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

### **ARTICLE SIX: PAYMENT AND NETTING**

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if "Accelerated Payment of Damages" is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. 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, with notice of the objection given to the other Party. 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 two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 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 pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), 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.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.



6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

## ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS 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. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS 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 OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. 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. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

#### **ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS**

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) (“Party A Performance Assurance”), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## **ARTICLE NINE: GOVERNMENTAL CHARGES**

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

## **ARTICLE TEN: MISCELLANEOUS**

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 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 NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.



10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. 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. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors 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; provided, however, 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.

## SCHEDULE M

**(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)**

- A. The Parties agree to add the following definitions in Article One.

“Act” means \_\_\_\_\_.<sup>1</sup>

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

- B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

- C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

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<sup>1</sup> Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 -  
Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE  
APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS  
OF THE STATE OF \_\_\_\_\_<sup>2</sup> SHALL APPLY.

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<sup>2</sup> Insert relevant state for Governmental Entity or Public Power System.

## SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into \_\_\_\_\_ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider



and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this "Into Product" (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

"Native Load" means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

"Non-Firm" means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

"System Firm" means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the "System") with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller's failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer's failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system's, or the control area's, or reliability council's reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller's performance. Buyer's failure to receive shall be excused (i) by Force Majeure; (ii) by Seller's failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer's performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

"Transmission Contingent" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller's proposed generating source to the Buyer's proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Article 1.23 to the contrary.

"Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller's failure to deliver under a "Unit Firm" Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

**MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on \_\_\_\_\_, \_\_\_\_\_  
between \_\_\_\_\_ (“Party A”) and \_\_\_\_\_ (“Party B”)  
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: \_\_\_\_\_

Buyer: \_\_\_\_\_

Product:

Into \_\_\_\_\_, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: \_\_\_\_\_)

Unit Firm

(Specify Unit(s): \_\_\_\_\_)

Other \_\_\_\_\_

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency       Seller       Buyer

FT-Delivery Point Contingency       Seller       Buyer

Transmission Contingent       Seller       Buyer

Other transmission contingency

(Specify: \_\_\_\_\_)

Contract Quantity: \_\_\_\_\_

Delivery Point: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Energy Price: \_\_\_\_\_

Other Charges: \_\_\_\_\_

Confirmation Letter  
Page 2

Delivery Period: \_\_\_\_\_  
Special Conditions: \_\_\_\_\_  
Scheduling: \_\_\_\_\_  
Option Buyer: \_\_\_\_\_  
Option Seller: \_\_\_\_\_  
Type of Option: \_\_\_\_\_  
Strike Price: \_\_\_\_\_  
Premium: \_\_\_\_\_  
Exercise Period: \_\_\_\_\_

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated \_\_\_\_\_ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_

September 2019

**MASTER POWER PURCHASE AND SALE AGREEMENT  
RESOURCE ADEQUACY CONFIRMATION LETTER  
BETWEEN  
[PARTY A NAME] (“PARTY A”)  
AND  
PACIFIC GAS AND ELECTRIC COMPANY (“PARTY B”)**

This confirmation letter (“Confirmation”) confirms the Transaction between Party A and Party B, which becomes effective on the date fully executed by both Parties (the “Confirmation Effective Date”), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation. This Transaction is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of [Date of EEI Master between Parties], together with the Cover Sheet, [the Collateral Annex and Paragraph 10 to the Collateral Annex,] and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the “Master Agreement”). The Master Agreement and this Confirmation are collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation, have the meanings specified for such terms in the Master Agreement or the Tariff (defined below), as applicable. Section references herein are to this Confirmation unless otherwise noted.

**ARTICLE 1  
TRANSACTION TERMS**

**Buyer:** Party A

**Seller:** Party B

**Product:** The Product is the Capacity Attributes of the Unit(s) as defined in Appendix B; provided that if Buyer does not specify the Local Capacity Area in Appendix B, when applicable, then Seller may provide Local RAR from any Local Capacity Area in the Seller’s local areas. The Product does not include any right to the energy or ancillary services of the Unit(s).

**Delivery Period:** [Begin Date] through [End Date], inclusive.

**Contract Quantity and Contract Price:** The Contract Quantity and Contract Price for each day of each Showing Month during the Delivery Period shall be set forth in Appendix B.

**ARTICLE 2  
DELIVERY OBLIGATIONS AND ADJUSTMENTS**

**2.1 Firm RA Product**

Seller’s obligation to deliver the Contract Quantity of Product for each day included in the Delivery Period is firm and will not be excused for any reason.

**2.2 Seller To Identify Shown Unit**



- (a) Seller shall identify the Shown Unit(s) that meet the Product characteristics and Contract Quantity specified in Appendix B by providing Buyer with the specific Unit information no later than:
  - (i) Fifteen (15) calendar days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month, if the Confirmation Effective Date is at least fifteen (15) calendar days before such Compliance Showing deadline; or
  - (ii) One (1) business day from the Confirmation Effective Date if the Confirmation Effective Date is less than fifteen (15) calendar days from the Compliance Showing. Section 2.3 of this Confirmation does not apply when the Confirmation Effective Date is within fifteen (15) calendar days of the Compliance Showing.
- (b) The Shown Unit should not have characteristics that would trigger the need for Buyer or Seller to file an Advice Letter to the CPUC.
- (c) Seller's notice under this Section 2.2 shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within three (3) Business Days of receipt of Seller's notice and in writing, notifies Seller of any objections Buyer has to the proposed Shown Unit. If Buyer timely objects, Seller must identify another Shown Unit within five (5) Business Days. Provided such Shown Unit meets the requirements of this Confirmation, this second Shown Unit shall be deemed acceptable to and approved by Buyer upon receipt. This section does not apply if the Confirmation Effective Date is within fifteen (15) calendar days of the relevant Compliance Showing deadline.
- (d) Once the Shown Unit designated by Seller is approved or deemed approved in accordance with Section 2.2(c), then any such Shown Unit will be automatically deemed the Unit from which the Product is delivered for purposes of this Confirmation for the affected Showing Month.

### **2.3 Seller To Provide Alternate Capacity**

- (a) If Seller desires to provide the Contract Quantity for any Showing Month during the Delivery Period from a different Unit other than the Shown Unit as designated in Section 2.2, then Seller may, at no additional cost to Buyer, provide Buyer with Product from one (1) or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units for the Showing Month during the Delivery Period is equal to the Contract Quantity for the Delivery Period.
- (b) If Seller desires to provide Product from an Alternate Unit under Section 2.3(a), Seller must notify Buyer of its intent to provide Product from an Alternate Unit and identify the proposed Alternate Unit meeting the Product characteristics specified in Appendix B no later than five (5) calendar days before the relevant

deadlines for the submission of Compliance Showings related to the applicable Showing Month. Seller's notice under this Section 2.3(b) shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within one (1) Business Day of receipt of Seller's notice and in writing, notifies Seller of any objections Buyer has to the proposed Alternate Unit. If Buyer timely objects, Seller must identify another Alternate Unit within two (2) Business Days. Provided such Alternate Unit meets the requirements of a Shown Unit under this Confirmation, this second Alternate Unit is deemed acceptable to and approved by Buyer upon receipt.

- (c) Once the Alternate Unit is approved or deemed approved in accordance with Section 2.3(b), then any such Alternate Unit will be automatically deemed the Unit from which Product is delivered for purposes of this Confirmation for the affected Showing Month.

## 2.4 Delivery of Product

- (a) Seller shall provide Buyer with the Contract Quantity of Product for each day during the Delivery Period consistent with the following:
  - (i) Seller shall, on a timely basis with respect to each applicable Showing Month, submit, or cause the Unit's Scheduling Coordinator to submit, Supply Plans in accordance with the Tariff to identify and confirm the Product provided to Buyer for each day of such Showing Month that is included in the Delivery Period so that the total amount of Product identified and confirmed for each such day of such Showing Month equals the Contract Quantity for such day of such Showing Month.
  - (ii) Seller will be deemed to have delivered the Product on each day to the extent that Buyer receives credit from CAISO for such day for Product identified and confirmed in the Supply Plan submitted for the Unit.
  - (iii) Hold-Back Capacity, if any, is deemed Contract Quantity delivered, unless utilized under Article 7 as Substitute Capacity, then Contract Quantity is delivered according to the timeline requirements therein.
- (b) In accordance with Sections 2.2 and 2.3 and subject to Article 7, Seller shall to the extent required by CAISO or the CPUC rules cause the information listed in Appendix B to be included in all applicable Supply Plans and shall cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the Tariff. In addition, if during the Delivery Period, there are changes to the information included in Appendix B, the Parties agree to communicate such changes to each other promptly.

## 2.5 Damages for Failure to Provide Capacity

If Seller fails to deliver to Buyer the Contract Quantity of Product for any day during the Delivery Period in accordance with Section 2.4 then with respect to each Showing Month, Seller is liable for damages pursuant to Section 4.1 of the Master Agreement, and provided that Buyer has prepaid for the Contract of Quantity in accordance with Section 3.1, Seller shall pay to Buyer the following:

For each applicable day during the Showing Month included in the Delivery Period in which the Buyer's Monthly Payment has been received by Seller in accordance with Section 3.1 of this Confirmation only, the amount equal to (w) the applicable Contract Price divided by (x) the number of days included in the Showing Month multiplied by (y) the amount of Contract Quantity not delivered by Seller on such day, multiplied by (z) 1,000 kW per MW.

## **2.6 Indemnities for Failure to Deliver Contract Quantity**

- (a) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or CAISO resulting from any of the following:
  - (i) Seller's failure to deliver any portion of the Contract Quantity of Product for any portion of the Delivery Period and such failure results in the imposition of penalties, fines or costs assessed against Buyer; or
  - (ii) A Unit's Scheduling Coordinator's failure to timely or accurately submit Supply Plans in accordance with the applicable Tariff that identify Buyer's right to the Contract Quantity purchased hereunder for each day of the Delivery Period.
- (b) With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines, and costs.

## **2.7 Buyer's Re-Sale of Product**

- (a) Buyer may re-sell all or a portion of the Product purchased under this Confirmation ("Resold Product"); provided that such re-sell right does not include the ability to offer any portion of Product into the CSP. If Buyer re-sells Product, Seller agrees, and agrees to cause the Unit's Scheduling Coordinator, to follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller further agrees, and agrees to cause the Unit's Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to any subsequent purchaser of such Resold Product due to the failure

of Seller or the Unit's Scheduling Coordinator to comply with the terms of this Confirmation, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Confirmation if Buyer had not resold the Product, including without limitation, pursuant to Sections 2.5 and 2.6.

- (b) If Buyer exercises its right to re-sell the Product, Buyer shall notify Seller in writing that such sale has occurred by providing to Seller the information described in Appendix C ("Re-sale Plan"). The Re-sale Plan shall be provided no later than three (3) Business Days before the deadline for the Compliance Showings applicable to the relevant Showing Month, except where Buyer exercises its rights under Article 7, then Buyer shall notify Seller in accordance with deadlines described in Article 7. Buyer shall notify Seller of any subsequent changes or further resale of the Resold Product, and such notice shall include all updates to the information in Appendix C in accordance with the deadlines described in this Section 2.7(b).

### **ARTICLE 3** **PAYMENT**

#### **3.1 Monthly Payment**

Buyer shall make a payment (a "Monthly Payment") to Seller, for the applicable Showing Month, as follows:

$$\text{Monthly Payment} = Q \times P \times CF$$

where:

- Q = The Contract Quantity of Product to be delivered by Seller to Buyer pursuant to Appendix B and consistent with Section 2.4 for the Showing Month
- P = The Contract Price for the Showing Month, expressed in dollars per kW-month, as stated in Appendix B
- CF = The conversion factor equal to 1,000 kW per MW

The Monthly Payment calculation shall be rounded to two decimal places.

If the Confirmation Effective Date is more than fifteen (15) calendar days prior to the deadline for the corresponding Compliance Showing applicable to the relevant Showing Month, payment shall be paid by Buyer and received by Seller no later than fifteen (15) calendar days prior to the deadlines for the corresponding Compliance Showings applicable to the Showing Month. If the Confirmation Effective Date is fifteen (15) calendar days or less from the deadline for the corresponding Compliance Showing applicable to the relevant Showing Month, the Monthly Payment shall be made by Buyer and received by Seller no later than five (5) Business days following the Confirmation Effective Date.

**3.2 Allocation of Other Payments and Costs**

- (a) Seller is entitled to retain any revenues it may receive from, and shall pay all costs charged by, CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) revenue for flexible ramping product, and (v) any revenues for black start or reactive power services. All Seller revenues described in this Section 3.2(a) and received by Buyer or a purchaser of Resold Product must be remitted to Seller and Buyer shall pay such revenues to Seller if received by Buyer or if a subsequent purchaser of Resold Product fails to remit those revenues to Seller.

If Buyer fails to pay such revenues to Seller, Seller may recoup any amounts owing to it for such revenues against any future amounts it may owe to Buyer.

Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.

- (b) In order to verify the accuracy of such revenues, Buyer has the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity and in accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to tell the Seller or the Unit's Scheduling Coordinator to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale.
- (d) Buyer and Seller agree that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the Tariff. Any Availability Incentive Payments or Non-Availability Charges are for the account, or are the responsibility of, the Seller, as applicable.

**ARTICLE 4**  
**CAISO OFFER REQUIREMENTS**

Seller is responsible for, as applicable, scheduling or causing the applicable Unit's Scheduling Coordinator to schedule with, or make available to, CAISO the Product delivered to Buyer for each day during the Delivery Period in compliance with the Tariff, and performing all, or causing the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the Product sold hereunder. Buyer is not liable for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or

operator to comply with such Tariff provisions or any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator (unless Seller is the Scheduling Coordinator), owner, or operator for such noncompliance.

**ARTICLE 5**  
**OTHER BUYER AND SELLER COVENANTS**

**5.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product**

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions (including the execution of documents or instruments) reasonably necessary to ensure Buyer's right to the use of the Contract Quantity on each day during the Delivery Period for the sole benefit of Buyer or any applicable subsequent purchaser pursuant to Section 2.7. The Parties shall make commercially reasonable changes to this Confirmation necessary to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, CAISO or other Governmental Body having jurisdiction to administer Compliance Obligations, with regard to the following proceedings: (a) the Resource Adequacy (RA) Order Instituting Rulemaking (OIR) (Rulemaking (R.)17-09-020) at the CPUC; (b) the RA Enhancements stakeholder initiative at the CAISO; (c) the Integrated Resource Plan OIR (R.16-02-007) at the CPUC; (d) the Power Charge Indifference Adjustment (PCIA) OIR (R.17-06-026) at the CPUC.

**5.2 Representations, Warranties and Covenants**

- (a) Seller represents and warrants to Buyer throughout the Delivery Period that:
- (i) no portion of the Contract Quantity for any day during the Delivery Period has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
  - (ii) the Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
  - (iii) each Unit's Scheduling Coordinator, owner and operator is obligated to comply with applicable laws, including the Tariff, relating to the Product;
  - (iv) if Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit for each day included in the Delivery Period does not exceed the Unit NQC and, if applicable, the Unit EFC, for that Unit; and
  - (v) Seller has notified either the Scheduling Coordinator of the Unit or the entity from which Seller purchased the Product of the fact that Seller has transferred the Contract Quantity for each day of the Delivery Period to Buyer, or, if applicable, to a subsequent purchaser.

- (b) Seller represents and warrants to Buyer as of the date of the relevant Compliance Showing, that Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit;
- (c) Seller covenants as follows:
  - (i) Seller shall not offer, and shall ensure that the Unit's Scheduling Coordinator does not offer, any portion of the Contract Quantity for any day during the Delivery Period to CAISO as CPM Capacity. However, if CAISO designates any portion of the Contract Capacity as CPM Capacity, then Seller shall promptly notify Buyer, or shall cause the Unit's Scheduling Coordinator to promptly notify Buyer within one (1) Business Day of the time Seller receives notification from CAISO. If CAISO makes such a designation, Seller shall not accept, and shall ensure that the Unit's Scheduling Coordinator does not accept, any such designation by CAISO unless and until Buyer has agreed to accept such designation; and
  - (ii) Seller shall, upon request, furnish Buyer, CAISO, CPUC or other applicable Governmental Body evidence that its representation made in Section 5.2(c)(i) is true and correct
- (d) Each Party covenants to the other Party throughout the Delivery Period to comply with the Tariff, relating to the Product.
- (e) The Parties agree that the following sections of the Master Agreement between the Parties shall not be applicable to this Confirmation or Transactions hereunder until Party B's exit from the Chapter 11 Cases has occurred: Sections 5.1(d), 5.1(e), 5.1(f), 10.2(v), 10.2(vi), and 10.10. Notwithstanding anything to the contrary contained herein, with respect to Party B: Party A acknowledges and agrees that (i) representations and warranties under Section 10.2(x) of the Master Agreement are made subject to the provisions of the Bankruptcy Code and any order of the Bankruptcy Court; and (ii) until Party B's exit from the Chapter 11 Cases has occurred, the existence or continuation of Party B being Bankrupt is not an Event of Default with respect to Party B under this Agreement (including pursuant to Section 5.1(g) of the Master Agreement) and does not entitle Party A to terminate this Agreement solely because of such existence or continuation.

**ARTICLE 6**  
**CONFIDENTIALITY**

Notwithstanding Section 10.11 of the Master Agreement, the Parties may disclose all terms and conditions of this Transaction to any Governmental Body, the CPUC, CAISO and the Procurement Review Group, and Seller may disclose the transfer of the Contract Quantity for each day during the Delivery Period under this Transaction to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans. Each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose

information disclosed pursuant to this Article. In addition, if Buyer resells all or any portion of the Contract Quantity for any day during the Delivery Period to another party, Buyer shall be permitted to disclose to the purchaser of the Resold Product all such information necessary to effect such resale transaction, other than the Contract Price. *[Drafting Note: Parties to review confidentiality provision in Master Agreement and edit accordingly here]*

## ARTICLE 7 HOLD-BACK AND SUBSTITUTE CAPACITY

No later than three (3) Business Days before the relevant deadline for the initial Compliance Showing with respect to a particular Showing Month, Buyer may request in writing that Seller not list, or cause the Unit's Scheduling Coordinator not to list, in the Unit's Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period ("Hold-Back Capacity"). Along with such request, Buyer shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Buyer's request for Hold-Back Capacity, Buyer may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Buyer's use as Substitute Capacity only for Planned Outages within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day of the Planned Outage for which Buyer seeks to use such Substitute Capacity as required by the CAISO. The amount of Contract Quantity that is the subject of Buyer's request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.4 for purposes of calculating a Monthly Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Section 2.5 or 2.6. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Buyer's request under this Article 7.

Notwithstanding anything to the contrary in Sections 2.6, Seller shall not be liable for any costs, penalties, or fines assessed against Buyer by the CAISO as a result of Seller's failure to make Substitute Capacity available to Buyer if Buyer did not timely comply with the notification requirements of this Article 7.

## ARTICLE 8 COLLATERAL REQUIREMENTS

### **8.1 Buyer Collateral Requirements**

Notwithstanding anything to the contrary contained in the Master Agreement, Buyer shall, within five (5) Business Days following the Confirmation Effective Date, provide to, and maintain with, Seller a Fixed Independent Amount as long as Buyer or its Guarantor, if any, does not maintain Credit Ratings of at least BBB- from S&P and Baa3 from Moody's. The "Fixed Independent Amount" shall be 20% of the sum of the Monthly Payments for all unpaid months of the Delivery Period. **[For Masters with Collateral Annex insert:** For the purposes of calculating the Collateral Requirement pursuant to Section 8.2 of the Master Agreement, entitled "Party B Credit Protection", and all corresponding provisions to Section 8.2 of the Master Agreement, such Fixed Independent Amount for Buyer shall be added to the Exposure Amount for Seller and subtracted from the Exposure Amount for Buyer.]



## **8.2 Seller Collateral Requirements**

Section 8.1 of the Master Agreement, entitled “Party A Credit Protection”, and all corresponding provisions to Section 8.1 of the Master Agreement do not apply to this Confirmation. *[Drafting Note: Parties to review Collateral Requirements provision in Master Agreement and edit accordingly here]*

## **8.3 Current Mark-to-Market Value**

**[For Masters with Collateral Annex insert:]** For the purposes of calculating Exposure pursuant to the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for the Product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the Current Mark-to-Market Value for this Transaction, consequently affecting each Party's Exposure.

**[For Masters without Collateral Annex insert:]** For the purposes of calculating Termination Payment pursuant to Article 8 of the Master Agreement, the mark-to-market value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for the Product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the mark-to-market value for this Transaction, consequently affecting each Party's Performance Assurance amount.

## **ARTICLE 9**

### **ADDITIONAL MASTER AGREEMENT AMENDMENTS**

#### **9.1 Declaration of an Early Termination Date and Calculation of Settlement Amounts**

The Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation and with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the Master Agreement:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur or be liable for any penalties, fines or costs from the CPUC, CAISO, or any Governmental Body having jurisdiction, because Buyer or a purchaser of Resold Product is not able to include the applicable Contract Quantity in any applicable Compliance Showing due to Seller's Event of Default, then Buyer may, in good faith, estimate the amount of those penalties, fines or costs and include this estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Buyer's estimate exceeds the actual amount of penalties, fines or costs, Buyer shall promptly remit to Seller the excess amount. The rights and obligations with respect to determining and paying any Termination Payment, and

*September 2019*

any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

*September 2019*

**ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.**

**[INSERT NAME OF BUYER]**

**Pacific Gas and Electric Company, a  
California corporation, limited for all  
purposes hereunder to its Electric  
Procurement and Electric Fuels Functions**

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

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

**APPENDIX A**  
**DEFINED TERMS**

For purposes of this Confirmation, the following terms have the following meanings:

“Advice Letter” means (1) an informal request by a CPUC jurisdictional entity for Commission approval, authorization, or other relief, including an informal request for approval to furnish service under rates, charges, terms or conditions other than those contained in the utility’s tariffs then in effect, and (2) a compliance filing by a load-serving entity pursuant to Public Utilities Code Section 380.

“Alternate Unit” means a generating unit designated by the Parties in accordance with Section 2.3 and which includes the Product characteristics, if any, as set forth in Appendix B.

“Bankruptcy Code” means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

“Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of California, having subject matter jurisdiction over the Chapter 11 Cases.

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

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

“Capacity Attributes” means, with respect to a generating unit, any and all of the following, in each case which are attributed to or associated with the generating unit at any time throughout the Delivery Period:

- (a) Resource Adequacy Capacity attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR;
- (b) Resource Adequacy Capacity attributes or other locational attributes of the generating unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the generating unit within the CAISO Control Area, that can be counted toward a Local RAR; and
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs of the generating unit, howsoever entitled, including any accounting construct counted toward any Compliance Obligations;

provided that, notwithstanding the foregoing, Capacity Attributes exclude all certificates, tags, credits, or accounting constructs that are not counted toward any Compliance Obligations, howsoever entitled associated with the generating unit, as such characteristics, certificates, tags, credits, or accounting constructs are described in the CPUC Decisions and Tariff.

“Capacity Procurement Mechanism” or “CPM” has the meaning set forth in the Tariff.

“Chapter 11 Cases” means Party B’s Chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Northern District of California, Case Nos. 19-30088 (DM) and 19- 30089 (DM), which are being jointly administered.

“Competitive Solicitation Process” or “CSP” has the meaning set forth in the Tariff.

“Compliance Obligations” means the RAR and Local RAR, and if applicable FCR.

“Compliance Showings” means the monthly, annual, or multi-year (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) if applicable, FCR compliance or advisory showings (or similar or successor showings), in each case, an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO) pursuant to the CPUC Decisions, to CAISO pursuant to the Tariff, or to any Governmental Body having jurisdiction.

“Confirmation” is defined in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” is defined in the introductory paragraph of this Confirmation.

“Contract Price” means, for any period during the Delivery Period, the price, expressed in dollars per kW-month, specified for such period set forth in the Contract Price Table in Appendix B.

“Contract Quantity” means, with respect to any day during the Delivery Period, the amount of Product, expressed in MW, set forth in the Contract Quantity table in Appendix B for such day.

“Control Area” has the meaning set forth in the Tariff.

“CPM Capacity” has the meaning set forth in the Tariff.

“CPUC” means the California Public Utilities Commission.

“CPUC Decisions” 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, 15-01-063, 15-06-063, 16-06-045, 17-06-027, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

“Delivery Period” is defined in Article 1 of this Confirmation.

“Emission Reduction Credits” or “ERC(s)” 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 such 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.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’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 Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and 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.

“FERC” means the Federal Energy Regulatory Commission.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by a Local Regulatory Authority or other Governmental Body having jurisdiction.

“FCR Attributes” means, with respect to a generating unit, any and all resource adequacy attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward an LSE’s FCR.

“FCR Contract Quantity” means, with respect to a day included in the Delivery Period, the amount of FCR Attributes, expressed in MW, equal to the Contract Quantity for such day.

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

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal. This definition does not include “market participants” as defined in the CAISO’s Business Practice Manual for Definitions and Acronyms as published on the CAISO website.

“Hold-Back Capacity” is defined in Article 7 of this Confirmation.

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

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction. 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.

“LSE” means “Load Serving Entity” as such term is defined in the Tariff.

“Marketable Emission Trading Credits” means without limitation, 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 (see 42 U.S.C. § 7651b.(a) to (f)).

“Master Agreement” is defined in the introductory paragraph of this Confirmation.

“Monthly Payment” is defined in Section 3.1 of this Confirmation.

“MW” means megawatt.

“Outage” has the meaning set forth in the Tariff.

“Path” refers to the Path 26 transmission constraint which is surrounded by two zones; North of Path 26 (PG&E’s TAC) and South of Path 26 (SCE and SDG&E’s TACs), as identified by the Commission in D.07-06-029.

“Planned Outage” means any outage that was submitted to the CAISO for approval at least eight (8) calendar days prior to the outage start date.

“Procurement Review Group” has the meaning set forth in CPUC Decision D. 02-08-071.

“Product” is defined in Article 1 of this Confirmation.

“RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction.

“Re-sale Plan” is defined in Section 2.7(b) of this Confirmation.

“Resold Product” is defined in Section 2.7 of this Confirmation.

“Resource Adequacy Capacity” has the meaning set forth in the Tariff. “Scheduling Coordinator” has the meaning set forth in the Tariff.

“SCID of Benefitting LSE” means the Scheduling Coordinator ID Code (SCID) of the Load Serving Entity (LSE) that will be using the Product toward meeting their RAR in the given Showing Month.

“Scheduling Coordinator ID Code (SCID)” has the meaning set forth in the Tariff.

“Showing Month” means the calendar month that is the subject of the related Compliance Showing, as set forth in the CPUC Decisions and outlined in the Tariff. For illustrative purposes

only, pursuant to the Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Shown Unit” means a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Buyer on the Confirmation Effective Date.

“Substitute Capacity” means “RA Substitute Capacity” as defined in the Tariff.

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

“System RAR” means the system resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction.

“Tariff” means the Fifth Replacement FERC Electric Tariff and the associated CAISO protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means any generation unit provided by Seller pursuant to Section 2.2 and any Alternate Unit or Shown Unit.

“Unit EFC” means, with respect to a Unit on any date of determination, the lesser of the Effective Flexible Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.

“Unit NQC” means, with respect to a Unit on any date of determination, the lesser of Net Qualifying Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.



**APPENDIX B**  
**PRODUCT AND PRICE INFORMATION**

Product means Capacity Attributes with the following characteristics.

Showing Month and Year	Path (North, South)	System RAR Quantity (MW)	Local RAR Quantity (MW)	Local Capacity Area*	FCR Quantity, if any (MW)	Flexible Capacity Category (1,2,3)	Contract Price (\$/kW-month)	SCID of Benefitting LSE

\* Please specify: Bay Area, Humboldt, Sierra, Stockton, Fresno, Kern, North Coast/North Bay, LA Basin, Big Creek/Ventura

**APPENDIX C**  
**SUBSEQUENT SALE INFORMATION**

<b>Contract Key ID:</b>	
<b>Benefitting LSE SCID:</b>	
<b>Generic Volume (in MW):</b>	
<b>Local Volume (in MW and by local area):</b>	
<b>Flexible Volume (in MW):</b>	
<b>Term:</b>	

**APPENDIX D**  
**NOTICE INFORMATION**

**Name:** [Buyer's Name] a [include place of formation and business type]

("[Buyer]" or "[Party A]")  
All Notices:

Delivery Address:  
Street:  
City:            State:    Zip:

Mail Address: (if different from above)

Attn:  
(email)  
Phone:

**Invoices and Payments:**

Attn:  
(email)  
Phone:

**Scheduling:**

Attn:  
(email)  
  
Phone:

**Wire Transfer:**

BNK:  
ACCT Title:  
ABA:  
ACCT:  
DUNS:  
Federal Tax ID Number:

**Credit and Collections:**

Attn:  
(email)  
Phone:

**Contract Management**

Attn:  
(email)  
Phone:

**With additional Notices of an Event of Default to Contract Manager:**

Attn:  
(email)  
Phone:

**Supply Plan Contact:**

**Name:** Pacific Gas and Electric Company, a California corporation, limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions

("[Seller]" or "[Party B]")  
All Notices:

Delivery Address:  
77 Beale Street, Mail Code N12E  
San Francisco, CA 94105-1702

Mail Address:  
P.O. Box 770000, Mail Code N12E  
San Francisco, CA 94177  
Attn: Candice Chan (candice.chan@pge.com)  
Director, Contract Mgmt & Settlements  
Phone: (415) 973-7780

**Invoices and Payments:**

Attn: Tom Girlich (thomas.girlich@pge.com)  
Manager, Electric Settlements  
Phone: (415) 973-9381

**Outages:**

Attn: Outage Coordinator  
(ESMOutageCoordinator@pge.com;  
RATransactionNotificationList@pge.com)  
Phone: (415) 973-1721

**Wire Transfer:**

BNK: The Bank of NY Mellon  
ACC Title: PG&E  
ABA: 011001234  
ACCT: 059994  
DUNS: 556650034  
Federal Tax ID Number: 94-0742640

**Credit and Collections:**

Attn: Credit Risk Management (PGERiskCredit@pge.com)  
  
Phone: (415) 972-5188

**Contract Management**

Attn: Elizabeth Motley (elizabeth.motley@pge.com)  
Contract Management  
Phone: (415) 973-2368

**With additional Notices of an Event of Default to Contract Manager:**

Attn: Ted Yura (ted.yura@pge.com)  
Senior Manager, Contract Management  
Phone: (415) 973-8660

**Supply Plan and Hold-Back Request:**  
EPP-RAFilingsMailbox@pge.com

APPENDIX E  
FORM OF LETTER OF CREDIT  
*Issuing Bank Letterhead and Address*

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

**Date:** [Insert issue date]

**Beneficiary:** [Insert Beneficiary name]  
[Insert Beneficiary address]

**Applicant:** [Insert Applicant name]  
[Insert Applicant address]

**Letter of Credit Amount:** [Insert amount]

**Expiry Date:** [Insert date that is one (1) year from offer date]

Ladies and Gentlemen:

By order of **[Insert name of Applicant]** (“Applicant”), we hereby issue in favor of **[Insert name of Beneficiary]** (the “Beneficiary”) our irrevocable standby letter of credit No. **[Insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[Insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[Insert name of issuing or paying bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[Insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[Insert number]** and stating the amount of the demand; and

2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A. “The amount of the accompanying sight draft under Letter of Credit **[Insert number of letter of credit]** (the “Draft Amount”) is owed to **[Insert name of Beneficiary]** by **[Insert name of Beneficiary’s counterparty under the RA Confirmation]** (“Counterparty”) under Confirmation for Resource Adequacy Capacity Product for CAISO Resources dated **[insert date of the Confirmation]** between **[Insert name of Beneficiary]** and Counterparty, which entitles **[Insert name of Beneficiary]** to draw the Draft Amount under Letter of Credit No. **[Insert number]**,” or

B. "Letter of Credit No. **[Insert number]** will expire in thirty (30) days or less and **[Insert name of Beneficiary's counterparty under the RA Confirmation]** has not provided replacement security acceptable to **[Insert name of Beneficiary]**."

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount; and
5. The Expiry Date of this Letter of Credit shall be automatically extended without amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to renew this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at **[Insert bank's address for drawings]**.

All demands for payment shall be made either by presentation of originals or copies of documents, or by facsimile transmission of documents to **[Insert fax number]**, Attention: **[Insert name of bank's receiving department]**. You may contact us at **[Insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a facsimile presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the third (3rd) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[Insert number and any other necessary details]**.

Very truly yours,

**[INSERT NAME OF ISSUING BANK]**

By: \_\_\_\_\_  
Name: **[Print or type name]**  
Title: **[Print or type title]**

**EXHIBIT A**  
**SIGHT DRAFT**

TO:  
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ \_\_\_\_\_ DATE: \_\_\_\_\_

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC COMPANY THE AMOUNT OF U.S. \$ \_\_\_\_\_ ( \_\_\_\_\_ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. [XXXXXX].

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER:

By: \_\_\_\_\_  
Name: [Print or type name]  
Title: [Print or type title]

September 2019

**MASTER POWER PURCHASE AND SALE AGREEMENT  
RESOURCE ADEQUACY CONFIRMATION LETTER  
BETWEEN  
[PARTY A NAME] (“PARTY A”)  
AND  
PACIFIC GAS AND ELECTRIC COMPANY (“PARTY B”)**

This confirmation letter (“Confirmation”) confirms the Transaction between Party A and Party B, which becomes effective on the date fully executed by both Parties (the “Confirmation Effective Date”), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation. This Transaction is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of [Date of EEI Master between Parties], together with the Cover Sheet, [the Collateral Annex and Paragraph 10 to the Collateral Annex,] and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the “Master Agreement”). The Master Agreement and this Confirmation are collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation, have the meanings specified for such terms in the Master Agreement or the Tariff (defined below), as applicable. Section references herein are to this Confirmation unless otherwise noted.

**ARTICLE 1  
TRANSACTION TERMS**

**Buyer:** Party B

**Seller:** Party A

**Product:** The Product is the Capacity Attributes of the Unit(s) as defined in Appendix B; provided that if Buyer does not specify the Local Capacity Area in Appendix B, when applicable, then Seller may provide Local RAR from any Local Capacity Area in the Seller’s local areas. The Product does not include any right to the energy or ancillary services of the Unit(s).

**Delivery Period:** [Begin Date] through [End Date], inclusive.

**Contract Quantity and Contract Price:** The Contract Quantity and Contract Price for each day of each Showing Month during the Delivery Period shall be set forth in Appendix B.

**ARTICLE 2  
DELIVERY OBLIGATIONS AND ADJUSTMENTS**

**2.1 Firm RA Product**

Seller’s obligation to deliver the Contract Quantity of Product for each day included in the Delivery Period is firm and will not be excused for any reason.



**2.2 Seller To Identify Shown Unit**

- (a) Seller shall identify the Shown Unit(s) that meet the Product characteristics and Contract Quantity specified in Appendix B by providing Buyer with the specific Unit information no later than:
  - (i) Fifteen (15) calendar days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month, if the Confirmation Effective Date is at least fifteen (15) calendar days before such Compliance Showing deadline; or
  - (ii) One (1) business day from the Confirmation Effective Date if the Confirmation Effective Date is less than fifteen (15) calendar days from the Compliance Showing. Section 2.3 of this Confirmation does not apply when the Confirmation Effective Date is within fifteen (15) calendar days of the Compliance Showing.
- (b) The Shown Unit should not have characteristics that would trigger the need for Buyer or Seller to file an Advice Letter to the CPUC.
- (c) Seller's notice under this Section 2.2 shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within three (3) Business Days of receipt of Seller's notice and in writing, notifies Seller of any objections Buyer has to the proposed Shown Unit. If Buyer timely objects, Seller must identify another Shown Unit within five (5) Business Days. Provided such Shown Unit meets the requirements of this Confirmation, this second Shown Unit shall be deemed acceptable to and approved by Buyer upon receipt. This section does not apply if the Confirmation Effective Date is within fifteen (15) calendar days of the relevant Compliance Showing deadline.
- (d) Once the Shown Unit designated by Seller is approved or deemed approved in accordance with Section 2.2(c), then any such Shown Unit will be automatically deemed the Unit from which the Product is delivered for purposes of this Confirmation for the affected Showing Month.

**2.3 Seller To Provide Alternate Capacity**

- (a) If Seller desires to provide the Contract Quantity for any Showing Month during the Delivery Period from a different Unit other than the Shown Unit as designated in Section 2.2, then Seller may, at no additional cost to Buyer, provide Buyer with Product from one (1) or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units for the Showing Month during the Delivery Period is equal to the Contract Quantity for the Delivery Period.
- (b) If Seller desires to provide Product from an Alternate Unit under Section 2.3(a), Seller must notify Buyer of its intent to provide Product from an Alternate Unit and identify the proposed Alternate Unit meeting the Product characteristics

specified in Appendix B no later than five (5) calendar days before the relevant deadlines for the submission of Compliance Showings related to the applicable Showing Month. Seller's notice under this Section 2.3(b) shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within one (1) Business Day of receipt of Seller's notice and in writing, notifies Seller of any objections Buyer has to the proposed Alternate Unit. If Buyer timely objects, Seller must identify another Alternate Unit within two (2) Business Days. Provided such Alternate Unit meets the requirements of a Shown Unit under this Confirmation, this second Alternate Unit is deemed acceptable to and approved by Buyer upon receipt.

- (c) Once the Alternate Unit is approved or deemed approved in accordance with Section 2.3(b), then any such Alternate Unit will be automatically deemed the Unit from which Product is delivered for purposes of this Confirmation for the affected Showing Month.

## 2.4 Delivery of Product

- (a) Seller shall provide Buyer with the Contract Quantity of Product for each day during the Delivery Period consistent with the following:
  - (i) Seller shall, on a timely basis with respect to each applicable Showing Month, submit, or cause the Unit's Scheduling Coordinator to submit, Supply Plans in accordance with the Tariff to identify and confirm the Product provided to Buyer for each day of such Showing Month that is included in the Delivery Period so that the total amount of Product identified and confirmed for each such day of such Showing Month equals the Contract Quantity for such day of such Showing Month.
  - (ii) Seller will be deemed to have delivered the Product on each day to the extent that Buyer receives credit from CAISO for such day for Product identified and confirmed in the Supply Plan submitted for the Unit.
  - (iii) Hold-Back Capacity, if any, is deemed Contract Quantity delivered, unless utilized under Article 7 as Substitute Capacity, then Contract Quantity is delivered according to the timeline requirements therein.
- (b) In accordance with Sections 2.2 and 2.3 and subject to Article 7, Seller shall to the extent required by CAISO or the CPUC rules cause the information listed in Appendix B to be included in all applicable Supply Plans and shall cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the Tariff. In addition, if during the Delivery Period, there are changes to the information included in Appendix B, the Parties agree to communicate such changes to each other promptly.

**2.5 Damages for Failure to Provide Capacity**

If Seller fails to deliver to Buyer the Contract Quantity of Product for any day during the Delivery Period in accordance with Section 2.4 then with respect to each Showing Month, Seller is liable for damages pursuant to Section 4.1 of the Master Agreement, and provided that Buyer has prepaid for the Contract of Quantity in accordance with Section 3.1, Seller shall pay to Buyer the following:

For each applicable day during the Showing Month included in the Delivery Period in which the Buyer's Monthly Payment has been received by Seller in accordance with Section 3.1 of this Confirmation only, the amount equal to (w) the applicable Contract Price divided by (x) the number of days included in the Showing Month multiplied by (y) the amount of Contract Quantity not delivered by Seller on such day, multiplied by (z) 1,000 kW per MW.

**2.6 Indemnities for Failure to Deliver Contract Quantity**

- (a) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or CAISO resulting from any of the following:
  - (i) Seller's failure to deliver any portion of the Contract Quantity of Product for any portion of the Delivery Period and such failure results in the imposition of penalties, fines or costs assessed against Buyer; or
  - (ii) A Unit's Scheduling Coordinator's failure to timely or accurately submit Supply Plans in accordance with the applicable Tariff that identify Buyer's right to the Contract Quantity purchased hereunder for each day of the Delivery Period.
- (b) With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines, and costs.

**2.7 Buyer's Re-Sale of Product**

- (a) Buyer may re-sell all or a portion of the Product purchased under this Confirmation ("Resold Product"); provided that such re-sell right does not include the ability to offer any portion of Product into the CSP. If Buyer re-sells Product, Seller agrees, and agrees to cause the Unit's Scheduling Coordinator, to follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller further agrees, and agrees to cause the Unit's Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs

any liability to any subsequent purchaser of such Resold Product due to the failure of Seller or the Unit's Scheduling Coordinator to comply with the terms of this Confirmation, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Confirmation if Buyer had not resold the Product, including without limitation, pursuant to Sections 2.5 and 2.6.

- (b) If Buyer exercises its right to re-sell the Product, Buyer shall notify Seller in writing that such sale has occurred by providing to Seller the information described in Appendix C ("Re-sale Plan"). The Re-sale Plan shall be provided no later than three (3) Business Days before the deadline for the Compliance Showings applicable to the relevant Showing Month, except where Buyer exercises its rights under Article 7, then Buyer shall notify Seller in accordance with deadlines described in Article 7. Buyer shall notify Seller of any subsequent changes or further resale of the Resold Product, and such notice shall include all updates to the information in Appendix C in accordance with the deadlines described in this Section 2.7(b).

### **ARTICLE 3** **PAYMENT**

#### **3.1 Monthly Payment**

Buyer shall make a payment (a "Monthly Payment") to Seller, for the applicable Showing Month, as follows:

$$\text{Monthly Payment} = Q \times P \times CF$$

where:

- Q = The Contract Quantity of Product to be delivered by Seller to Buyer pursuant to Appendix B and consistent with Section 2.4 for the Showing Month
- P = The Contract Price for the Showing Month, expressed in dollars per kW-month, as stated in Appendix B
- CF = The conversion factor equal to 1,000 kW per MW

The Monthly Payment calculation shall be rounded to two decimal places.

If the Confirmation Effective Date is more than fifteen (15) calendar days prior to the deadline for the corresponding Compliance Showing applicable to the relevant Showing Month, payment shall be paid by Buyer and received by Seller no later than fifteen (15) calendar days prior to the deadlines for the corresponding Compliance Showings applicable to the Showing Month. If the Confirmation Effective Date is fifteen (15) calendar days or less from the deadline for the corresponding Compliance Showing applicable to the relevant Showing Month, the Monthly Payment shall be made by Buyer and received by Seller no later than five (5) Business days following the Confirmation Effective Date.

### 3.2 Allocation of Other Payments and Costs

- (a) Seller is entitled to retain any revenues it may receive from, and shall pay all costs charged by, CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) revenue for flexible ramping product, and (v) any revenues for black start or reactive power services. All Seller revenues described in this Section 3.2(a) and received by Buyer or a purchaser of Resold Product must be remitted to Seller and Buyer shall pay such revenues to Seller if received by Buyer or if a subsequent purchaser of Resold Product fails to remit those revenues to Seller.

If Buyer fails to pay such revenues to Seller, Seller may recoup any amounts owing to it for such revenues against any future amounts it may owe to Buyer.

Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.

- (b) In order to verify the accuracy of such revenues, Buyer has the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity and in accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to tell the Seller or the Unit's Scheduling Coordinator to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale.
- (d) Buyer and Seller agree that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the Tariff. Any Availability Incentive Payments or Non-Availability Charges are for the account, or are the responsibility of, the Seller, as applicable.

#### **ARTICLE 4** **CAISO OFFER REQUIREMENTS**

Seller is responsible for, as applicable, scheduling or causing the applicable Unit's Scheduling Coordinator to schedule with, or make available to, CAISO the Product delivered to Buyer for each day during the Delivery Period in compliance with the Tariff, and performing all, or causing the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the Product sold hereunder. Buyer is not liable for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or

operator to comply with such Tariff provisions or any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator (unless Seller is the Scheduling Coordinator), owner, or operator for such noncompliance.

**ARTICLE 5**  
**OTHER BUYER AND SELLER COVENANTS**

**5.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product**

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions (including the execution of documents or instruments) reasonably necessary to ensure Buyer's right to the use of the Contract Quantity on each day during the Delivery Period for the sole benefit of Buyer or any applicable subsequent purchaser pursuant to Section 2.7. The Parties shall make commercially reasonable changes to this Confirmation necessary to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, CAISO or other Governmental Body having jurisdiction to administer Compliance Obligations, with regard to the following proceedings: (a) the Resource Adequacy (RA) Order Instituting Rulemaking (OIR) (Rulemaking (R.)17-09-020) at the CPUC; (b) the RA Enhancements stakeholder initiative at the CAISO; (c) the Integrated Resource Plan OIR (R.16-02-007) at the CPUC; (d) the Power Charge Indifference Adjustment (PCIA) OIR (R.17-06-026) at the CPUC.

**5.2 Representations, Warranties and Covenants**

- (a) Seller represents and warrants to Buyer throughout the Delivery Period that:
- (i) no portion of the Contract Quantity for any day during the Delivery Period has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
  - (ii) the Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
  - (iii) each Unit's Scheduling Coordinator, owner and operator is obligated to comply with applicable laws, including the Tariff, relating to the Product;
  - (iv) if Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit for each day included in the Delivery Period does not exceed the Unit NQC and, if applicable, the Unit EFC, for that Unit; and
  - (v) Seller has notified either the Scheduling Coordinator of the Unit or the entity from which Seller purchased the Product of the fact that Seller has transferred the Contract Quantity for each day of the Delivery Period to Buyer, or, if applicable, to a subsequent purchaser.

- (b) Seller represents and warrants to Buyer as of the date of the relevant Compliance Showing, that Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit;
- (c) Seller covenants as follows:
  - (i) Seller shall not offer, and shall ensure that the Unit's Scheduling Coordinator does not offer, any portion of the Contract Quantity for any day during the Delivery Period to CAISO as CPM Capacity. However, if CAISO designates any portion of the Contract Capacity as CPM Capacity, then Seller shall promptly notify Buyer, or shall cause the Unit's Scheduling Coordinator to promptly notify Buyer within one (1) Business Day of the time Seller receives notification from CAISO. If CAISO makes such a designation, Seller shall not accept, and shall ensure that the Unit's Scheduling Coordinator does not accept, any such designation by CAISO unless and until Buyer has agreed to accept such designation; and
  - (ii) Seller shall, upon request, furnish Buyer, CAISO, CPUC or other applicable Governmental Body evidence that its representation made in Section 5.2(c)(i) is true and correct
- (d) Each Party covenants to the other Party throughout the Delivery Period to comply with the Tariff, relating to the Product.
- (e) The Parties agree that the following sections of the Master Agreement between the Parties shall not be applicable to this Confirmation or Transactions hereunder until Party B's exit from the Chapter 11 Cases has occurred: Sections 5.1(d), 5.1(e), 5.1(f), 10.2(v), 10.2(vi), and 10.10. Notwithstanding anything to the contrary contained herein, with respect to Party B: Party A acknowledges and agrees that (i) representations and warranties under Section 10.2(x) of the Master Agreement are made subject to the provisions of the Bankruptcy Code and any order of the Bankruptcy Court; and (ii) until Party B's exit from the Chapter 11 Cases has occurred, the existence or continuation of Party B being Bankrupt is not an Event of Default with respect to Party B under this Agreement (including pursuant to Section 5.1(g) of the Master Agreement) and does not entitle Party A to terminate this Agreement solely because of such existence or continuation.

**ARTICLE 6**  
**CONFIDENTIALITY**

Notwithstanding Section 10.11 of the Master Agreement, the Parties may disclose all terms and conditions of this Transaction to any Governmental Body, the CPUC, CAISO and the Procurement Review Group, and Seller may disclose the transfer of the Contract Quantity for each day during the Delivery Period under this Transaction to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans. Each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose

information disclosed pursuant to this Article. In addition, if Buyer resells all or any portion of the Contract Quantity for any day during the Delivery Period to another party, Buyer shall be permitted to disclose to the purchaser of the Resold Product all such information necessary to effect such resale transaction, other than the Contract Price. *[Drafting Note: Parties to review confidentiality provision in Master Agreement and edit accordingly here]*

## **ARTICLE 7** **HOLD-BACK AND SUBSTITUTE CAPACITY**

No later than three (3) Business Days before the relevant deadline for the initial Compliance Showing with respect to a particular Showing Month, Buyer may request in writing that Seller not list, or cause the Unit's Scheduling Coordinator not to list, in the Unit's Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period ("Hold-Back Capacity"). Along with such request, Buyer shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Buyer's request for Hold-Back Capacity, Buyer may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Buyer's use as Substitute Capacity only for Planned Outages within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day of the Planned Outage for which Buyer seeks to use such Substitute Capacity as required by the CAISO. The amount of Contract Quantity that is the subject of Buyer's request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.4 for purposes of calculating a Monthly Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Section 2.5 or 2.6. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Buyer's request under this Article 7.

Notwithstanding anything to the contrary in Sections 2.6, Seller shall not be liable for any costs, penalties, or fines assessed against Buyer by the CAISO as a result of Seller's failure to make Substitute Capacity available to Buyer if Buyer did not timely comply with the notification requirements of this Article 7.

## **ARTICLE 8** **COLLATERAL REQUIREMENTS**

### **8.1 Buyer Collateral Requirements**

Section 8.1 of the Master Agreement, entitled "Party A Credit Protection", and all corresponding provisions to Section 8.1 of the Master Agreement do not apply to this Confirmation.

### **8.2 Seller Collateral Requirements**

Notwithstanding anything to the contrary contained in the Master Agreement, Seller shall, within five (5) Business Days following the Confirmation Effective Date, provide to, and maintain with, Buyer a Fixed Independent Amount as long as Seller or its Guarantor, if any, does not maintain Credit Ratings of at least BBB- from S&P and Baa3 from Moody's. The "Fixed Independent Amount" shall be 20% of the sum of the Monthly Payments for all unpaid months of the Delivery Period. **[For Masters with Collateral Annex insert: For the purposes of calculating the**



Collateral Requirement pursuant to Section 8.2 of the Master Agreement, entitled “Party B Credit Protection”, and all corresponding provisions to Section 8.2 of the Master Agreement, such Fixed Independent Amount for Seller shall be added to the Exposure Amount for Buyer and subtracted from the Exposure Amount for Seller.]

### **8.3 Current Mark-to-Market Value**

**[For Masters with Collateral Annex insert:]** For the purposes of calculating Exposure pursuant to the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for the Product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the Current Mark-to-Market Value for this Transaction, consequently affecting each Party's Exposure.

**[For Masters without Collateral Annex insert:]** For the purposes of calculating Termination Payment pursuant to Article 8 of the Master Agreement, the mark-to-market value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for the Product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the mark-to-market value for this Transaction, consequently affecting each Party's Performance Assurance amount.

## **ARTICLE 9**

### **ADDITIONAL MASTER AGREEMENT AMENDMENTS**

#### **9.1 Declaration of an Early Termination Date and Calculation of Settlement Amounts**

The Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation and with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the Master Agreement:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur or be liable for any penalties, fines or costs from the CPUC, CAISO, or any Governmental Body having jurisdiction, because Buyer or a purchaser of Resold Product is not able to include the applicable Contract Quantity in any applicable Compliance Showing due to Seller’s Event of Default, then Buyer may, in good faith, estimate the amount of those penalties, fines or costs and include this estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Buyer’s estimate exceeds the actual amount of penalties, fines or costs, Buyer shall promptly remit to Seller the excess amount. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of

*September 2019*

this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

*September 2019*

**ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.**

**[INSERT NAME OF SELLER]**

**Pacific Gas and Electric Company, a  
California corporation, limited for all  
purposes hereunder to its Electric  
Procurement and Electric Fuels Functions**

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

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

**APPENDIX A**  
**DEFINED TERMS**

For purposes of this Confirmation, the following terms have the following meanings:

“Advice Letter” means (1) an informal request by a CPUC jurisdictional entity for Commission approval, authorization, or other relief, including an informal request for approval to furnish service under rates, charges, terms or conditions other than those contained in the utility’s tariffs then in effect, and (2) a compliance filing by a load-serving entity pursuant to Public Utilities Code Section 380.

“Alternate Unit” means a generating unit designated by the Parties in accordance with Section 2.3 and which includes the Product characteristics, if any, as set forth in Appendix B.

“Bankruptcy Code” means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

“Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of California, having subject matter jurisdiction over the Chapter 11 Cases.

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

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

“Capacity Attributes” means, with respect to a generating unit, any and all of the following, in each case which are attributed to or associated with the generating unit at any time throughout the Delivery Period:

- (a) Resource Adequacy Capacity attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR;
- (b) Resource Adequacy Capacity attributes or other locational attributes of the generating unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the generating unit within the CAISO Control Area, that can be counted toward a Local RAR; and
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs of the generating unit, howsoever entitled, including any accounting construct counted toward any Compliance Obligations;

provided that, notwithstanding the foregoing, Capacity Attributes exclude all certificates, tags, credits, or accounting constructs that are not counted toward any Compliance Obligations, howsoever entitled associated with the generating unit, as such characteristics, certificates, tags, credits, or accounting constructs are described in the CPUC Decisions and Tariff.

“Capacity Procurement Mechanism” or “CPM” has the meaning set forth in the Tariff.

“Chapter 11 Cases” means Party B’s Chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Northern District of California, Case Nos. 19-30088 (DM) and 19- 30089 (DM), which are being jointly administered.

“Competitive Solicitation Process” or “CSP” has the meaning set forth in the Tariff.

“Compliance Obligations” means the RAR and Local RAR, and if applicable FCR.

“Compliance Showings” means the monthly, annual, or multi-year (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) if applicable, FCR compliance or advisory showings (or similar or successor showings), in each case, an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO) pursuant to the CPUC Decisions, to CAISO pursuant to the Tariff, or to any Governmental Body having jurisdiction.

“Confirmation” is defined in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” is defined in the introductory paragraph of this Confirmation.

“Contract Price” means, for any period during the Delivery Period, the price, expressed in dollars per kW-month, specified for such period set forth in the Contract Price Table in Appendix B.

“Contract Quantity” means, with respect to any day during the Delivery Period, the amount of Product, expressed in MW, set forth in the Contract Quantity table in Appendix B for such day.

“Control Area” has the meaning set forth in the Tariff.

“CPM Capacity” has the meaning set forth in the Tariff.

“CPUC” means the California Public Utilities Commission.

“CPUC Decisions” 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, 15-01-063, 15-06-063, 16-06-045, 17-06-027, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

“Delivery Period” is defined in Article 1 of this Confirmation.

“Emission Reduction Credits” or “ERC(s)” 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 such 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.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’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 Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and 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.

“FERC” means the Federal Energy Regulatory Commission.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by a Local Regulatory Authority or other Governmental Body having jurisdiction.

“FCR Attributes” means, with respect to a generating unit, any and all resource adequacy attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward an LSE’s FCR.

“FCR Contract Quantity” means, with respect to a day included in the Delivery Period, the amount of FCR Attributes, expressed in MW, equal to the Contract Quantity for such day.

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

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal. This definition does not include “market participants” as defined in the CAISO’s Business Practice Manual for Definitions and Acronyms as published on the CAISO website.

“Hold-Back Capacity” is defined in Article 7 of this Confirmation.

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

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction. 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.

“LSE” means “Load Serving Entity” as such term is defined in the Tariff.

“Marketable Emission Trading Credits” means without limitation, 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 (see 42 U.S.C. § 7651b.(a) to (f)).

“Master Agreement” is defined in the introductory paragraph of this Confirmation.

“Monthly Payment” is defined in Section 3.1 of this Confirmation.

“MW” means megawatt.

“Outage” has the meaning set forth in the Tariff.

“Path” refers to the Path 26 transmission constraint which is surrounded by two zones; North of Path 26 (PG&E’s TAC) and South of Path 26 (SCE and SDG&E’s TACs), as identified by the Commission in D.07-06-029.

“Planned Outage” means any outage that was submitted to the CAISO for approval at least eight (8) calendar days prior to the outage start date.

“Procurement Review Group” has the meaning set forth in CPUC Decision D. 02-08-071.

“Product” is defined in Article 1 of this Confirmation.

“RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction.

“Re-sale Plan” is defined in Section 2.7(b) of this Confirmation.

“Resold Product” is defined in Section 2.7 of this Confirmation.

“Resource Adequacy Capacity” has the meaning set forth in the Tariff. “Scheduling Coordinator” has the meaning set forth in the Tariff.

“SCID of Benefitting LSE” means the Scheduling Coordinator ID Code (SCID) of the Load Serving Entity (LSE) that will be using the Product toward meeting their RAR in the given Showing Month.

“Scheduling Coordinator ID Code (SCID)” has the meaning set forth in the Tariff.

“Showing Month” means the calendar month that is the subject of the related Compliance Showing, as set forth in the CPUC Decisions and outlined in the Tariff. For illustrative purposes

only, pursuant to the Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Shown Unit” means a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Buyer on the Confirmation Effective Date.

“Substitute Capacity” means “RA Substitute Capacity” as defined in the Tariff.

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

“System RAR” means the system resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction.

“Tariff” means the Fifth Replacement FERC Electric Tariff and the associated CAISO protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means any generation unit provided by Seller pursuant to Section 2.2 and any Alternate Unit or Shown Unit.

“Unit EFC” means, with respect to a Unit on any date of determination, the lesser of the Effective Flexible Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.

“Unit NQC” means, with respect to a Unit on any date of determination, the lesser of Net Qualifying Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.



**APPENDIX B**  
**PRODUCT AND PRICE INFORMATION**

Product means Capacity Attributes with the following characteristics.

Showing Month and Year	Path (North, South)	System RAR Quantity (MW)	Local RAR Quantity (MW)	Local Capacity Area*	FCR Quantity, if any (MW)	Flexible Capacity Category (1,2,3)	Contract Price (\$/kW-month)	SCID of Benefitting LSE

\* Please specify: Bay Area, Humboldt, Sierra, Stockton, Fresno, Kern, North Coast/North Bay, LA Basin, Big Creek/Ventura

**APPENDIX C**  
**SUBSEQUENT SALE INFORMATION**

<b>Contract Key ID:</b>	
<b>Benefitting LSE SCID:</b>	
<b>Generic Volume (in MW):</b>	
<b>Local Volume (in MW and by local area):</b>	
<b>Flexible Volume (in MW):</b>	
<b>Term:</b>	

**APPENDIX D**  
**NOTICE INFORMATION**

**Name:** [Buyer's Name] a [include place of formation and business type]

**Name:** Pacific Gas and Electric Company, a California corporation, limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions

("[Seller]" or "[Party A]")  
All Notices:

("[Buyer]" or "[Party B]")  
All Notices:

Delivery Address:  
Street:  
City: State: Zip:

Delivery Address:  
77 Beale Street, Mail Code N12E  
San Francisco, CA 94105-1702

Mail Address: (if different from above)

Mail Address:  
P.O. Box 770000, Mail Code N12E  
San Francisco, CA 94177  
Attn: Candice Chan (candice.chan@pge.com)  
Director, Contract Mgmt & Settlements  
Phone: (415) 973-7780

Attn:  
(email)  
Phone:

**Invoices and Payments:**

Attn:  
(email)  
Phone:

**Invoices and Payments:**

Attn: Tom Girlich (thomas.girlich@pge.com)  
Manager, Electric Settlements  
Phone: (415) 973-9381

**Scheduling:**

Attn:  
(email)  
  
Phone:

**Outages:**

Attn: Outage Coordinator  
(ESMOutageCoordinator@pge.com;  
RATransactionNotificationList@pge.com)  
Phone: (415) 973-1721

**Wire Transfer:**

BNK:  
ACCT Title:  
ABA:  
ACCT:  
DUNS:  
Federal Tax ID Number:

**Wire Transfer:**

BNK: The Bank of NY Mellon  
ACC Title: PG&E  
ABA: 011001234  
ACCT: 059994  
DUNS: 556650034  
Federal Tax ID Number: 94-0742640

**Credit and Collections:**

Attn:  
(email)  
Phone:

**Credit and Collections:**

Attn: Credit Risk Management (PGERiskCredit@pge.com)  
  
Phone: (415) 972-5188

**Contract Management**

Attn:  
(email)  
Phone:

**Contract Management**

Attn: Elizabeth Motley (elizabeth.motley@pge.com)  
Contract Management  
Phone: (415) 973-2368

**With additional Notices of an Event of Default to Contract Manager:**

Attn:  
(email)  
Phone:

**With additional Notices of an Event of Default to Contract Manager:**

Attn: Ted Yura (ted.yura@pge.com)  
Senior Manager, Contract Management  
Phone: (415) 973-8660

**Supply Plan Contact:**

**Supply Plan and Hold-Back Request:**  
EPP-RAFilingsMailbox@pge.com

APPENDIX E  
FORM OF LETTER OF CREDIT  
*Issuing Bank Letterhead and Address*

STANDBY LETTER OF CREDIT NO. XXXXXXXX

**Date:** [Insert issue date]

**Beneficiary:** [Insert Beneficiary name]  
[Insert Beneficiary address]

**Applicant:** [Insert Applicant name]  
[Insert Applicant address]

**Letter of Credit Amount:** [Insert amount]

**Expiry Date:** [Insert date that is one (1) year from offer date]

Ladies and Gentlemen:

By order of **[Insert name of Applicant]** (“Applicant”), we hereby issue in favor of **[Insert name of Beneficiary]** (the “Beneficiary”) our irrevocable standby letter of credit No. **[Insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[Insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[Insert name of issuing or paying bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[Insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[Insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
  - A. “The amount of the accompanying sight draft under Letter of Credit **[Insert number of letter of credit]** (the “Draft Amount”) is owed to **[Insert name of Beneficiary]** by **[Insert name of Beneficiary’s counterparty under the RA Confirmation]** (“Counterparty”) under Confirmation for Resource Adequacy Capacity Product for CAISO Resources dated **[insert date of the Confirmation]** between **[Insert name of Beneficiary]** and Counterparty, which entitles **[Insert name of Beneficiary]** to draw the Draft Amount under Letter of Credit No. **[Insert number]**.” or

B. "Letter of Credit No. **[Insert number]** will expire in thirty (30) days or less and **[Insert name of Beneficiary's counterparty under the RA Confirmation]** has not provided replacement security acceptable to **[Insert name of Beneficiary]**."

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount; and
5. The Expiry Date of this Letter of Credit shall be automatically extended without amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to renew this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at **[Insert bank's address for drawings]**.

All demands for payment shall be made either by presentation of originals or copies of documents, or by facsimile transmission of documents to **[Insert fax number]**, Attention: **[Insert name of bank's receiving department]**. You may contact us at **[Insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a facsimile presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the third (3rd) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[Insert number and any other necessary details]**.

Very truly yours,

**[INSERT NAME OF ISSUING BANK]**

By: \_\_\_\_\_  
Name: **[Print or type name]**  
Title: **[Print or type title]**

**EXHIBIT A**  
**SIGHT DRAFT**

TO:  
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ \_\_\_\_\_ DATE: \_\_\_\_\_

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC COMPANY THE AMOUNT OF U.S. \$ \_\_\_\_\_ ( \_\_\_\_\_ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. [XXXXXX].

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER:

By: \_\_\_\_\_  
Name: [Print or type name]  
Title: [Print or type title]

**MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION LETTER  
BETWEEN  
[INSERT COUNTERPARTY NAME ]  
AND  
SOUTHERN CALIFORNIA EDISON COMPANY**

This Confirmation Letter including all appendices hereto (“Confirmation”) confirms the Transaction between [ ] (“Buyer” or [“SCE”/“Counterparty”]) {*SCE Comment: Select appropriate selection. Where SCE is acting as the buyer, the term “Counterparty” should be deleted.*} and [ ] (“Seller” or [“SCE”/“Counterparty”]) {*SCE Comment: Select appropriate selection. Where SCE is acting as the seller, the term “Counterparty” should be deleted.*}, each individually a “Party” and together the “Parties”, dated as of [Date] (the “Confirmation Effective Date”) in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation, in the amounts described in this Confirmation. This Transaction is governed by the Edison Electric Institute (“EEI”) Master Power Purchase and Sale Agreement between the Parties, effective as of [Date], along with the Cover Sheet, any amendments and annexes thereto (the “Master Agreement”), and including, the EEI Collateral Annex to the Master Agreement along with the Paragraph 10 to the Collateral Annex between the Parties (such Paragraph 10 and the Collateral Annex are referred to collectively herein as the “Collateral Annex”) (the Master Agreement and the Collateral Annex shall be collectively referred to as the “EEI Agreement”). The EEI Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the EEI Agreement, or the CAISO Tariff (defined herein below). To the extent this Confirmation is inconsistent with any provision of the EEI Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

**ARTICLE 1. TRANSACTION TERMS**

**1.1 Product; Elections**

Buyer: [ ]

Seller: [ ]

- Flexible Capacity:  Applicable  
 Not applicable



**Product:** The product, including the Capacity Attributes of the Unit(s), as defined in Appendix B, or Alternate Unit(s) provided in accordance with Section 2.3.

**1.2 Delivery of Product**

Seller shall sell and deliver to Buyer, and Buyer shall receive and purchase from Seller the Product in the amount of the applicable Contract Quantity for each day of each month of the Delivery Period.

**1.3 Delivery Period and Term**

- (a) Delivery Period. The Delivery Period shall be: [Start Date] through [End Date], inclusive, unless terminated earlier in accordance with the terms of this Agreement.
- (b) Term. The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period or (ii) the date the Parties' obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

**1.4 Contract Quantity**

The Contract Quantity for each day of each applicable Showing Month is as follows:

**Contract Quantity (MWs for each day of such Showing Month)**

<b>Showing Month</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
January					
February					
March					
April					
May					
June					
July					
August					

*RA Capacity (Buy or Sell Confirmation)*  
v.09.09.2019

Showing Month	2020	2021	2022	2023	2024
September					
October					
November					
December					

**1.5 Flexible Capacity**

If the Parties have designated Flexible Capacity as “Applicable”, then the Flexible Capacity included in the Contract Quantity for each day of each applicable Showing Month is as follows:

**Flexible Capacity (MWs for each day of such Showing Month)**

Showing Month	2020	2021	2022	2023	2024
January					
February					
March					
April					
May					
June					
July					
August					
September					
October					
November					
December					

**1.6 Contract Price**

The Contract Price means, for any Showing Month, the price specified in the Contract Price table as set forth below, for such Showing Month:

**CONTRACT PRICE TABLE**

<b>Showing Month, Year</b>	<b>Contract Price (\$/kW-month)</b>
[Month, Year]	
[Month, Year]	

**ARTICLE 2. DELIVERY OBLIGATIONS**

**2.1 Delivery of Product**

Seller shall provide Buyer with the Expected Contract Quantity of Product for each day of each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, (i) Monthly Supply Plans and (ii) Annual Supply Plans if the Confirmation Effective Date is prior to the year-ahead Compliance Showing deadline applicable for the Showing Months as specified in Sections 1.4 and 1.5 herein, in accordance with the CAISO Tariff to identify and confirm the Expected Contract Quantity provided to Buyer for each day of each Showing Month so that the total amount of Expected Contract Quantity identified and confirmed for each day of such Showing Month equals the Expected Contract Quantity for such day of such Showing Month.
- (b) Seller shall or shall cause the Unit's SC to submit written notification to Buyer, no later than fifteen (15) Business Days before the initial Compliance Showing deadline for each Showing Month, confirming that Buyer will be specified as the recipient of the Expected Contract Quantity for each day of such Showing Month in the Unit's SC Supply Plan (such notice, the "Expected Contract Quantity Notice"). For illustrative purposes only, as of the Confirmation Effective Date, the applicable Compliance Showing deadlines are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the Monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the Annual Supply Plan. The Parties acknowledge and agree that such dates may be modified by the CAISO from time to time throughout the Term.

- (c) If Seller is delivering Product to Buyer from more than one Unit, Seller shall deliver such Product to Buyer from each Unit in accordance with the Contract Quantity Unit Allocation, as set forth in Appendix E; provided, Seller may modify the Contract Quantity Unit Allocation from time to time by providing email notice to Buyer's Supply Plan contact, as set forth in Appendix F, no later than the initial Compliance Showing deadline for each Showing Month.

## **2.2 Adjustments to Contract Quantity**

Seller shall deliver to Buyer the Contract Quantity of Product for each day of each Showing Month consistent with the following:

- (a) Planned Outages: Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month for the applicable days of such Planned Outages; provided, (i) Seller notifies Buyer, no later than fifteen (15) Business Days before the initial deadline for the Compliance Showing applicable to that Showing Month, of the amount of Product from the Unit Buyer is permitted to include in Buyer's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the CAISO Tariff.
- (b) Reductions in Unit NQC and Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for each Showing Month may also be reduced in the event the Unit experiences a reduction in Unit NQC or Unit EFC after the Confirmation Effective Date as determined by the CAISO. In the event the Unit experiences such a reduction in Unit NQC or Unit EFC, Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product or (ii) from Alternate Units, provided, that in each case Seller provides and identifies such Alternate Units in accordance with Section 2.3.

- (c) SCE's Swap Reduction Option: If SCE is the Seller under this Confirmation, then SCE's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at SCE's option in the event Counterparty fails to deliver, for any reason, the contract quantity of product set forth in Section 1.4 of the Swap Confirmation; provided, SCE's obligation to deliver the Contract Quantity of Product as set forth in this Section 2.2(c) may be reduced only by the amount of contract quantity of product that Counterparty failed to deliver under the Swap Confirmation (such option, the "Swap Reduction Option"). Notwithstanding Section 2.1(b), if SCE exercises its Swap Reduction Option, SCE shall have the right to modify the Expected Contract Quantity Notice by submitting written notice to Counterparty of such modification no later than five (5) Business Days before the initial Compliance Showing deadline for such Showing Month. *{SCE Comment: Section 2.2(c) is only applicable to RA Swaps in which SCE is the Seller and should be deleted for all other transactions}*

### 2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity in accordance with Section 2.2 for any Showing Month for any reason, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Product from one or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units for each day of the Showing Month is not more than the Contract Quantity in accordance with Section 2.2 for the applicable Showing Month, provided that in each case:

- (a) Seller shall notify Buyer of its intent to provide Product from and identify alternate units that (i) have the same Capacity Attributes of the Unit originally identified in Appendix B, including the Resource Category and the Unit EFC Category, (ii) are accepted by the CAISO, and (iii) otherwise that satisfy the requirements of this Agreement ("Alternate Units"), meeting the above Contract Quantity requirements no later than fifteen (15) Business Days before the initial deadline for Buyer's Compliance Showing related to such Showing Month;
- (b) Seller shall, or shall cause the Unit's SC to submit a Monthly Supply Plan and an Annual Supply Plan, as applicable, that includes the Alternate Units, in accordance with the CAISO Tariff, no later than fifteen (15) Business Days before the initial Compliance Showing deadline for the applicable Showing Month;
- (c) if Seller does not comply with the requirements of Sections 2.3(a) and (b) for the applicable Showing Month, then any such Alternate Units shall not be deemed a Unit for purposes of this Confirmation for that Showing Month and Seller shall not receive payment for such Product.

Subject to the satisfaction of the conditions contained in subsections (a) – (c) of this Section 2.3, once Seller has identified in writing any Alternate Units that meet the requirements of this Section 2.3, then any such Alternate Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

**2.4 Damages for Failure to Provide Capacity**

If Seller fails to provide Buyer with the Expected Contract Quantity of Product for any day of any Showing Month, in accordance with Section 2.1 (the “Replacement Obligation”), in each case as applicable, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace all or any portion of the Replacement Obligation for the applicable Showing Month with capacity having equivalent Capacity Attributes as the Expected Contract Quantity; provided, if, using commercially reasonable efforts, Buyer is unable to acquire capacity having equivalent Capacity Attributes for any portion of any Showing Month, Buyer may replace such portion of the Replacement Obligation with capacity having Capacity Attributes in excess of the Contract Quantity (the “Replacement Capacity”). Buyer may enter into purchase transactions with one or more parties to purchase Replacement Capacity. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner to minimize damages in procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, including any transaction costs and expenses incurred in connection with such procurement, plus (B) each applicable Replacement Capacity Price multiplied by the aggregate amount of Replacement Obligation neither provided by Seller as Alternate Capacity nor purchased by Buyer as Replacement Capacity, for all applicable portions of the applicable Showing Month pursuant to Section 2.4(a), and (ii) the Replacement Obligation minus the Alternate Capacity, not provided for all applicable portions of the applicable Showing Month times the Contract Price for that month. Buyer’s invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount and shall include supporting documentation.

**2.5 Indemnities for Failure to Deliver Expected Contract Quantity**

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from

any of the following:

- (a) Seller's failure to provide any portion of the Expected Contract Quantity for any portion of the Delivery Period;
- (b) Seller's failure to provide notice of the non-availability of any portion of the Expected Contract Quantity for any portion of the Delivery Period as required under Section 2.2;
- (c) Seller's or the Unit's SC's failure to timely submit Supply Plans that identify Buyer's right to the Expected Contract Quantity for each Unit purchased hereunder for each day of the Delivery Period;
- (d) Seller's or the Unit's SC's failure to submit accurate Supply Plans that identify Buyer's right to the Expected Contract Quantity for each Unit purchased hereunder for each day of the Delivery Period; or
- (e) any other failure by Seller to perform its obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines.

## **2.6 Buyer's Re-Sale of Product**

Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Confirmation, in accordance with Applicable Laws and CPUC Decisions ("Resold Product"); provided, with respect to Resold Product that includes the sale of Capacity Attributes that impact Seller's obligations under this Confirmation, Buyer agrees to: (a) notify Seller that such a sale has occurred; (b) provide Seller with the information described in Appendix D; and (c) notify Seller of any subsequent changes to the information in Appendix D with respect to any particular sale; in each case promptly following such sale and in no event later than the initial Compliance Showing deadline for each Showing Month. Subject to Article 6 below, Seller agrees, and agrees to cause the Unit's SC, to: (i) follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product; and (ii) take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product.

Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Unit's SC to comply with the terms of this Confirmation, and Seller would have had liability to Buyer under this Confirmation for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be

liable to Buyer under this Confirmation, including without limitation, pursuant to Sections 2.4 and 2.5, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser. Buyer acknowledges and agrees that with respect to any Resold Product, if Seller incurs any liability to any purchaser of such Resold Product due to the failure of Buyer to comply with the terms of this Confirmation, and Buyer would have had liability to Seller under this Confirmation for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Buyer shall be liable to Seller under this Confirmation for the amounts it would have been liable to Seller for had such Resold Product not been sold to a subsequent purchaser.

**2.7 CAISO Offer Requirements**

Seller shall, or cause each Unit's SC to, schedule with, or make available to, the CAISO the Expected Contract Quantity for each Unit in compliance with the CAISO Tariff, and shall, or shall cause each Unit's SC, owner, or operator, as applicable, to perform all obligations under the CAISO Tariff that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller or such Unit's SC, owner, or operator for such noncompliance.

**2.8 Unit SC's Substitution Obligation**

After the obligation to replace all or any portion of the Expected Contract Quantity transfers from the load serving entity to the Unit's SC for a Showing Month in accordance with the CAISO Tariff, and if the CAISO determines that any portion of the Expected Contract Quantity for any portion of a Showing Month that was shown by Buyer in its Compliance Showings requires outage substitution in accordance with Section 40.9.3.6 of the CAISO Tariff because the Unit, or Alternate Unit, as applicable, is scheduled to take an outage (planned or otherwise) (such amount requiring outage substitution, the "SC Substitute Capacity"), then: (a) Seller shall have no liability under Sections 2.4 or 2.5 with respect to such SC Substitute Capacity; and (b) Seller shall have no liability to Buyer for any costs that are allocated to Buyer by the CAISO for any CPM Capacity procured by the CAISO pursuant to the Capacity Procurement Mechanism and that are related to such SC Substitute Capacity.

**ARTICLE 3. PAYMENT**

**3.1 Monthly Payment**

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly Payment to Seller, after the applicable Showing Month, as follows:

$$\text{Monthly Payment} = (A \times B \times 1,000)$$



where:

A = applicable Contract Price for that Showing Month

$$B = \sum_i^n [(C_i) \times (\frac{1}{n})]$$

C = The amount of Contract Quantity of Product actually delivered by Seller to Buyer pursuant to and consistent with Section 2.1 and, if applicable, Section 2.3, for the applicable day of the Showing Month

i = Each day of Showing Month

n = number of days in the Showing Month

The Monthly Payment calculation shall be rounded to two decimal places.

### **3.2 Allocation of Other Payments and Costs**

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by the CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) energy sales, and (iii) any revenues for black start or reactive power services.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Aggregate Contract Quantity (including any capacity revenues from RMR Contracts for the Unit, Capacity Procurement Mechanism or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(iii)). To the extent permitted by the CAISO Tariff, Seller shall, or shall cause each Unit's SC to, submit RUC Availability Bids for the Expected Contract Quantity for each Unit for each hour of the Delivery Period at a bid price of Zero Dollars (\$0) per MW per hour, regardless of whether each Unit is shown on a Supply Plan for the applicable Showing Month.
- (c) In accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement,
  - (i) all such Buyer revenues described in this Section 3.2, but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts Buyer may owe to Seller. In order

to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity; and

- (ii) all such Seller, or a Unit's SC, owner, or operator revenues described in this Section 3.2, but received by Buyer shall be remitted to Seller. If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts it may owe to Buyer.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day of each Showing Month provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.
- (e) Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.

### **3.3 Offset Rights**

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs reimbursement, or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party.

## ARTICLE 4. OTHER BUYER AND SELLER COVENANTS

### 4.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period: (a) cause the required showing information listed in Appendix C to be included in all applicable Supply Plans; (b) execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Aggregate Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Section 2.6; and (c) cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the CAISO Tariff. If during the Delivery Period, there are changes to the information included in Appendix C, the Parties agree to communicate such changes to each other promptly. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, CAISO or other Governmental Authority having jurisdiction to administer Compliance Obligations, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

### 4.2 Seller's Representations, Warranties and Covenants

- (a) Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:
  - (i) Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Authority with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
  - (ii) No portion of the Aggregate Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
  - (iii) Seller shall comply with Applicable Laws relating to the Product;
  - (iv) (A) Seller shall, and shall cause the Unit's SC to promptly (and in any event within one (1) Business Day of the time Seller receives notification from the CAISO) notify Buyer in the event the CAISO designates any portion of the Aggregate Contract Quantity as CPM Capacity and (B) in the event the CAISO makes such a designation Seller shall, and shall cause the Unit's SC to not accept any such designation by the CAISO unless and until Buyer has agreed to accept

such designation;

- (v) Buyer shall have the exclusive right to offer the Aggregate Contract Quantity, or any portion thereof, to the CAISO as CPM Capacity and Seller shall not, and shall cause the Unit's SC not to, offer any portion of the Aggregate Contract Quantity to the CAISO as CPM Capacity or accept any designation of any portion thereof as CPM Capacity;
  - (vi) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
  - (vii) Seller shall cause the Unit's SC, owner and operator to comply with Applicable Laws relating to the Product;
  - (viii) Buyer shall have no liability for the failure of Seller or the failure of the Unit's SC, owner, or operator to comply with such CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.
  - (ix) If Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit does not exceed the Unit NQC or Unit EFC for that Unit;
  - (x) Seller has notified the SC of the Unit that Seller has transferred the Contract Quantity, including the amount of Flexible Capacity and Inflexible Capacity, to the extent applicable, with respect to each day of each Showing Month to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the CAISO Tariff and this Confirmation;
  - (xi) Seller has notified the SC of the Unit that Seller is obligated to cause the Unit's SC to provide to the Buyer, at least fifteen (15) Business Days before the initial deadline for each Compliance Showing, the applicable Expected Contract Quantity of the Unit for each day of such Showing Month, including the amount of Flexible Capacity and Inflexible Capacity, to the extent applicable, that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
  - (xii) Seller has notified the Unit's SC that Buyer is entitled to the revenues set forth in Section 3.2, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.
- (b) If the Parties have designated Flexible Capacity as "Applicable", then the following representation and warranty shall apply to Seller throughout the Delivery Period:

- (i) If Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit and which are eligible to satisfy a load serving entity's Flexible RAR, does not exceed the Unit EFC for that Unit.
- (c) Seller represents, warrants and covenants to Buyer that, as of the Confirmation Effective Date, all of the information set forth on Appendix B hereto is true, correct and complete.
- (d) If the Parties have designated Flexible Capacity as "Applicable", then Seller represents, warrants and covenants to Buyer that, as of the Confirmation Effective Date, the CAISO has given the Unit the Unit EFC set forth on Appendix B hereto.

#### **ARTICLE 5. CONFIDENTIALITY**

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that: (i) Buyer may disclose the Aggregate Contract Quantity or any applicable portion of the Aggregate Contract Quantity, including any amounts of Flexible Capacity and Inflexible Capacity, to the extent applicable, under this Transaction to any Governmental Authority, the CPUC, the CAISO in order to support its Compliance Showings, if applicable; (ii) Seller may disclose the transfer of the Aggregate Contract Quantity and the applicable Contract Quantity and Expected Contract Quantity (as well as any amounts of Flexible Capacity and Inflexible Capacity, to the extent applicable) for each day of each Showing Month under this Transaction to the SC of the Unit in order for such SC to timely submit accurate Supply Plans; (iii) both Parties may disclose the terms and conditions of the Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the Independent Evaluator; and (iv) Buyer and the Independent Evaluator may disclose the terms and conditions of the Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the CAISO, the CPUC, and all divisions thereof, the California Energy Commission, and participants of the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Aggregate Contract Quantity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

#### **ARTICLE 6. HOLDBACK**

No later than five (5) Business Days before the deadline for the initial Compliance Showing deadline with respect to a particular Showing Month, Buyer may request that Seller not list, or cause the Unit's SC not to list, a portion or all of a Unit's applicable

Expected Contract Quantity for any portion(s) of such Showing Month on the Supply Plan. The amount of Expected Contract Quantity that is the subject of such a request shall be deemed Expected Contract Quantity provided consistent with Section 2.1 for purposes of calculating a Monthly Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Section 2.4 or 2.5. Seller shall, or shall cause the Unit's SC to, comply with Buyer's request under this Article 6.

## ARTICLE 7. MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with FERC Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR § 35.42. Seller also agrees that it will not, in any filings, if any, made subject to FERC Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

## ARTICLE 8. COLLATERAL REQUIREMENTS

### 8.1 Counterparty Collateral Requirements

Notwithstanding anything to the contrary contained in the EEI Agreement, Counterparty shall provide to, and maintain with, SCE a Full Floating Independent Amount as long as Counterparty or its Guarantor, if any, does not maintain Credit Ratings of at least (a) BBB- from S&P and Baa3 from Moody's, if such entity is rated by the Ratings Agencies, or (b) BBB- by S&P or Baa3 by Moody's if such entity is rated by only one Ratings Agency. The Full Floating Independent Amount shall be equal to \$ [\_\_\_\_\_]. *{SCE Comment: amount equals twenty percent (20%) of the sum of the expected FFIA Monthly Payments for all months of the Delivery Period.}* Commencing after the initial Compliance Showing deadline of the first Showing Month of the Delivery Period, and for each initial Compliance Showing deadline during the Delivery Period thereafter, the Full Floating Independent Amount shall be reduced to twenty percent (20%) of the sum of the FFIA Monthly Payments for the Next Showing Month and all remaining months of the Delivery Period. For the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Full Floating Independent Amount for Counterparty shall be added to the Exposure Amount for SCE and subtracted from the Exposure Amount for Counterparty.

For the purposes of calculating Exposure, the Monthly Payment shall be deemed accrued and payable upon the initial Compliance Showing deadline for the applicable Showing Month.

**8.2 Current Mark-To-Market Value**

The Parties further agree that for the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for a resource adequacy Capacity product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the Current Mark-to-Market Value for this Transaction.

**8.3 Credit Terms**

The Parties agree that the credit and collateral provisions of the EEI Agreement shall govern this Transaction; provided, however, that for purposes of calculating a Party's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, with respect to this Transaction only (a) if Counterparty has Exposure to SCE, then the amount of Exposure for this Transaction is deemed to be zero dollars (\$0), and (b) in no event shall SCE be required to post or maintain an Independent Amount with Counterparty.

**ARTICLE 9. OTHER**

**9.1 Declaration of an Early Termination Date and Calculation of Settlement Amounts**

The Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement, provided that, with respect to this Transaction only, the following language is added at the end of Section 5.2 of the Master Agreement, with any terms which are defined in this Confirmation being used in the Master Agreement with the definitions given to such terms in this Confirmation:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any Governmental Authority having jurisdiction, because Buyer is not able to include the applicable Contract Quantity in any applicable Compliance Showing due to Seller's Event of Default, then Buyer may, in good faith, estimate the amount of those penalties or fines and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties or fines are finally ascertained. If this accounting establishes that Buyer's estimate exceeds the actual amount of penalties or fines, Buyer shall promptly remit to Seller the excess amount. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto,

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*v.09.09.2019*

shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained.”

*[Remainder of Page Intentionally Left Blank]*



In WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the Confirmation Effective Date first written:

**[BUYER'S/SELLER'S NAME],**  
a [[Buyer's/Seller's] jurisdiction of  
organization and type of organization].

**SOUTHERN CALIFORNIA  
EDISON COMPANY,**  
a California corporation.

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

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

[Name]

[Name]

[Title]

[Title]

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

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

## APPENDIX A

### DEFINED TERMS

“Aggregate Contract Quantity” means the aggregate amount of Product associated with the MWs set forth in the table in Section 1.4 which Seller has agreed to provide to Buyer from the Unit throughout the entire term of the Delivery Period.

“Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Alternate Capacity” means Product which Seller has elected to provide to Buyer in accordance with the terms of Section 2.3.

“Alternate Unit” means a generating unit meeting the requirements specified in Section 2.3.

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

“Applicable Laws” means the CAISO Tariff and all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Project, the Unit or the terms of this Agreement.

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

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

“Buyer” has the meaning specified in the introductory paragraph of this Confirmation.

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

“CAISO Control Area” has the meaning set forth in the CAISO Tariff.

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

“CAISO Tariff” means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), Operating Agreements, 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, if applicable.

“Capacity Attributes” means, with respect to a Unit, any and all of the following, in each case which are attributed to or associated with the Unit at any time throughout the Delivery Period:

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- (a) resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;
- (b) resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR; and
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Compliance Obligation;

provided that, notwithstanding the foregoing, Capacity Attributes shall exclude all flexible capacity resource adequacy attributes, characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled associated with the Unit.

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

“Collateral Annex” has the meaning specified in the introductory paragraph of this Confirmation.

“Compliance Obligations” means the RAR and Local RAR.

“Compliance Showings” means the (a) Local RAR compliance or advisory showings (or similar or successor showings) and (b) RAR compliance or advisory showings (or similar or successor showings), in each case, a load serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

“Confirmation” has the meaning specified in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” has the meaning specified in the introductory paragraph of this Confirmation.

“Contract Price” means, for any Showing Month, the price specified in the Contract Price Table in Section 1.6 for such Showing Month.

“Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product associated with the number of MWs set forth in the table in Section 1.4, which Seller has agreed to provide to Buyer from the Unit for each day of such Showing Month.

“Contract Quantity Unit Allocation” means, if Seller is delivering Product to Buyer from more than one Unit, the allocation of Contract Quantity Seller will deliver from each Unit, as set forth in Appendix E and as modified by Seller from time to time in accordance with Section 2.1(c).

“Cover Sheet” has the meaning specified in the introductory paragraph of this Confirmation.

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

“CPUC” means the California Public Utilities Commission.

“CPUC Decisions” 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, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Current Mark-to-Market Value” has the meaning specified in Section 8.2

“Delivery Period” has the meaning specified in Section 1.3(a).

“EEI” has the meaning specified in the introductory paragraph of this Confirmation.

“EEI Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Expected Contract Quantity” means, with respect to any particular day of any Showing Month of the Delivery Period, the Contract Quantity of Product for such day of such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity for such day, and after giving effect to any reductions to Contract Quantity for such day as specified in Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

“Expected Contract Quantity Notice” has the meaning specified in Section 2.1(b).

“FFIA Monthly Payment” shall be the Monthly Payment calculated using the Contract Quantity rather than the Expected Contract Quantity, such that variable C in the formula for Monthly Payment shall be as follows:  $C =$  the Contract Quantity of Product for each applicable day of the Showing Month.

“Good Utility Practice” has the meaning set forth in the CAISO Tariff.

“Governmental Authority” means any: (a) federal, state, local, municipal or other government; (b) governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (c) court or governmental tribunal.

“Independent Evaluator” has the meaning set forth in CPUC Decision 04-12-048.

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

“Local RAR” means the local resource adequacy requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction. 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.

“Master Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Monthly Payment” has the meaning specified in Section 3.1.

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

“MW” means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.

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

“Next Showing Month” means the next calendar month for which a Compliance Showing will be made.

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

“North” means north of Path 26.

“Path 26” has the meaning set forth in the CAISO Tariff.

“Planned Outage” means, an Approved Maintenance Outage (as defined in the CAISO Tariff), but does not include a RA Maintenance Outage With Replacement (as defined in the CAISO Tariff), a Short-Notice Opportunity RA Maintenance Outage (as defined in the CAISO Tariff) or an Off-Peak Opportunity RA Maintenance Outage (as defined in the CAISO Tariff).

“Product” means the Capacity Attributes of the Unit, including any capacity from RMR Contracts for the Unit, or its successor, Capacity Procurement Mechanism, or its successor, and RUC Availability Payments, or its successor; provided that:

(a) Product does not include any right to the energy or ancillary services from the Unit;

(b) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Transaction; and

(c) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Unit subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area.

“RAR” means the resource adequacy requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

“Replacement Capacity” has the meaning specified in Section 2.4.

“Replacement Capacity Price” means the market price for Product with Capacity Attributes reasonably equivalent to the quantity of Product not provided by Seller under this Confirmation, as determined in the manner upon which market prices are determined under Section 5.2(b) of the Master Agreement. For purposes of this Transaction and Confirmation, the “Replacement Capacity Price” shall be deemed to be the “Replacement Price” as defined in Section 1.51 of the Master Agreement.

“Replacement Obligation” has the meaning specified in Section 2.4.

“Resold Product” has the meaning specified in Section 2.6.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“RMR Contracts” has the meaning set forth in the CAISO Tariff.

“RUC Availability Bid” has the meaning set forth in the CAISO Tariff.

“RUC Availability Payment” has the meaning set forth in the CAISO Tariff.

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

“SC Substitute Capacity” has the meaning set forth in Section 2.8.

“Seller” has the meaning specified in the introductory paragraph of this Confirmation.

“Showing Month” shall be the calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the CPUC Decisions and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“South” means south of Path 26.

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

“Swap Confirmation” means that certain EEI Agreement Confirmation between SCE and Counterparty dated concurrently herewith. *{SCE Comment: include additional identifying information as necessary (e.g., Delivery Period, Contract Quantity, etc.)}*. *{SCE Comment: definition is only applicable to RA Swaps in which SCE is the Seller and should be deleted for all other transactions}*

“Swap Reduction Option” has the meaning specified in Section 2.2(c). *{SCE Comment: definition is only applicable to RA Swaps in which SCE is the Seller and should be deleted for all other transactions}*

“Term” has the meaning specified in Section 1.3(b).

“Unit” shall mean the generation assets described in Appendix B (including any Alternate Units), from which Product is provided by Seller to Buyer.

“Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

#### ADDITIONAL DEFINED TERMS

To the extent that the Parties have selected Flexible Capacity as being “Applicable”, the following definitions shall be utilized in lieu of the corresponding definition, where appropriate, or in addition to the definitions set forth in the above Defined Terms:

“Aggregate Contract Quantity” means the aggregate amount of Product associated with the MWs set forth in the table in Section 1.4 which Seller has agreed to provide to Buyer from the Unit throughout the entire term of the Delivery Period and which includes Product which is Flexible Capacity in an amount equal to the aggregate amount identified in Section 1.5. All Product identified in Section 1.4 is Inflexible Capacity except to the extent identified as Flexible Capacity in Section 1.5.

“Capacity Attributes” means, with respect to a Unit, any and all of the following, in each case which are attributed to or associated with the Unit at any time throughout the Delivery Period:

- (a) resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;
- (b) resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR;
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Compliance Obligations; and
- (d) flexible capacity resource adequacy attributes for the Unit, including, without limitation, the amount of Unit EFC and MWs associated with Unit EFC as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward Flexible RAR.

“Compliance Obligations” means the RAR, Local RAR and Flexible RAR.

“Compliance Showings” 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 or successor showings), in each case, a load serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

“Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product associated with the number of MWs set forth in the table in Section 1.4, which Seller has agreed to provide to Buyer from the Unit for each day of such Showing Month, and which includes Product which is Flexible Capacity in an amount equal to the amount identified in Section 1.5. All Product identified in Section 1.4 is Inflexible Capacity except to the extent identified as Flexible Capacity in Section 1.5.

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

“Flexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product set forth in the table in Section 1.5 which Seller has agreed to provide to Buyer from the Unit as part of the Contract Quantity for each day of such Showing Month, and which such MWs of Product are eligible to satisfy a load serving



entity's Flexible RAR and which such MWs of Product are associated with MWs of the Unit that are part of the Unit EFC.

“Flexible RAR” means the flexible capacity requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction and includes any non-binding advisory showings which a load serving entity is to make with respect to flexible capacity.

“Inflexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product set forth in the table in Section 1.4 minus the number of MWs of Product set forth in the table in Section 1.5, which Seller has agreed to provide to Buyer from the Unit as part of the Contract Quantity for each day of such Showing Month, and which such MWs of Product are not eligible to satisfy a load serving entity's Flexible RAR and which are Product associated MWs of the Unit that are not part of or outside the Unit EFC. Inflexible Capacity is also known as ‘generic capacity’.

“Product” means the Capacity Attributes of the Unit, provided that:

- (a) Product does not include any right to the energy or ancillary services from the Unit;
- (b) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Transaction;
- (c) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder will not result in a change in payments made pursuant to this Transaction;
- (d) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Unit subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area; and
- (e) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR whereby the Unit, or a portion of the Unit which did not previously qualify to satisfy Flexible RAR, subsequently qualifies to satisfy Flexible RAR, the Product shall include all Capacity Attributes of the Unit related to Flexible RAR, including any Capacity Attributes related to Flexible RAR with respect to any portion of the Unit which previously was not able to satisfy Flexible RAR.

“Unit EFC” means the Effective Flexible Capacity (in MWs) of the Unit. The Parties agree that if the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall

*RA Capacity (Buy or Sell Confirmation)*  
*v.09.09.2019*

be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Effective Flexible Capacity.

“Unit EFC Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

**APPENDIX B  
UNIT INFORMATION**

*[SCE Comment: edit table as applicable]*

	Unit 1	Unit 2	Unit 3	Unit 4
<b>Unit Name</b>				
<b>CAISO Resource ID</b>				
<b>Unit NQC (MW as of the Confirmation Effective Date by month)</b>	<i>{Insert applicable number, or in the event Unit NQC varies by month insert Unit NQC by month}</i>	<i>{Insert applicable number, or in the event Unit NQC varies by month insert Unit NQC by month}</i>	<i>{Insert applicable number, or in the event Unit NQC varies by month insert Unit NQC by month}</i>	<i>{Insert applicable number, or in the event Unit NQC varies by month insert Unit NQC by month}</i>
<b>If Flexible Capacity is designated as applicable in Section 1.1, Unit EFC (MW, as of the Confirmation Effective Date by month)</b>	<i>{Insert applicable number, or in the event Unit EFC varies by month insert Unit EFC by month}</i>	<i>{Insert applicable number, or in the event Unit EFC varies by month insert Unit EFC by month}</i>	<i>{Insert applicable number, or in the event Unit EFC varies by month insert Unit EFC by month}</i>	<i>{Insert applicable number, or in the event Unit EFC varies by month insert Unit EFC by month}</i>
<b>Resource Type</b>	<i>{Insert technology}</i>	<i>{Insert technology}</i>	<i>{Insert technology}</i>	<i>{Insert technology}</i>
<b>Resource Category (1, 2, 3 or 4)</b>				
<b>Unit EFC Category (1, 2, or 3): N/A</b>				
<b>Path 26 (North, South or None)</b>				
<b>Local Capacity Area (if any, as of Confirmation Effective Date)</b>				

*RA Capacity (Buy or Sell Confirmation)*  
*v.09.09.2019*

<b>PABA Vintage</b>				
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**APPENDIX C**  
**SUPPLY PLAN INFORMATION**

Benefitting load serving entity SCID: \_\_\_\_\_

**APPENDIX D**  
**SUBSEQUENT SALE INFORMATION**

Contract Key ID: \_\_\_\_\_

Subsequent sale contract quantity (in MW): \_\_\_\_\_

Subsequent sale delivery period: \_\_\_\_\_

Amount of Inflexible Capacity included in Volume: \_\_\_\_\_

New Benefitting load serving entity SC identification number: \_\_\_\_\_

**APPENDIX E  
CONTRACT QUANTITY UNIT ALLOCATION**

*[SCE Comment: edit table as applicable]*

Showing Month, Year	Unit 1		Unit 2		Unit 3		Unit 4	
	Contract Capacity (MW)	Flexible Capacity (MW)	Contract Capacity (MW)	Flexible Capacity (MW)	Contract Capacity (MW)	Flexible Capacity (MW)	Contract Capacity (MW)	Flexible Capacity (MW)
January, Year								
February, Year								
March, Year								
April, Year								
May, Year								
June, Year								
July, Year								
August, Year								
September, Year								
October, Year								
November, Year								
December, Year								

**APPENDIX F**  
**SUPPLY PLAN CONTACT INFORMATION**

*[SCE Comment: edit table as applicable]*

Buyer's Supply Plan contact information:

Buyer's Supply Plan name: Angelica Sindelar

Buyer's Supply Plan email: angelica.sindelar@sce.com

Buyer's Supply Plan phone number: 626-302-9576

Seller's Supply Plan contact information:

Seller's Supply Plan name: [name]

Seller's Supply Plan email: [email]

Seller's Supply Plan phone number: [#]



AMENDED IN BOARD

5/12/15

FILE NO. 150408

ORDINANCE NO. 75-15

1 [Purchase and Sale of Electricity and Related Products and Services - Public Utilities  
2 Commission]

3 **Ordinance authorizing the Public Utilities Commission (PUC) to use pro forma**  
4 **agreements to purchase and sell electricity and related products and services to**  
5 **operate the City's municipal electric utility and community choice aggregation**  
6 **program; authorizing the General Manager of the PUC, in such agreements, to deviate**  
7 **from certain otherwise applicable requirements of City law, under certain**  
8 **circumstances; and authorizing the PUC, within specified parameters, to approve**  
9 **agreements with terms in excess of ten years or requiring expenditures of \$10,000,000**  
10 **or more for renewable and greenhouse-gas-free power and related products and**  
11 **services.**

12 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
13 **Additions to Codes** are in single-underline italics Times New Roman font.  
14 **Deletions to Codes** are in ~~strikethrough italics Times New Roman font~~.  
15 **Board amendment additions** are in double-underlined Arial font.  
16 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
17 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
18 subsections or parts of tables.

19 Be it ordained by the People of the City and County of San Francisco:

20 **Section 1.** Findings. The Board of Supervisors of the City and County of San  
21 Francisco hereby finds:

22 (a) For decades, the City and County of San Francisco (City), through its Public  
23 Utilities Commission (PUC), has operated a municipal electric utility that supplies clean  
24 greenhouse-gas-free electricity to San Francisco's municipal facilities, services, and  
25 customers.

1 (b) The PUC supplements electricity from its Hetch Hetchy hydroelectric facilities  
2 with 11 megawatts of renewable energy from City-owned facilities and with purchases of  
3 electricity from other sources. PUC makes many of these purchases using industry-standard  
4 pro forma contracts that the Board of Supervisors has authorized in advance. See Ordinance  
5 Nos. 54-92 and 39-01.

6 (c) The City has adopted aggressive goals for greenhouse gas reduction and use of  
7 renewable energy. In Ordinance No. 81-08, the Board of Supervisors articulated the goal of  
8 having a greenhouse-gas-free electric system by 2030, and meeting all City electricity needs  
9 with renewable and greenhouse-gas-free sources.

10 (d) State law allows cities and counties to develop Community Choice Aggregation  
11 (CCA) programs, through which local governments may choose to supply electricity to serve  
12 the needs of participating customers within their jurisdictions while the existing utility continues  
13 to provide services such as customer billing, transmission and distribution.

14 (e) For many years, the City has considered developing a CCA program to allow  
15 San Francisco residents and businesses the option to receive cleaner, more sustainable  
16 electricity at rates comparable to the incumbent utility. See Ordinance Nos. 86-04, 147-07,  
17 232-09, 45-10, 200-12 and 78-14; and Resolution Nos. 348-12 and 331-13.

18 (f) In 2012, the Board of Supervisors approved a contract with Shell Energy North  
19 America that required Shell to procure all power needed for the early phases of the City's  
20 CCA program, called CleanPowerSF. See Resolution 348-12. The Shell contract was never  
21 executed.

22 (g) In response to interest from City leaders and community members, PUC is  
23 developing a new CCA program that would offer participating customers a choice of two levels  
24 of renewable energy service: a 100% renewable option and a 33%-50% renewable option.  
25 These options would be offered to groups of customers in phases, and over time would be

1 offered to all customers within San Francisco. PUC expects to implement this program  
2 expeditiously by purchasing energy using its in-house expertise and staff resources. At the  
3 same time, PUC would immediately begin the process of developing new local renewable  
4 energy resources that would over time replace purchased energy, if such projects are  
5 approved following any necessary environmental review.

6 (h) PUC anticipates that it will need to procure no less than 30 megawatts of  
7 renewable energy for the first phase of CCA service. To meet aggressive implementation date  
8 targets and secure the best possible prices and terms, PUC staff will need to negotiate a mix  
9 of electricity contracts with multiple renewable energy projects simultaneously in an expedited  
10 time frame.

11 (i) PUC already uses some standardized contracting methods to streamline its  
12 procurement practices. Increased ability to purchase power and related products and services  
13 using pro forma contracts that meet specified criteria will enable PUC to implement CCA  
14 expeditiously and capture maximum price benefits for CCA customers and customers of the  
15 City's municipal utility.

16 (j) Most utilities and the existing CCA programs, Marin Clean Energy and Sonoma  
17 Clean Power, use standardized contracts for their procurement practices.

18 (k) City law requires standard contract provisions to protect the City's interests,  
19 ensure accountability, and promote important social values. The Board of Supervisors may  
20 waive certain contract provisions by ordinance. When the PUC uses pro forma contracts for  
21 the purchase and sale of power and related products and services, it may be appropriate to  
22 waive some of the City's standard contract provisions, if the General Manager finds and  
23 documents in writing that doing so is in the best interest of the City.

1           **Section 2.** Approval of Pro Forma Contracts and Related Waivers of Certain  
2 Requirements of City Law.

3           (a)    Background.

4           Utilities and energy suppliers use industry-standard pro forma contracts to ensure the  
5 availability of essential services in a timely and cost-effective manner. Using these  
6 agreements can help facilitate negotiations by focusing the parties on the elements that are  
7 most likely to differ from one transaction to another: e.g., price, quantity, location, and  
8 duration. These contracts provide standard terms and conditions that address common  
9 issues, but allow parties to determine which provisions to include in a particular contract.  
10 These contracts do not contain all contractual provisions required by local law.

11  
12           (b)    Specific Pro Forma Contracts.

13           (1)    Western System Power Pool Agreement.

14           (A)    The Western System Power Pool ("WSPP") is a group of more than 300  
15 publicly-owned and private utilities, including Alameda Municipal Power, the City of Palo Alto,  
16 the City of Roseville, the Sacramento Municipal Utility District, and Silicon Valley Power, all of  
17 which operate publicly-owned utilities. The City, through PUC, is a member of the WSPP.  
18 The WSPP has developed an agreement that sets forth standard terms and conditions for the  
19 purchase and sale of power and related products and services. A copy of the current WSPP  
20 agreement is on file with the Clerk of the Board of Supervisors in File No. 150408 and  
21 available on the Board's website, and is incorporated herein by reference as though fully set  
22 forth. The WSPP agreement has been approved by the Federal Energy Regulatory  
23 Commission ("FERC"). The WSPP agreement is periodically updated and modified subject  
24 to the approval of FERC.

1 (B) The Board of Supervisors has previously authorized the General  
2 Manager to use the WSPP agreement for transactions with a duration of up to five years and  
3 waived for those transactions the requirements of section 12.F of the Administrative Code and  
4 Chapter 8 of the Environment Code (formerly Administrative Code Section 121.5(b)). See  
5 Ordinance 54-92 and Ordinance 39-01, which are on file with the Clerk of the Board of  
6 Supervisors in File No. 150408.

7 (C) Using the WSPP Agreement, PUC routinely engages in short term  
8 transactions of five years or less in order to supplement power generated by Hetch Hetchy or  
9 sell excess power. These purchases are subject to the PUC's risk management procedures  
10 and policies, while sales of Hetch Hetchy energy are subject to the City's "water first" policy  
11 and requirements of the Raker Act. See Raker Act of 1913, ch. 4, 38 Stat. 242.

12 (2) The Edison Electric Institute Master Agreement.

13 (A) The Edison Electric Institute (EEI) in collaboration with more than 80  
14 member utilities, affiliated and independent power marketers, merchant power, and end-use  
15 representatives, developed an agreement that sets forth standard terms and conditions for the  
16 purchase and sale of power and related products and services. The EEI agreement is  
17 updated as needed to reflect market changes. A copy of the current EEI agreement is on file  
18 with the Clerk of the Board of Supervisors in File No. 150408 and available on the Board's  
19 website, and is incorporated herein by reference as though fully set forth

20 (B) In Resolution 348-12, the Board of Supervisors authorized the General  
21 Manager to execute an agreement based on the EEI agreement with Shell Energy North  
22 America to provide services require to launch a CCA.

23 (3) Other Pro Forma Agreements.

24 (A) Feed-in-Tariff (FIT).  
25

1 A FIT Program is a standard tariff for purchases of electricity from distributed  
2 generation facilities, such as a roof-top solar photovoltaic systems. The FIT establishes  
3 uniform rules for participation, standard-offer prices, and a form contract. Because the term of  
4 the contract is typically 10-20 years, a FIT can incentivize the development of local renewable  
5 resources by assuring project owners of a stable long-term revenue stream.

6 (B) City Standard Contracts.

7 PUC may find it beneficial and efficient to develop City-specific standard contracts for  
8 the purchase and sale of power and related products and services.

9  
10 (c) Authorization to Use Pro Forma Contracts.

11 (1) The Board of Supervisors authorizes the use of the WSPP agreement and the  
12 EEI agreement, as those agreements may be modified over time, for the PUC's purchase and  
13 sale of power and related products and services, notwithstanding that the terms of those  
14 agreements may deviate from the City's standard contract forms; provided that if those  
15 agreements are modified in a manner that, in the judgment of the General Manager and the  
16 City Attorney, materially decreases the City's rights or materially increases its liabilities, then  
17 the General Manager shall seek approval from the Board of Supervisors to enter into any  
18 agreement that would be subject to such approval absent the authorization granted in this  
19 subsection 2(c).

20 (2) The Board of Supervisors authorizes the use of one or more pro forma contracts  
21 developed by PUC for the purchase and sale of power and related products and services;  
22 provided that if those agreements, in the judgment of the General Manager and the City  
23 Attorney, materially decrease the City's rights or materially increase its liabilities as compared  
24 to the forms of the WSPP agreement and EEI agreement authorized for use by this ordinance,  
25 then the General Manager shall seek approval from the Board of Supervisors to enter into any

1 agreement that would be subject to such approval absent the authorization granted in this  
2 subsection 2(c).

3 (3) The Board of Supervisors authorizes the use of a pro forma contract to support  
4 a FIT or similar mechanism to purchase electricity from distributed generation facilities that is  
5 consistent with industry standards; provided that if the contract contains terms that in the  
6 judgment of the General Manager and the City Attorney materially decrease the City's rights  
7 or materially increase its liabilities as compared to the forms of the WSPP agreement and EEI  
8 agreement authorized for use by this ordinance, then the General Manager shall seek  
9 approval from the Board of Supervisors to enter into any agreement that would be subject to  
10 such approval absent the authorization granted in this subsection 2(c).

11 (4) The authority granted in this subsection 2(c) shall be limited to agreements that  
12 do not exceed ten years or require expenditures by the City of ten million dollars or more.

13 (5) For purposes of the authorizations and waivers in this section, power and  
14 related products and services shall include power supplies, the conveyance or transmission of  
15 same, or ancillary services such as spinning reserve, voltage control, or load scheduling, as  
16 required for assuring reliable services in accordance with good utility practice and applicable  
17 laws.

18 (d) Waivers of Required City Contract Provisions.

19 (1) For purchase or sale of power and related products and services, where the  
20 General Manager finds and documents in writing both that the transaction represents the best  
21 opportunity available to the City to obtain essential services and products or dispose of  
22 excess power in a manner beneficial to the City, and that it is not feasible to add all standard  
23 City contract provisions to the agreement, the Board of Supervisors hereby grants waivers of  
24 the following standard contract provisions to the extent found necessary by the General  
25

1 Manager, and finds such waivers to be reasonable and in the public interest, for purchases  
2 made using the pro forma contracts identified in subsection 2(c) above:

3 (A) Review of the City's support of the MacBride Principles (Admin. Code  
4 Chapter 12F);

5 (B) Increased participation by small and micro local businesses in City  
6 contracts (Admin. Code Chapter 14B);

7 (C) The competitive bidding requirement (Admin. Code Section 21.1);

8 (D) First source hiring requirements (Admin. Code Chapter 83); and

9 (E) The tropical hardwood and virgin redwood ban (Environ. Code Chapter  
10 8).

11 (2) For purchase or sale of power and related products and services, where the  
12 General Manager finds and documents in writing both that the agreement represents the best  
13 opportunity available to the City to obtain essential services and products or dispose of  
14 excess power in a manner beneficial to the City, and that it is not feasible to add all standard  
15 City contract provisions to the agreement, the Board of Supervisors waives the requirement  
16 to include in the agreement references to the following City Code provisions to the extent  
17 found necessary by the General Manager and finds such waivers to be reasonable and in the  
18 public interest for transactions using the pro forma contracts identified in subsection 2(c)  
19 above:

20 (A) Public access to meeting and records for non-profit organizations (Admin.  
21 Code Section 12L.2);

22 (B) Sweatfree Contracting (Admin. Code Section 12U.4);

23 (C) Food service waste reduction (Environ. Code Section 1605).  
24  
25



1           (3) The waivers specified in subsection 2(d) shall apply only to procurement  
2 contracts using the pro forma contracts referenced in subsection 2(c) above, which include  
3 language requiring compliance with all applicable federal, state, and local laws.  
4

5           **Section 3. Authorization Pursuant to Charter Section 9.118(b) for Purchases of**  
6 **Renewable and Greenhouse-Gas-Free Energy.**

7           (a) Background.

8           (1) PUC anticipates it will need at least 30 megawatts of renewable energy for the  
9 first phase of CCA service. Under the new program design, PUC will manage the supply  
10 portfolio for CCA customers, rather than contracting with a third party to purchase the energy  
11 needed for the program. This approach will be more cost-effective than paying a third party to  
12 enter into and manage contracts, but it will require PUC to negotiate and manage many  
13 contracts.

14           (2) PUC anticipates issuing competitive solicitations for renewable energy supplies  
15 and related services. It expects to enter into contracts of varying terms (up to 25 years) with  
16 multiple sellers for a variety of resource types including solar, wind, and geothermal. This  
17 approach will facilitate diversity of sellers and resource types while also reducing the risk of  
18 failure that would be present in relying on a single entity for all energy supply. Long term  
19 contracts of up to 25 years also encourage the development of local resources by limiting  
20 development risk and providing revenue certainty.

21           (3) This new approach requires negotiating a number of contracts in a short time  
22 period in order to meet the aggressive implementation schedule established for the program.  
23 The ability to enter into agreements quickly will also allow PUC to capture attractive pricing  
24 and finalize important terms in a time frame that is expected in commercial transactions.  
25

1           (4) PUC's energy needs for serving the customers of its municipal utility are met  
2 almost entirely by Hetch Hetchy supplies. But there may be limited circumstances where  
3 purchases of renewable or greenhouse-gas-free supplies will be needed to ensure operations  
4 consistent with good utility practices or to comply with legal requirements. The ability to make  
5 these purchases in a timely manner will enable PUC to ensure the best prices and terms for  
6 its municipal utility energy supply.  
7

8           (b) Authorizations.

9           (1) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors  
10 authorizes the General Manager to purchase renewable and greenhouse-gas-free energy  
11 supplies from facilities in California using contracts with terms in excess of ten years or  
12 requiring expenditures of ten million dollars or more including amendments to such  
13 agreements with an impact of greater than \$500,000, so long as the contract term, including  
14 any amendments, does not exceed 25 years or require expenditures in excess of five million  
15 per year or \$125 million over the life of the contract, and further provided that such contracts  
16 are procured through a competitive process and approved by the PUC acting through its  
17 Commission at a public meeting.

18           (2) Waivers. For such purchases of renewable and greenhouse-gas-free energy  
19 supplies and capacity pursuant to the authority delegated in subsection 3(b)(1) that use the  
20 pro forma standard agreements described in subsection 2(c) above, the Board of Supervisors  
21 authorizes the waivers set forth in section 2(d) above.

22           (3) Contracts authorized under this subsection 3(b) for CCA shall be subject to a  
23 maximum aggregate limit of \$500 million. PUC shall annually report to the Board of  
24 Supervisors the duration, product purchased and cost of contracts entered into pursuant to  
25

1 this section 3(b). PUC shall also annually report the program costs, the rates charged to CCA  
2 customers to recover those costs, and a comparison of those CCA rates to PG&E rates.

3 (4) The cost of procurement contracts entered into under this section 3(b) for the  
4 City's municipal electric utility and CCA program shall be subject to the PUC's existing budget  
5 and appropriation process.

6 (5) For purposes of the authorizations and waivers in this section 3(b), power and  
7 related products and services shall include power supplies, the conveyance or transmission of  
8 same, or ancillary services such as spinning reserve, voltage control, or load scheduling, as  
9 required for assuring reliable services in accordance with good utility practice and applicable  
10 laws.

11 (6) That within 30 days of any agreements and/or contracts authorized by this  
12 legislation being fully executed by all parties, the final agreement or contract shall be provided  
13 to the Clerk of the Board for inclusion in the official file.

14 **Section 4. Severability.**

15 If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any  
16 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a  
17 decision of a court of competent jurisdiction, such decision shall not affect the validity of the  
18 remaining portions or applications of the ordinance. The Board of Supervisors hereby  
19 declares that it would have passed this ordinance and each and every section, subsection,  
20 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to  
21 whether any other portion of this ordinance or application thereof would be subsequently  
22 declared invalid or unconstitutional.

23  
24 **Section 5. Effective Date.** This ordinance shall become effective 30 days after  
25 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
2 of Supervisors overrides the Mayor's veto of the ordinance.

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APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

By:   
THERESA L. MUELLER  
Deputy City Attorney



**City and County of San Francisco**  
**Tails**  
**Ordinance**

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 150408

**Date Passed:** May 19, 2015

Ordinance authorizing the Public Utilities Commission (PUC) to use pro forma agreements to purchase and sell electricity and related products and services to operate the City's municipal electric utility and community choice aggregation program; authorizing the General Manager of the PUC, in such agreements, to deviate from certain otherwise applicable requirements of City law, under certain circumstances; and authorizing the PUC, within specified parameters, to approve agreements with terms in excess of ten years or requiring expenditures of \$10,000,000 or more for renewable and greenhouse-gas-free power and related products and services.

May 06, 2015 Budget and Finance Sub-Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

May 06, 2015 Budget and Finance Sub-Committee - RECOMMENDED AS AMENDED

May 12, 2015 Board of Supervisors - AMENDED

Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

May 12, 2015 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

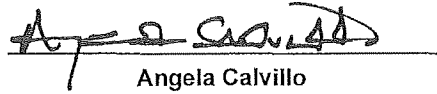
May 19, 2015 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Mar, Tang, Wiener and Yee

Excused: 1 - Kim

File No. 150408

I hereby certify that the foregoing  
Ordinance was FINALLY PASSED on  
5/19/2015 by the Board of Supervisors of  
the City and County of San Francisco.



Angela Calvillo  
Clerk of the Board



Mayor

5/28/15  
Date Approved

AMENDED IN COMMITTEE  
11/18/15

FILE NO. 151123

ORDINANCE NO. 223-15

1 [Purchase and Sale of Electricity and Related Products and Services for CleanPowerSF - San  
2 Francisco Public Utilities Commission]

3 **Ordinance conditionally authorizing the San Francisco Public Utilities Commission**  
4 **(SFPUC) to enter into one or more agreements requiring expenditures of \$10,000,000 or**  
5 **more for electric power and related products and services to launch the City's**  
6 **community choice aggregation program, CleanPowerSF, and authorizing the General**  
7 **Manager of the SFPUC to deviate from certain otherwise applicable requirements of**  
8 **City law in such agreements.**

9 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
11 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
12 **Board amendment additions** are in double-underlined Arial font.  
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
14 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
15 subsections or parts of tables.

16 Be it ordained by the People of the City and County of San Francisco:

17 Section 1. Findings.

18 **San Francisco Community Choice Aggregation Program**

19 (a) State law allows cities and counties to develop Community Choice Aggregation  
20 (CCA) programs, through which local governments may choose to supply electricity to serve  
21 the needs of participating customers within their jurisdictions while the existing utility continues  
22 to provide services such as customer billing, transmission and distribution.

23 (b) For many years, the City has considered developing a CCA program to allow  
24 San Francisco residents and businesses the option to receive cleaner, more sustainable  
25 electricity at rates comparable to the incumbent utility. See Board of Supervisors (BOS)  
Ordinance Nos. 86-04, 147-07, 232-09, 45-10, 200-12 and 78-14; and BOS Resolution Nos.  
348-12, and 331-13.

1 (c) The Public Utilities Commission (SFPUC) has developed a CCA program called  
2 CleanPowerSF. On May 12, 2015, in SFPUC Resolution 15-0112, on file with the Clerk of the  
3 Supervisors in File No. 151123, the SFPUC approved initial not-to-exceed rates and a rate-  
4 setting methodology for CleanPowerSF.

5 (d) In May 2015, the City enacted Ordinance No. 75-15. Ordinance No. 75-15  
6 authorized the General Manager of the SFPUC to use certain pro forma contracts, such as  
7 the Western System Power Pool (WSPP) agreement and the Edison Electric Institute (EEI)  
8 agreement to purchase electricity and authorized the General Manager to deviate from certain  
9 requirements under City law in such contracts. That ordinance also authorized the SFPUC  
10 within specified parameters to approve agreements with terms in excess of 10 years or  
11 requiring expenditures of \$10,000,000 or more, for renewable and greenhouse-gas-free  
12 energy supplies from facilities in California.

13 **SFPUC Competitive Processes for Power and Related Products to Launch**  
14 **CleanPowerSF, Short Listing of Bidders and Approval of Contract Negotiations**

15 (e) On August 11, 2015, the SFPUC issued a Request for Offers (RFO) for power  
16 supplies to launch CleanPowerSF. The RFO requested bids for energy to support the first  
17 phase of CleanPowerSF that would initially be 30 to 50 megawatts (MW).

18 (f) The RFO sought proposals for three types of products: firm and shaped  
19 renewable and conventional energy with a term of three to five years (Bid Option 1); firm  
20 and shaped or as available renewable energy with a term of one to 25 years (Bid Option 2);  
21 and resource adequacy capacity (RA Capacity).

22 (g) The SFPUC received six bids from respondents offering Bid Option 1 products;  
23 52 bids from respondents offering Bid Option 2 products; and six bids from respondents  
24 offering RA Capacity. SFPUC staff reviewed the bids to ensure their compliance with the  
25



1 minimum bid requirements, and an evaluation team reviewed the bids against the RFO  
2 evaluation criteria.

3 (h) The evaluation team recommended the following respondents for further  
4 consideration and negotiations:

5 (1) for Bid Option 1 products: Calpine Energy Services; L.P., Constellation;  
6 and Morgan Stanley;

7 (2) for Bid Option 2 products: Calpine Energy Services, L.P.; E.ON; EDF  
8 Renewable Development, LLC; First Solar; FTP Power LLC; dba Sustainable Power Group  
9 (sPower); Iberdrola Renewables; Republic Services of Sonoma County, Inc.; 8minutenergy;  
10 Centaurus Renewable Energy LLC/Clenera, LLC; and

11 (3) for RA Capacity: Calpine Energy Service, L.P.; Constellation; and EWP  
12 Renewable Development Corporation.

13 (i) On October 27, 2015, in SFPUC Resolution 15-0222, on file with the Clerk of the  
14 Board of Supervisors in File No. 151123, the SFPUC approved the pool of qualified  
15 respondents recommended by the evaluation team, authorized the General Manager to  
16 negotiate energy supply contracts with one or more of the respondents, and authorized the  
17 General Manager to execute energy supply contracts with one or more of the qualified  
18 respondents subject to specified conditions. The SFPUC authorized the General Manager to  
19 submit the contracts to the Board of Supervisors for its review, if required.

20 (j) SFPUC Resolution 15-0222 imposed the following conditions, among others:

21 (1) contract pricing must be consistent with the rate setting priorities set forth  
22 in SFPUC Resolution 15-0112;

23 (2) contractors must maintain an investment grade credit rating, or provide  
24 equivalent credit support during the duration of the contract;

25 (3) contracts for Bid Option 1 products may not exceed five years;

1 (4) contracts for Bid Option 2 products may not exceed 25 years;  
2 (5) contracts for RA Capacity may not exceed five years; and  
3 (6) the total cost of all CleanPowerSF energy supply contracts entered into  
4 pursuant to SFPUC Resolution 15-0222 may not exceed \$365 million a year.

5 (k) SFPUC Resolution 15-0222 also provides:

6 (1) The SFPUC intends to review the expected costs of CCA service and  
7 consider authorizing the General Manager to finalize the schedule of rates and charges for the  
8 initial offering, prior to commencement of the opt-out process;

9 (2) The contracts will not be effective until the SFPUC has reviewed the  
10 CleanPowerSF business plan and risk assessment and adopted business practice policies for  
11 CleanPowerSF;

12 (3) The General Manager will report to the SFPUC on the final schedule of  
13 rates and charges for the initial offering, prior to commencement of the opt-out process; and

14 (4) Before making any future decisions to construct or cause the construction  
15 of specific renewable energy projects subject to the California Environmental Quality Act  
16 (CEQA), the SFPUC will consider any environmental review documents prepared by the City  
17 or another lead agency in compliance with CEQA and, if it approves such projects, the  
18 SFPUC will make or adopt any required CEQA findings as part of such approval actions.

19 (l) If the City defaults or elects to terminate an agreement, the SFPUC may be  
20 required to make termination payments under Bid Option 1 product contracts, and such  
21 termination payments could be in the tens of millions of dollars.

22 (m) In order to secure this potential exposure the SFPUC issued a request for  
23 proposals in August 2015 to obtain an irrevocable letter of credit to secure such termination  
24 payments.

1 (n) After a review of responsive proposals from qualified commercial banks the  
2 SFPUC determined to negotiate the terms of a letter of credit with JPMorgan Chase Bank,  
3 National Association.

4 **Need for Further Contracting Authority for Bid Option 1 Products.**

5 (o) Based on its review of the competitive process responses and program needs,  
6 the SFPUC in its expert judgment has determined that in order to obtain the best service for  
7 the best price, it may require the ability to enter into contracts for Bid Option 1 products and  
8 related letters of credit that exceed \$10,000,000.

9 Section 2. Authorizations.

10 (a) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors  
11 hereby authorizes the General Manager to ~~(i)~~ enter into no more than one agreements per  
12 bidder for Bid Option 1 products with one or more of the three bidders specified in SFPUC  
13 Resolution 15-0222 (Calpine Energy Services, L.P., Constellation, and Morgan Stanley),  
14 requiring expenditures of \$10,000,000 or more, including amendments to such contracts with  
15 an impact of greater than \$500,000, provided that the total aggregate cost of any such  
16 agreement(s) authorized by this Section 2(a) may not exceed \$30 million a year.

17 (b) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors  
18 hereby authorizes the General Manager to and ~~(ii)~~ enter into one or more credit agreements  
19 with JPMorgan Chase Bank for one or more letters of credit to secure termination payments  
20 under any contract for Bid Option 1 products, ~~in either case~~ requiring expenditures of  
21 \$10,000,000 or more, including amendments to such contracts with an impact of greater than  
22 \$500,000, provided that the total aggregate value of such letter(s) of credit authorized by this  
23 Section 2(b) may not exceed \$40 million.

24 ~~(b)(c)~~ The Board of Supervisors hereby extends to contracts authorized pursuant to  
25 Section 2(a)~~(i)~~ above the authorization to use pro forma contracts set forth in Section 2(c) of

1 Ordinance No. 75-15, and the waivers of required City Contracting Provisions set forth in  
2 Section 2(d) of Ordinance No. 75-15.

3 ~~(e)~~(d) The authorization in Section 2(a)(i) and authorization and waivers in Section  
4 2(~~cb~~) above apply only to contracts authorized by SFPUC Resolution 15-0222 that meet all of  
5 the requirements set forth in SFPUC Resolution 15-0222. The authorization in Section  
6 2(~~ba~~)(ii) applies only for letters of credit to secure termination payments in contracts  
7 authorized by SFPUC Resolution 15-0222 that meet all of the requirements set forth in  
8 SFPUC Resolution 15-0222.

9 ~~(d)~~(e) The authorizations in Sections 2(a) and 2(b) and the authorization and waivers  
10 in Section 2(~~cb~~) are subject to all other requirements of Ordinance No. 75-15.

11 ~~(e)~~(f) The cost of procurement contracts entered into under Section 2 shall be subject  
12 to the Charter budget and fiscal provisions.

13 (g) The SFPUC shall submit annual reports to the Board of Supervisors that include  
14 annual program costs, the rates charged by the SFPUC to CleanPowerSF customers to  
15 recover the costs, and a comparison of those CleanPowerSF rates to PG&E rates.

16 (h) This Ordinance adds to but does not otherwise modify the authority granted in  
17 Ordinance No. 75-15.

18 Section 3. Effective Date.

19 This ordinance shall become effective 30 days after enactment. Enactment occurs  
20 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
21 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
22 Mayor's veto of the ordinance.

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APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

By: Jeanne M. Sole  
JEANNE M. SOLE  
Deputy City Attorney

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**City and County of San Francisco**  
**Tails**  
**Ordinance**

City Hall  
 1 Dr. Carlton B. Goodlett Place  
 San Francisco, CA 94102-4689

**File Number:** 151123

**Date Passed:** December 08, 2015

Ordinance conditionally authorizing the San Francisco Public Utilities Commission (SFPUC) to enter into one or more agreements requiring expenditures of \$10,000,000 or more for electric power and related products and services to launch the City's community choice aggregation program, CleanPowerSF, and authorizing the General Manager of the SFPUC to deviate from certain otherwise applicable requirements of City law in such agreements.

November 18, 2015 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

November 18, 2015 Budget and Finance Committee - RECOMMENDED AS AMENDED

December 01, 2015 Board of Supervisors - PASSED, ON FIRST READING


Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

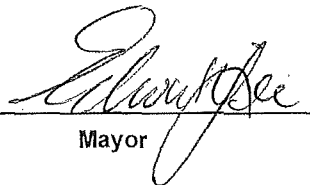
December 08, 2015 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Tang, Wiener, Yee and Peskin

File No. 151123

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 12/8/2015 by the Board of Supervisors of the City and County of San Francisco.

  
 \_\_\_\_\_  
 Angela Calvillo  
 Clerk of the Board

  
 \_\_\_\_\_  
 Mayor

  
 \_\_\_\_\_  
 Date Approved

1 [Authorizing Agreements - Purchase of Electricity and Related Products and Services for  
2 CleanPowerSF - Public Utilities Commission]

3 **Ordinance delegating authority under Charter, Section 9.118, to the General Manager of**  
4 **the Public Utilities Commission to enter into agreements with terms in excess of ten**  
5 **years or requiring expenditures of \$10,000,000 or more for power and related products**  
6 **and services required to supply San Francisco's community choice aggregation**  
7 **program, CleanPowerSF, subject to specified conditions, as defined herein; and**  
8 **authorizing deviations from certain otherwise applicable contract requirements in the**  
9 **Administrative Code and the Environment Code.**

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
12 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
13 **Board amendment additions** are in double-underlined Arial font.  
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
15 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
16 subsections or parts of tables.

17 Be it ordained by the People of the City and County of San Francisco:

18 **Section 1. Background.**

19 (a) State law allows cities and counties to develop Community Choice Aggregation  
20 (CCA) programs, through which local governments supply electricity to serve the needs of  
21 participating customers within their jurisdictions while the existing utility continues to provide  
22 services such as customer billing, transmission, and distribution.

23 (b) The City elected to implement a CCA program to provide San Francisco  
24 residents and businesses the option to receive cleaner, more sustainable electricity at rates  
25 comparable to PG&E's rates. See Ordinance Nos. 86-04, 147-07, 232-09, 45-10, 200-12 and  
78-14; and Resolution Nos. 348-12, 331-13 and 75-15.

1 (c) In May 2016, the San Francisco Public Utilities Commission (PUC) launched  
2 San Francisco's CCA program, CleanPowerSF, with initial service to almost 8,000 accounts.  
3 In November 2016, PUC expanded its service and CleanPowerSF now serves about 80,000  
4 accounts. As required by State law for all CCAs, customers are given several opportunities to  
5 opt out of CleanPowerSF service.

6 (d) CleanPowerSF currently offers two levels of supply service: Green, the default  
7 service taken by most customers, which contains 40% renewable energy; and SuperGreen, a  
8 premium option selected by 3.94% of customers, which offers 100% renewable energy.

9 (e) The goals of CleanPowerSF are to provide affordable and reliable electricity  
10 services, cleaner energy alternatives advancing the City's Greenhouse Gas reduction goals,  
11 investment in local renewable energy projects and jobs, and long-term rate and financial  
12 stability.

13 (f) Public and private utilities and energy suppliers use industry-standard pro forma  
14 contracts to ensure the availability of essential services in a timely and cost-effective manner.  
15 Using these agreements can help facilitate negotiations by focusing the parties on the  
16 elements that are most likely to differ from one transaction to another: price, quantity, location,  
17 and duration. These contracts provide standard terms and conditions that address common  
18 issues, but allow parties to determine which provisions to include in a particular contract.

19 (g) City law requires standard contract provisions to protect the City's interests,  
20 ensure accountability, and promote important social values. For the initial phase of  
21 CleanPowerSF service, in Ordinance Nos. 75-15 and 223-15, the Board of Supervisors  
22 authorized the PUC to use certain pro forma contracts and deviate from certain otherwise  
23 applicable contracting requirements, subject to specified conditions. The Board also  
24 delegated authority to the PUC General Manager to enter agreements with terms in excess of  
25 ten years or requiring expenditures of \$10,000,000 or more, subject to specified conditions.



1           **Section 2. Expansion of CleanPowerSF Service to San Francisco Customers.**

2           State law requires cities that offer CCA service to offer service to all residential  
3 customers; many CCA programs, including CleanPowerSF, have added customers in phases  
4 to mitigate financial and operational risk. The CleanPowerSF Phasing Policy (adopted in the  
5 CleanPowerSF Business Practice Policies on December 8, 2015, by PUC Resolution 15-  
6 0267) provides that service will be offered to additional customers throughout San Francisco  
7 in a manner that is financially prudent and operationally feasible. The PUC expects additional  
8 phases of service to meet the following conditions: program rates are sufficient to cover  
9 program costs and rates are projected to be at or below PG&E rates at the launch of each  
10 phase; supply commitments are sufficient to meet new projected customer demand; staffing  
11 and systems and/or qualified third party service providers can handle additional transactions  
12 and customer account volumes; sufficient and reasonably priced credit, collateral and working  
13 capital support is available; and required approvals have been obtained.

14           In May 2017 the PUC completed a study of the options for expanding CleanPowerSF  
15 to offer service to all customers in San Francisco. On May 9, 2017, the PUC Commission  
16 adopted in a public meeting the goal of completing City-wide enrollment into CleanPowerSF  
17 by July 2019. The CleanPowerSF Growth Plan, Final Report, is on file with the Clerk of the  
18 Board of Supervisors in File No. 171172.

19           The PUC anticipates launching a large program expansion in 2018, with further  
20 expansion to all customers in the City in 2019, although exact expansion dates will depend on  
21 available power supply and program costs. To meet these aggressive implementation date  
22 targets and secure the best possible prices and terms, PUC will need to negotiate a mix of  
23 electricity contracts with multiple suppliers simultaneously in an expedited time frame.  
24  
25

1           **Section 3. Contracts Needed for CleanPowerSF Expansion.**

2           (a)     The electricity supplies needed to expand CleanPowerSF service throughout the  
3 City will be obtained through a mix of long-term (10 to 25 years) and shorter term contracts.  
4 To acquire the electricity products necessary to supply this program expansion and meet the  
5 program's portfolio content goals and regulatory obligations, the PUC issued two Requests for  
6 Offers ("RFO"), one in June 2017 (described in subsection (1) below) and one in September  
7 2017 (described in subsection (2) below). To ensure it had adequate credit support for these  
8 purchases and other program requirements, the PUC also issued an RFP for a bank credit  
9 facility in July 2017 (described in subsection (3) below).

10           (1)     On June 22, 2017, the PUC issued an RFO seeking bids for energy,  
11 environmental attributes, and capacity from new or existing eligible renewable resources, for  
12 contracts of up to 25 years in duration. A copy of the renewable energy RFO is on file with  
13 the Clerk of the Board of Supervisors in File No. 171172, and is incorporated herein by  
14 reference as though fully set forth. The PUC received more than 300 bids from 32 different  
15 companies, for supplies from more than 70 different projects, 83% of which are located in  
16 California. Over 90% of the bids offered energy from new renewable resources. After the  
17 evaluation team reviewed the bids to determine compliance with minimum qualifications and  
18 criteria specified in the RFO, the PUC shortlisted two subsets of bidders for further  
19 consideration and possible negotiations. For projects with initial contract delivery dates in  
20 2018 or 2019, the selected bidders are 8minutenergy Renewable LLC; Avangrid Renewables  
21 LLC; Calpine Energy Services L.P.; E.ON Climate & Renewables North America LLC; First  
22 Solar; Frontier Renewable; FTP Power LLC, dba Sustainable Power Group (sPower); Morgan  
23 Stanley Capital Group Inc.; NextEra Energy Resources Acquisitions LLC; Shell Energy North  
24 America (US) L.P.; SunPower Corporation Systems; Terra-Gen LLC; Wadham Energy L.P.;  
25 and Wind Wall Development LLC. For projects with initial contract delivery dates in 2020 or

1 2021, the selected bidders are 8minutenergy Renewable LLC; E.ON Climate & Renewables  
2 North America, LLC; EDF Renewable Development, LLC; EDP Renewables North America  
3 LLC; First Solar; Lendlease Energy Development LLC; NextEra Energy Resources  
4 Acquisitions, LLC; NRG Renew, LLC; Sempra Renewables, LLC; and SunPower Corporation,  
5 Systems.

6 The RFO invited Respondents to submit proposals for community benefits to be  
7 invested in San Francisco County and/or the county in which the renewable project is or will  
8 be located. Community Benefits are firm commitments on the part of the bidder to be  
9 delivered to the community during the term of the contract in accordance with the SFPUC's  
10 2011 Community Benefits Policy and 2009 Environmental Justice Policy, which directs the  
11 SFPUC and its partner firms to be a good neighbor to all who are directly impacted by its  
12 activities and investments. Community benefits must support non-profit or charitable activities  
13 and may not go to, nor benefit, any employee of the SFPUC. The contractor may provide  
14 community benefits in the form of a direct financial contribution, volunteer hours, in-kind  
15 contributions, or a combination thereof. Community benefits are a "zero-dollar task," meaning  
16 no hours or dollars are allocated in the selected contractor's costs under the contract.

17 (2) On September 12, 2017, the PUC issued an RFO seeking bids for  
18 shaped energy, renewable energy, carbon-free energy, and capacity for contracts of up to  
19 three years in length, with start dates as early as 2018 and as late as 2021. A copy of the  
20 shaped energy RFO is on file with the Clerk of the Board of Supervisors in File No. 171172,  
21 and is incorporated herein by reference as though fully set forth. These bids are not for  
22 electricity produced by pre-specified projects; instead, the bidder provides a portfolio of  
23 electricity supply from a variety of available sources responsive to the need the PUC  
24 identified. The RFO excluded bids containing power purchased from coal or nuclear plants.  
25 PUC received bids from five companies. After the evaluation team reviewed the bids to

1 determine compliance with minimum qualifications and criteria specified in the RFO, the PUC  
2 shortlisted five bidders for further consideration and possible negotiations. The selected  
3 bidders are Calpine Energy Services L.P.; Constellation; Direct Energy Business Marketing  
4 LLC; Morgan Stanley Capital Group Inc.; and Shell Energy North America (U.S.) L.P.

5 (3) On July 18, 2017, the PUC issued an RFP for a bank credit facility. A  
6 copy of the bank RFO is on file with the Clerk of the Board of Supervisors in File No. 171172,  
7 and is incorporated herein by reference as though fully set forth. After evaluating the  
8 responses, PUC selected JPMorgan Chase Bank, N.A. (JPMorgan) for further discussions  
9 and negotiations. PUC anticipates negotiating a credit agreement to provide liquidity support,  
10 as needed, for power purchases, regulatory requirements, and other financial obligations of  
11 the program through letters of credit or loans. The credit agreement will have a maximum  
12 term of six years and a maximum credit commitment of \$150 million.

13 (b) Negotiation and Execution of Contracts. PUC expects to negotiate contracts  
14 with one or more bidders for power and to make purchases under one or more of the  
15 contracts after approvals and after final pricing. PUC anticipates that some purchases will be  
16 made in early 2018, and additional purchases will be made over the next few years, through  
17 2021. ~~The PUC Commission in public meetings will consider authorizing one or more of these~~  
18 ~~contracts. PUC expects the Commission to review and consider approvals related to the~~  
19 ~~RFOs for power supply in its regular Commission meeting on November 14, 2017. PUC also~~  
20 ~~expects to successfully conclude negotiations with JPMorgan for the bank credit facility, which~~  
21 ~~will is expected to be considered by the PUC Commission in a public meeting in January 2018~~  
22 ~~2017.~~ The General Manager will not execute any contracts unless conditions specified by the  
23 PUC Commission have been satisfied, including requirements for program rates. Final  
24 program rates will provide for program cost recovery including energy procurement and  
25 administrative and financial costs of program implementation.

1           (c) In a public meeting on November 14, 2017, the PUC Commission approved the  
2 pool of qualified bidders for energy supply contracts and authorized the General Manager to  
3 negotiate energy supply contracts with one or more of those bidders, and to execute one or  
4 more contracts, subject to the following conditions:

5           (1) the total cost of the executed contracts is consistent with the rate setting  
6 methodology adopted by the Commission in Resolution 15-0112;

7           (2) the renewable energy supplied is from resources eligible to be counted as  
8 California Renewables Portfolio Standard Portfolio Content Category 1 or Portfolio Content  
9 Category 2 resources;

10           (3) the counterparties to any contract must be creditworthy;

11           (4) the total combined volume of power procured under contracts from the  
12 two competitive solicitations shall not exceed 435 MW per year;

13           (5) the duration of any contract under the renewable energy RFO shall not  
14 exceed 25 years, and the duration of any contract under the shaped energy RFO shall not  
15 exceed three years;

16           (6) the total quantity of Resource Adequacy Capacity procured shall not  
17 exceed the expected quantity established by state law and regulation for load of 435 MW per  
18 year; and

19           (7) the total cost of all energy supply contracts shall not exceed \$175 million  
20 per year.

21           The Commission further determined it would review the expected costs of CCA service  
22 and consider authorizing the General Manager to finalize the schedule of rates and charges  
23 for the next expansion to additional customers; the contracts would not be effective until the  
24 PUC has reviewed the CleanPowerSF risk assessment for the proposed portfolio of contracts  
25 to be executed; and the General Manager would report to the SFPUC on the final schedule of

1 rates and charges prior to commencement of the opt-out process. See Resolution No. 17-  
2 0226, which is on file with the Clerk of the Board of Supervisors in File No. 171172, and is  
3 incorporated herein by reference as though fully set forth.  
4

5 **Section 4. Grant of Authority to Use Standard Power Contracts.**

6 As approved in Ordinances 75-15 and 223-15, and for the reasons stated there in  
7 addition to the reasons stated above, for purchases of power and related products and  
8 services necessary to provide CleanPowerSF service, the Board of Supervisors authorizes  
9 the use of the following standardized contracts that deviate from the City's contract forms.

10 (a) Western System Power Pool ("WSPP") Agreement. The WSPP is a group of  
11 more than 300 publicly-owned and private utilities, including Alameda Municipal Power, the  
12 City of Palo Alto, the City of Roseville, the Sacramento Municipal Utility District, and Silicon  
13 Valley Power, all of which operate publicly-owned utilities. The City, through PUC, is a  
14 member of the WSPP. The WSPP has developed an agreement that sets forth standard  
15 terms and conditions for the purchase and sale of power and related products and services.  
16 A copy of the current WSPP agreement is on file with the Clerk of the Board of Supervisors in  
17 File No.171172, and is incorporated herein by reference as though fully set forth. The WSPP  
18 agreement has been approved by the Federal Energy Regulatory Commission ("FERC").  
19 The WSPP agreement is periodically updated and modified subject to the approval of FERC.  
20 The Board of Supervisors authorized the use of the WSPP agreement for CleanPowerSF  
21 purchases in Ordinance No. 75-15.

22 (b) The Edison Electric Institute (EEI) Master Agreement. The EEI, in collaboration  
23 with more than 80 member utilities, power marketers, power generators, and customer  
24 representatives, developed an agreement that sets forth standard terms and conditions for the  
25 purchase and sale of power and related products and services. The EEI agreement is

1 updated as needed to reflect market changes. A copy of the current EEI agreement is on file  
2 with the Clerk of the Board of Supervisors in File No. 171172 and is incorporated herein by  
3 reference as though fully set forth. The Board of Supervisors authorized the use of the EEI  
4 agreement for CleanPowerSF purchases in Ordinance No. 75-15.

5 (c) City Pro forma Agreements. In connection with the recent RFOs for power  
6 supplies, the PUC has developed its own standardized contract forms for three different types  
7 of energy supply, combining standard industry terms with key City requirements. Ordinance  
8 No. 75-15 authorized the use of form agreements developed by PUC for CleanPowerSF  
9 purchases. Each of these form agreements is on file with the Clerk of the Board of  
10 Supervisors in File No. 171172 and is incorporated herein by reference as though fully set  
11 forth:

- 12 (1) Renewable Power Purchase Agreement (New Facility);
- 13 (2) Renewable Power Purchase Agreement (Existing Facility); and
- 14 (3) Power Purchase and Sale Agreement.

15 (d) The Board of Supervisors authorizes the use of the WSPP agreement and the  
16 EEI agreement for the PUC's purchase of power and related products and services,  
17 notwithstanding that the terms of those agreements may deviate from the City's standard  
18 contract terms; the Board of Supervisors authorizes modifications to the form agreements so  
19 long as such modifications, in the judgment of the General Manager and the City Attorney, do  
20 not materially decrease the City's rights or materially increase its liabilities.

21 (e) The Board of Supervisors approves the pro forma contracts developed by PUC  
22 for the purchase of power and related products and services, notwithstanding that the terms of  
23 those agreements may deviate from the City's standard contract terms; the Board of  
24 Supervisors authorizes modifications to the form agreements so long as such modifications, in  
25

1 the judgment of the General Manager and the City Attorney, do not materially decrease the  
2 City's rights or materially increase its liabilities.

3  
4 **Section 5. Agreement for a Bank Credit Facility.**

5 The Board of Supervisors authorizes the General Manager, subject to the conditions in  
6 Section 7, to enter an agreement for liquidity support with JPMorgan, or with another entity if  
7 negotiations with JPMorgan do not result in an acceptable agreement. The General Manager  
8 may utilize the waivers in Section 6 below and may make modifications to the standard City  
9 agreements so long as such modifications, in the judgment of the General Manager and the  
10 City Attorney, do not materially decrease the City's rights or materially increase its liabilities.

11  
12 **Section 6. Waiver of Certain Contract-Related Requirements in the**  
13 **Administrative Code and the Environment Code.**

14 (a) Where the General Manager finds and documents in writing both that the  
15 transaction represents the best opportunity available to the City to obtain essential services  
16 and products in a manner beneficial to the City, and that it is not feasible to add all standard  
17 City contract provisions to the agreement, the Board of Supervisors hereby grants waivers of  
18 the following standard contract provisions to the extent found necessary by the General  
19 Manager, and finds such waivers to be reasonable and in the public interest:

- 20 (1) Implementing the MacBride Principles (Admin. Code Chapter 12F);  
21 (2) Increased participation by small and micro local businesses in City  
22 contracts (Admin. Code Chapter 14B);  
23 (3) The competitive bidding requirement (Admin. Code Section 21.1);  
24 (4) First source hiring requirements (Admin. Code Chapter 83); and  
25



1 (5) The tropical hardwood and virgin redwood ban (Environ. Code  
2 Chapter 8).

3 (b) Where the General Manager finds and documents in writing both that the  
4 agreement represents the best opportunity available to the City to obtain essential services  
5 and products in a manner beneficial to the City, and that it is not feasible to add all standard  
6 City contract provisions to the agreement, the Board of Supervisors waives the requirement to  
7 include in the agreement references to the following City Code provisions to the extent found  
8 necessary by the General Manager, and finds such waivers to be reasonable and in the public  
9 interest:

10 (1) Public access to meeting and records of non-profit organizations (Admin.  
11 Code Section 12L);

12 (2) Sweatfree Contracting (Admin. Code Section 12U.4);

13 (3) Food service waste reduction (Environ. Code Section 1605).

14 (c) The waivers specified in this Section 6 shall apply only to contracts which  
15 include language requiring compliance with all applicable federal, state, and local laws.  
16

17 **Section 7. Conditions on Contract Authority Granted in this Ordinance.**

18 (a) The City's payment obligations under these contracts for CleanPowerSF power  
19 supply and bank credit facility to support CleanPowerSF expansion to offer service throughout  
20 San Francisco shall be special limited obligations of the City payable solely from the revenues  
21 of CleanPowerSF.

22 (b) The total cost of the power supply contracts authorized by this ordinance, with  
23 terms from one to twenty-five years, shall not exceed \$175 million per year.

24 (c) The total credit commitment under the bank credit facility agreement shall not  
25 exceed \$150 million over the term of the agreement, which shall not exceed six years.

1 (d) The contracts shall be approved by the PUC acting through its Commission in a  
2 public meeting. The Commission may delegate approval authority to the General Manager,  
3 subject to conditions specified by the Commission in a public meeting.

4 (e) All conditions established by the PUC shall be met, including but not limited to  
5 requirements regarding program rates, program expansion, and electricity portfolio content.

6 (f) The PUC shall submit annual reports to the Board of Supervisors that include  
7 annual program costs, the rates charged by the PUC to CleanPowerSF customers to recover  
8 costs, and a comparison of CleanPowerSF rates to PG&E rates.

9  
10 **Section 8. Community Benefits in Renewable Power RFO.**

11 The Board of Supervisors finds that the community benefits component of the RFO for  
12 renewable energy supplies is reasonable and beneficial to the City and authorizes its inclusion  
13 in contracts, where the General Manager deems feasible and appropriate, so long as the PUC  
14 Commission finds, in a public meeting, that the community benefits component is reasonable  
15 and serves a utility purpose.

16  
17 **Section 9. Delegation of Authority Under Charter Section 9.118 to the PUC**  
18 **General Manager.**

19 Pursuant to its authority under Charter Section 9.118, the Board of Supervisors  
20 delegates to the PUC General Manager authority to purchase renewable and shaped energy  
21 supplies and credit support for CleanPowerSF from bidders selected by competitive  
22 solicitation as described above in Section 3 of this ordinance, using contracts with terms in  
23 excess of ten years or requiring expenditures of ten million dollars or more including  
24 amendments to such agreements with an impact of greater than \$500,000, so long as the  
25





City and County of San Francisco  
Tails  
Ordinance

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

File Number: 171172

Date Passed: January 23, 2018

Ordinance delegating authority under Charter, Section 9.118, to the General Manager of the Public Utilities Commission to enter into agreements with terms in excess of ten years or requiring expenditures of \$10,000,000 or more for power and related products and services required to supply San Francisco's community choice aggregation program, CleanPowerSF, subject to specified conditions, as defined herein; and authorizing deviations from certain otherwise applicable contract requirements in the Administrative Code and the Environment Code.

December 13, 2017 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

December 13, 2017 Budget and Finance Committee - RECOMMENDED AS AMENDED

January 09, 2018 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

January 23, 2018 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

File No. 171172

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 1/23/2018 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo  
Clerk of the Board

Mark E. Farrell  
Mayor

1/25/18

Date Approved

1 [Planning Code - Modifying Better Streets Plan Requirements and Curb Cut Restrictions]

2  
3 Ordinance amending the Planning Code to add new standard required streetscape  
4 improvements under the Better Streets Plan; modifying the triggers that would require  
5 project sponsors to construct streetscape improvements in the public right-of-way;  
6 clarifying the recommended sidewalk width for street types; expanding curb cut  
7 restrictions for off-street parking and loading to nearly all zoning districts and certain  
8 designated streets, including those on the Citywide Transit Network and any officially  
9 adopted bicycle routes or lanes, and requiring a Conditional Use authorization or a  
10 Section 309 or 329 exception for new or expanded curb cuts in the applicable areas;  
11 adding criteria for the Planning Commission to consider when granting a Conditional  
12 Use authorization or an exception as part of a Downtown C-3-O(SD) (Downtown, Office  
13 (Special Development)) or large project authorization in mixed-use districts for such  
14 curb cuts; prohibiting new curb cuts in bus stops and on Folsom Street between Essex  
15 and Second Street; eliminating minimum off-street parking requirements for projects  
16 subject to the curb cut restrictions or prohibitions; and making findings under the  
17 California Environmental Quality Act, findings of consistency with the General Plan and  
18 the eight priority policies of Planning Code, Section 101.1, and findings of public  
19 necessity, convenience and welfare under Planning Code, Section 302.

20 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
21 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
22 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
23 **Board amendment additions** are in double-underlined Arial font.  
24 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
25 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

1 Section 1. Findings, Including CEQA Findings and General Plan Consistency Findings.

2 (a) The City adopted the Better Streets Plan (or "Plan") in 2010 to establish  
3 requirements for the improvement of the public right-of-way associated with development  
4 projects. The Plan's aim is to make the public right-of-way safe, accessible, convenient and  
5 attractive to pedestrian use and travel by all modes of transportation, consistent with the  
6 Transit First policy of the General Plan and Section 98.1 of the Administrative Code.

7 (b) Since adoption of the Plan, the City has continued to develop policies and  
8 initiatives to build better and safer streets, such as the "Vision Zero" policy adopted in 2014,  
9 which, through education, enforcement, and design, seeks to make sure our streets safe and  
10 livable and eliminate traffic fatalities by 2024.

11 (c) Consistent with the policy direction enshrined in those initiatives, this Board finds  
12 that this ordinance furthers the public welfare by refining the Better Street Plan to better  
13 achieve its original goals. Specifically, the Board finds that these amendments adjust the  
14 Plan's triggers to more closely reflect the actual impacts of development projects on the public  
15 right-of-way, and that they provide additional publicly beneficial streetscape enhancements  
16 and more flexibility to City agencies to select the appropriate improvements for each location.

17 (d) This Board also finds that this ordinance promotes public safety by expanding and  
18 strengthening the current conditional use permit requirement for new curb cuts to areas of the  
19 City that are heavily used by pedestrians.

20 (e) In regard to the findings in Subsection (c) and (d) above, the Board finds additional  
21 support for these requirements in the Planning Department staff report on this legislation, a  
22 copy of which is on file with the Clerk of the Board of Supervisors in File No. 180914 and is  
23 incorporated herein by reference.

24 (f) The Planning Department has determined that the actions contemplated in this  
25 ordinance comply with the California Environmental Quality Act (California Public Resources

1 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
2 Supervisors in File No. 180914 and is incorporated herein by reference. The Board affirms  
3 this determination.

4 (g) On October 18, 2018, the Planning Commission, in Resolution No. 20319, adopted  
5 findings that the actions contemplated in this ordinance are consistent, on balance, with the  
6 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board  
7 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
8 Board of Supervisors in File No. 180914, and is incorporated herein by reference.

9 (h) Pursuant to Planning Code Section 302, this Board finds that this Planning Code  
10 amendment will serve the public necessity, convenience, and welfare for the reasons set forth  
11 in Planning Commission Resolution No. 20319 and the Board adopts these findings as its  
12 own.

13  
14 Section 2. The Planning Code is hereby amended by revising Sections 138.1, 150,  
15 155, 161, 209.2, 209.4, 210.1, 210.2, 303, 710-726, 728-734, 750-764, 810-812, to read as  
16 follows:

17  
18 **SEC.138.1. STREETScape AND PEDESTRIAN IMPROVEMENTS.**

19 (a) **Purpose.** The purpose of this section is to establish requirements for the  
20 improvement of the public right-of-way associated with development projects, such that the  
21 public right-of-way may be safe, accessible, convenient and attractive to pedestrian use and  
22 travel by all modes of transportation consistent with the San Francisco General Plan, achieve  
23 best practices in ecological stormwater management, and provide space for public life and  
24 social interaction, in accordance with the City's "Better Streets Policy" (Administrative Code  
25 Section 98.1).

1 (b) **Better Streets Plan.**

2 (1) The Better Streets Plan, as defined in Administrative Code Section 98.1\_(e),  
3 shall govern the design, location, and dimensions of all pedestrian and streetscape items in  
4 the public right-of-way, including but not limited to those items shown in Table 1. Development  
5 projects that propose or are required through this Section to make pedestrian and streetscape  
6 improvements to the public right-of-way shall conform with the principles and guidelines for  
7 those elements as set forth in the Better Streets Plan to the maximum extent feasible.

8 (2) Proposed improvements also shall be subject to approval by other City  
9 bodies with permitting jurisdiction over such streetscape improvements.

10 (3) The Department and other City bodies shall take into account a project's scale when  
11 determining the appropriate scope of improvements.

12  
13 **Table 1: Pedestrian and Streetscape Elements per the Better Streets Plan**

14

#	PHYSICAL ELEMENT <i>(1)</i>	BETTER STREETS PLAN SECTION
1	Curb ramps*	5.1
2	Marked crosswalks*	5.1
3	Pedestrian <i>countdown devices-priority signal devices and timings</i>	5.1
4	High-visibility crosswalks	5.1
5	Special crosswalk treatments	5.1
6	Restrictions on vehicle turning movements at crosswalks	5.1
7	Removal or reduction of permanent crosswalk closures	5.1

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1	8	Mid-block crosswalks	5.1
2	9	Raised crosswalks* (2)	5.1
3	<u>10</u>	<u>Parking restrictions at crosswalks (intersection daylighting)*</u>	<u>5.1</u>
4	<del>10</del> <u>11</u>	Curb radius guidelines	5.2
5	<del>11</del> <u>12</u>	Corner curb extensions or bulb-outs*	5.3
6	<del>12</del> <u>13</u>	Extended bulb-outs*	5.3
7	<del>13</del> <u>14</u>	Mid-block bulb-outs*	5.3
8	<del>14</del> <u>15</u>	Center or side medians	5.4
9	<del>15</del> <u>16</u>	Pedestrian refuge islands	5.4
10	<del>16</del> <u>17</u>	Transit bulb-outs	5.5
11	<del>17</del> <u>18</u>	Transit boarding islands	5.5
12	<del>18</del> <u>19</u>	Flexible use of the parking lane	5.6
13	<del>19</del> <u>20</u>	Parking lane planters	5.6
14	<del>20</del> <u>21</u>	Chicanes	5.7
15	<del>21</del> <u>22</u>	Traffic calming circles	5.7
16	<del>22</del> <u>23</u>	Modern roundabouts	5.7
17	<del>23</del> <u>24</u>	Sidewalk or median pocket parks	5.8
18	<del>24</del> <u>25</u>	Reuse of 'pork chops' and excess right-of-way	5.8
19	<del>25</del> <u>26</u>	Multi-way boulevard treatments	5.8
20	<del>26</del> <u>27</u>	Shared public ways	5.8
21	<del>27</del> <u>28</u>	Pedestrian-only streets	5.8
22	<del>28</del> <u>29</u>	Public stairs	5.8
23			
24			
25			

1	<u>2930</u>	Street trees*	6.1
2	<u>3031</u>	Tree basin furnishings*	6.1
3	<u>3132</u>	Sidewalk planters*	6.1
4	<u>3233</u>	Above-ground landscaping	6.1
5	<u>3334</u>	Stormwater management tools*	6.2
6	<u>3435</u>	Street and pedestrian lighting*	6.3
7	<u>3536</u>	Special paving*	6.4
8	<u>3637</u>	Site furnishings*	6.5
9	<u>3738</u>	Driveways	6.6
10	Standard streetscape elements marked with a *. (Requirement varies by street type: see the Better Streets Plan)		
11	<i>(1) The City shall not require physical elements beyond the subject frontage with the exception of raised crosswalks and curb ramps.</i>		
12	<i>(2) The City shall require raised crosswalks only when the subject right-of-way is 40-feet or less and the crosswalk is installed at a street corner.</i>		
13			
14			
15			

16

17 (c) **Required streetscape and pedestrian improvements.** Development projects shall include streetscape and pedestrian improvements on all publicly accessible rights-of-way<sub>s</sub> directly fronting the property as follows.

18

19

20 (1) **Street trees.** Project Sponsors shall plant and ~~maintain~~establish street trees as set forth in Article 16, Sections 805(a) ~~and (d)~~ and 806(d) of the Public Works Code.

21

22 (2) **Other streetscape and pedestrian elements for large projects.**

23 (A) **Application.**

24 (i) In any district, streetscape and pedestrian elements in conformance with the Better Streets Plan shall be required, if ~~all~~ the following conditions are

25

1 present: ~~(1) the project is on a lot that (a) is greater than one-half acre in total area, (b) contains 250~~  
2 ~~feet of total lot frontage on one or more publicly-accessible rights-of-way, or (c) the frontage~~  
3 ~~encompasses the entire block face between the nearest two intersections with any other publicly-~~  
4 ~~accessible rights-of-way, and (2) the project includes (a) new construction or (b) addition of 20% or~~  
5 ~~more of gross floor area to an existing building.~~

6 a. The project is on a lot that is greater than one-half acre in  
7 total area; or includes more than 50,000 gross square feet of new construction; or contains 150 feet of  
8 total lot frontage on one or more publicly-accessible right-of-ways; or its frontage encompasses the  
9 entire block face between the nearest two intersections with any other publicly-accessible right-of-way;  
10 and

11 b. The project includes new construction of 10 or more Dwelling  
12 Units; or new construction of 10,000 gross square feet or greater of non-residential space; or an  
13 addition of 20% or more of Gross Floor Area to an existing building; or a Change of Use of 10,000  
14 gross square feet or greater of a PDR use to a non-PDR use.

15 (ii) Project sponsors that meet the thresholds of this Subsection  
16 shall submit a streetscape plan to the Planning Department showing the location, design, and  
17 dimensions of all existing and proposed streetscape elements in the public right-of-way  
18 directly adjacent to the fronting property, including street trees, sidewalk landscaping, street  
19 lighting, site furnishings, utilities, driveways, and curb lines, and the relation of such elements  
20 to proposed new construction and site work on the subject property.

21 (B) **Standards.**

22 (i) **Required streetscape elements.** A continuous soil-filled  
23 trench parallel to the curb shall connect all street tree basins for those street trees required  
24 under the Public Works Code. The trench may be covered only by Permeable Surfaces as  
25 defined in Section 102 of the Planning Code, except at required tree basins, where the soil

1 must remain uncovered. The Director of Planning, or his or her designee, may modify or  
2 waive this requirement where a continuous trench is not possible due to the location of  
3 existing utilities, driveways, sub-sidewalk basements, or other pre-existing surface or sub-  
4 surface features.

5 (ii) **Additional streetscape elements.** The Department *shall*  
6 *consider, but need not require, additional streetscape elements for the appropriate street type per Table*  
7 *1 and the Better Streets Plan, may require a project to construct any Standard Streetscape Element*  
8 *listed in Table 1, above,* including benches, bicycle racks, curb ramps, corner curb extensions,  
9 *specified bulb-outs,* stormwater facilities, lighting, sidewalk landscaping, special sidewalk  
10 paving, and other site furnishings, *excepting crosswalks and pedestrian signals.*

11 a. Streetscape elements shall be selected from a City-  
12 approved palette of materials and furnishings, where applicable, and shall be subject to  
13 approval by all applicable City agencies.

14 b. Additionally, streetscape elements shall be consistent  
15 with the overall character and materials of the district, and shall have a logical transition or  
16 termination to the sidewalk and/or roadway adjacent to the fronting property.

17 (iii) **Sidewalk widening.** The Planning Department, in  
18 consultation with other agencies, shall evaluate whether sufficient roadway space is available  
19 for sidewalk widening for the entirety or a portion of the fronting public right-of-way in order to  
20 meet or exceed the recommended sidewalk widths for the appropriate street type per Table 2  
21 and the Better Streets Plan and/or to provide additional space for pedestrian and streetscape  
22 amenities. If it is found that sidewalk widening is feasible and desirable, the Planning  
23 Department shall require the owner or developer to install such sidewalk widening as a  
24 condition of approval, including all associated utility re-location, drainage, and street and  
25 sidewalk paving.

1 (iv) **Minimum sidewalk width.** New publicly-accessible rights-of-  
 2 way<sub>s</sub> proposed as part of development projects shall meet or exceed the recommended  
 3 sidewalk widths for the appropriate street type per Table 2. Where a consistent front building  
 4 setback of 3 feet or greater extending for at least an entire block face is provided, the  
 5 recommended sidewalk width may be reduced by up to 2 feet. Where a Board of Supervisors  
 6 adopted streetscape plan or community-based plan recommends a sidewalk width greater than the  
 7 recommended sidewalk width in Table 2 below, the City may require development projects to meet the  
 8 greater of the two widths.

9  
 10 **Table 2. Recommended Sidewalk Widths by Street Type**

	<b>Street Type (per Better Streets Plan)</b>	<b>Recommended Sidewalk Width (Minimum required for new streets)</b>
Commercial	Downtown commercial	<i>See-For Downtown Commercial Streets that are sited within the Downtown Streetscape Plan Area, the recommended sidewalk width shall be the width recommended in the Downtown Streetscape Plan. For Downtown Commercial Streets that are sited outside of the Downtown Streetscape Plan Area, the recommended sidewalk with shall be 15 feet.</i>
-	Commercial throughway	15' feet
-	Neighborhood commercial	15' feet
Residential	Downtown residential	15' feet
-	Residential throughway	15' feet
-	Neighborhood residential	12' feet
Industrial/Mixed-Use	Industrial	10' feet
-	Mixed-use	15' feet
Special	Parkway	17' feet

-	Park edge (multi-use path)	25' <i>feet</i>
-	Multi-way boulevard	15' <i>feet</i>
-	Ceremonial	Varies
Small	Alley	9' <i>feet</i>
-	Shared public way	n/a
-	Paseo	Varies

**(C) Review and approvals.**

(i) *The project sponsor shall submit to the Planning Department the streetscape plan required by this section shall be submitted to the Planning Department with the project's first Development Application as defined in Section 401 no later than 60 days prior to any Department or Planning Commission approval action, and the Planning Department or Commission shall be considered it for approval at the time of other project approval actions. The Planning Department may require any or all standard streetscape elements for the appropriate street type per Table 1 and the Better Streets Plan, if it finds that these improvements are necessary to meet the goals and objectives of the General Plan of the City and County of San Francisco. In Prior to making its determination about required streetscape and pedestrian elements, the Planning Department shall consult with other City agencies tasked with the design, permitting, use, and maintenance of the public right-of-way. If, after this consultation, any of the affected agencies find that the project sponsor cannot install one or more of the Standard Streetscape Elements due to physical constraints of or other complications related to the site or the public right-of-way surrounding or in the vicinity of the project, then the Department may impose alternative streetscape improvement requirements that provide equivalent or better protection to pedestrians, bicyclists, or transit movement, and/or reduce conflicts among transportation modes. However, such alternative*

1 improvements shall cost no more than Standard Streetscape Elements that would have been required  
2 and shall be approved only after consultation with the affected agencies.

3 (ii) Final approval by the affected agencies and construction of  
4 such streetscape improvements shall be completed prior to the issuance of the first Certificate  
5 of Occupancy or temporary Certificate of Occupancy for the project, unless otherwise  
6 extended by the Zoning Administrator. Should conditions, policies, or determinations by other  
7 City agencies require a change to the streetscape plan after approval of the streetscape plan  
8 but prior to commencement of construction of the streetscape improvements the Planning  
9 Department shall have the authority to require revision to such streetscape plan. In such case,  
10 the Zoning Administrator shall extend the timeframe for completion of such improvements by  
11 an appropriate duration as necessary.

12 (iii) Should the construction timeline for a development project be  
13 shorter than the construction timeline for the associated streetscape improvement, such as for a  
14 change-of-use project, the Zoning Administrator may extend the timeframe for completion of such  
15 improvements by an appropriate duration as necessary. As a condition of any such extension, the  
16 Zoning Administrator can require the project sponsor to post a bond in the amount of such  
17 improvement and subject to the terms that the Zoning Administrator deems appropriate.

18 (iv) **Waiver.** Any City agency tasked with the design, permitting,  
19 use, and maintenance of the public right-of-way, may waive any or all Department required  
20 improvements of the streetscape plan as described in this Subsection under that agency's  
21 jurisdiction if said agency determines that such improvement or improvements is  
22 inappropriate, interferes with utilities to an extent that makes installation financially infeasible,  
23 or would negatively affect the public welfare. Any such waiver shall be from the Director or  
24 General Manager of the affected agency, shall be in writing to the applicant and the  
25 Department, and shall specify the basis for the waiver. Waivers, if any, shall be obtained prior

1 to commencement of construction of the streetscape improvements unless extenuating  
2 circumstances arise during the construction of said improvements. If such a waiver is granted,  
3 the Department reserves the right to impose alternative streetscape improvement requirements  
4 that ~~are the same as or similar to the elements provide equivalent or better protection to pedestrians,~~  
5 ~~bicyclists, or transit movement, and/or reduce conflicts among transportation modes.~~ However, such  
6 ~~alternative requirements shall cost no more than element or elements that have been waived~~ in the  
7 adopted streetscape plan and shall be approved only after consultation with the affected  
8 agencyies. This Subsection shall not apply to the waiver of the street tree requirement set forth  
9 in Section 138.1(c)(1).

10 (d) **Neighborhood Streetscape Plans.** In addition to the requirements listed in  
11 Subsection 138.1 (c), the Planning Department in coordination with other city agencies, and  
12 after a public hearing, may adopt streetscape plans for particular streets, neighborhoods, and  
13 districts, containing standards and guidelines to supplement the Better Streets Plan.  
14 Development projects in areas listed in this subsection that propose or are required through  
15 this section to make pedestrian and streetscape improvements to the public right-of-way shall  
16 conform with the standards and guidelines in the applicable neighborhood streetscape plan in  
17 addition to those found in the Better Streets Plan.

18 (1) **Downtown Streetscape Plan.**

19 (A) In any C-3 District sidewalk paving as set forth in the Downtown  
20 Streetscape Plan shall be installed by the applicant under the following conditions:

- 21 (i) Any new construction;
- 22 (ii) The addition of Gross Floor Area equal to 20 percent or more  
23 of an existing building; or
- 24 (iii) A Change of Use of 10,000 or more gross square feet of PDR use to  
25 a non-PDR use.



1 (B) In accordance with the provisions of Section 309 of the Planning  
2 Code governing C-3 Districts, when a permit is granted for any project abutting a public  
3 sidewalk in a C-3 District, the Planning Commission may impose additional requirements that  
4 the applicant install sidewalk improvements such as benches, bicycle racks, lighting, special  
5 paving, seating, landscaping, and sidewalk widening in accordance with the guidelines of the  
6 Downtown Streetscape Plan if it finds that these improvements are necessary to meet the  
7 goals and objectives of the General Plan of the City and County of San Francisco. In making  
8 this determination, the Planning Commission shall consider the level of street as defined in  
9 the Downtown Streetscape Plan.

10 (C) If a sidewalk widening or a pedestrian street improvement is used to  
11 meet the open space requirement, it shall conform to the guidelines of Section 138.

12 (D) The Planning Commission shall determine whether the streetscape  
13 improvements required by this Section may be on the same site as the building for which the  
14 permit is being sought, or within 900 feet, provided that all streetscape improvements are  
15 located entirely within the C-3 District.

16 (2) **Rincon Hill Streetscape Plan.** In the Rincon Hill Downtown Residential  
17 Mixed Use (RH-DTR) and Folsom and Main Residential/Commercial Special Use Districts, the  
18 boundaries of which are shown in Section Map No. 1 of the Zoning Map, for all frontages  
19 abutting a public sidewalk, the project sponsor is required to install sidewalk widening, street  
20 trees, lighting, decorative paving, seating and landscaping in accordance with the approved  
21 Streetscape Master Plan of the Rincon Hill Area Plan for: (A) any new construction; or (B) the  
22 addition of Gross Floor Area equal to 20 percent or more of an existing building, or (C) a  
23 Change of Use of 10,000 or more square feet from a PDR use to a non-PDR use.

24 (e) **Additional provisions.**

25 ///

1           (1) **Maintenance.** Unless otherwise determined, fronting property owners shall  
2 maintain all streetscape improvements required by this section, including ~~street trees,~~  
3 landscaping, bicycle racks, benches, special paving, and other site furnishings at no public  
4 expense per the requirements of the Public Works Code ~~Section 706 (and the Better Streets Plan~~  
5 ~~for sidewalks and site-street furnishings) and 805 (street trees),~~ except for street trees and  
6 standard street lighting from a City-approved palette of street lights and any improvements  
7 within the roadway. Conditions intended to assure continued maintenance of the  
8 improvements for the actual lifetime of the building giving rise to the streetscape improvement  
9 requirement may be imposed as a condition of approval by the Planning Department.

10           (2) For any streetscape and/or pedestrian improvements installed pursuant to  
11 this section, the abutting property owner or owners shall hold harmless the City and County of  
12 San Francisco, its officers, agents, and employees, from any damage or injury caused by  
13 reason of the design, construction or maintenance of the improvements, and shall require the  
14 owner or owners or subsequent owner or owners of the respective property to be solely liable  
15 for any damage or loss occasioned by any act. This requirement shall be deemed satisfied if  
16 City permits for the improvements include indemnification and hold harmless provisions.

17           (3) Notwithstanding the provisions of this Section, an applicant shall apply for  
18 and obtain all required permits and approvals for changes to the legislated sidewalk widths  
19 and street improvements.

20           **(f) Removal and modification of private encroachments on public rights-of-way.**

21           (1) **Applicability.** This section shall apply to developments ~~which~~that:

22                   (A) construct new buildings;

23                   (B) include building alterations which increase the gross square footage  
24 of a structure by 20 percent or more;

25                   (C) add off-street parking or loading; or

1 (D) remove off-street parking or loading.

2 (2) **Requirements.** As a condition of approval for the applicable developments  
3 in subsection (b), the Planning Department may require the project sponsor to:

4 (A) reduce the number or width of driveway entrances to a lot, to comply  
5 with the streetscape requirements of this Code and the protected street frontages of  
6 Section 155(r);

7 (B) remove encroachments onto or over sidewalks and streets that  
8 reduce the pedestrian path of travel, or reduce the sidewalk area available for streetscape  
9 amenities such as landscaping, street trees and outdoor seating;

10 (C) remove or reduce in size basements which extend under public  
11 rights-of-way.

12 (3) **Standards.** In instances where such encroachments are removed, the  
13 Planning Department shall require that the replacement curbs, sidewalks, street trees, and  
14 landscaping shall meet the standards of the Better Streets Plan and of any applicable  
15 neighborhood streetscape plans.

16  
17 **SEC. 150. OFF-STREET PARKING AND LOADING REQUIREMENTS.**

18 (a) **General.** This Article 1.5 is intended to assure that off-street parking and loading  
19 facilities are provided in amounts and in a manner that will be consistent with the objectives  
20 and policies of the San Francisco General Plan, as part of a balanced transportation system  
21 that makes suitable provision for walking, cycling, public transit, private vehicles, and the  
22 movement of goods. With respect to off-street parking, this Article is intended to require  
23 facilities where needed but discourage excessive amounts of automobile parking, to avoid  
24 adverse effects upon surrounding areas and uses, and to encourage effective use of walking,  
25 cycling, and public transit as alternatives to travel by private automobile. No off-street parking

1 or loading is required on any lot whose sole feasible automobile access is across a protected street  
2 frontage identified in Section 155(r).

3 \* \* \* \*

4  
5 **SEC. 155. GENERAL STANDARDS AS TO LOCATION AND ARRANGEMENT OF OFF-**  
6 **STREET PARKING, FREIGHT LOADING AND SERVICE VEHICLE FACILITIES.**

7 \* \* \* \*

8 (r) **Protected Pedestrian-, Cycling-, and Transit-Oriented Street Frontages.** In  
9 order to preserve the pedestrian character of certain ~~downtown and neighborhood commercial~~  
10 districts and to minimize delays to transit service, regulation of garage entries, driveways, or  
11 other vehicular access to off-street parking or loading via curb cuts (except for the creation of new  
12 publicly-accessible Streets and Alleys) on development lots, ~~as defined in Section 145,~~ shall ~~be as~~  
13 ~~follows occur~~ on the ~~following~~ Street frontages: listed below. These limitations do not apply to the  
14 creation of new publicly-accessible Streets and Alleys. Any lot whose sole feasible vehicular access is  
15 via a protected street frontage described in this subsection (r) shall be exempted from any off-street  
16 parking or loading requirement found elsewhere in this Code.

17 (1) Folsom Street, from ~~Essex~~ Second Street to ~~The~~ Embarcadero, not permitted  
18 except as set forth in Section 827.

19 (2) Not permitted:

20 (A) The entire portion of Market Street from The Embarcadero to Castro  
21 Street,

22 (B) Hayes Street from Franklin Street to Laguna Street, and Church  
23 Street in the NCT-3 and Upper Market NCT Districts,

24 (C) Van Ness Avenue from Hayes Street to Mission Street,

25 ///

- 1 (D) Mission Street from The Embarcadero to Annie Street and from 10th  
2 Street to Division Street,
- 3 (E) Octavia Street from Hayes Street to Fell Street,
- 4 (F) Embarcadero in the DTR Districts,
- 5 (G) 22nd Street between 3rd Street and Minnesota Streets within the  
6 NCT-2 District,
- 7 (H) Valencia Street between 15th and 23rd Streets in the Valencia Street  
8 NCT District,
- 9 (I) Mission Street for the entirety of the Mission Street NCT District,
- 10 (J) 24th Street for the entirety of the 24th Street-Mission NCT,
- 11 (K) 16th Street between Guerrero and Capp Streets within the Valencia  
12 Street NCT and Mission Street NCT Districts,
- 13 (L) 16th Street between Kansas and Mississippi Streets in the UMU and  
14 PDR-1-D Districts,
- 15 (M) 6th Street for its entirety within the SoMa NCT District,
- 16 (N) 3rd Street, in the UMU districts for 100 feet north and south of  
17 Mariposa and 100 feet north and south of 20th Streets, and 4th Street between Bryant and  
18 Townsend in the SLI and MUO District,
- 19 (O) Ocean Avenue within the Ocean Avenue NCT District,
- 20 (P) Geneva Avenue from I-280 to San Jose Avenue within the NCT-2  
21 District,
- 22 (Q) Columbus Avenue between Washington and North Point Streets,
- 23 (R) Broadway from the Embarcadero on the east to Polk Street on the  
24 west, *and*
- 25 (S) All alleyways in the Chinatown Mixed Use Districts,

- 1 (T) Diamond Street within the Glen Park NCT District,
- 2 (U) Chenery Street within the Glen Park NCT District,
- 3 (V) Natoma Street from 300 feet westerly of 1st Street to 2nd Street,
- 4 (W) Ecker Alley in its entirety,
- 5 (X) Shaw Alley in its entirety,
- 6 (Y) 2nd Street from Market to Folsom Streets,
- 7 (Z) Destination Alleyways, as designated in the Downtown Streetscape
- 8 Plan,
- 9 (AA) The western (inland) side of the Embarcadero between Townsend
- 10 and Jefferson Streets,
- 11 (BB) Post Street, on the north side from Webster Street to Laguna Street
- 12 and on the south side from Fillmore Street to Webster Street,
- 13 (CC) Buchanan Street from Post Street to Sutter Street,
- 14 (DD) Grant Avenue between Columbus Avenue and Filbert Street,
- 15 (EE) Green Street between Grant Avenue and Columbus/Stockton,
- 16 (FF) All Alleys within the North Beach NCD and the Telegraph Hill-North
- 17 Beach Residential SUD,
- 18 (GG) Polk Street between Filbert Street and Golden Gate Avenue,
- 19 (HH) California Street between Van Ness Avenue and Hyde Street,
- 20 (II) Hyde Street between California Street and Pine Street,
- 21 (JJ) Broadway between Van Ness Avenue and Larkin Street,
- 22 (KK) Bush Street between Van Ness Avenue and Larkin Street, ~~and~~
- 23 (LL) Pine Street between Van Ness Avenue and Larkin Street, and
- 24 (MM) No curb cut shall be permitted that directly fronts an adjacent on-street
- 25 striped bus stop (e.g., bus stop zones with striping or red curb) that has been approved by the San

1 Francisco Municipal Transportation Agency (SFMTA) Board of Directors, transit bulb-out as defined  
2 in the Better Streets Plan, or on street frontage directly adjacent to a transit boarding island as defined  
3 in the Better Streets Plan if vehicles accessing the curb cut would be required to cross over the  
4 boarding island.

5 (3) Not permitted without Conditional Use authorization or Sections 309 or 329  
6 exception. Not permitted except with a Conditional Use authorization, except that in In the C-3-  
7 O(SD) District, the Planning Commission may grant ~~such~~ permission for a new curb cut or an  
8 expansion of an existing one as an exception pursuant to Section 309 in lieu of a Conditional  
9 Use authorization as long as the Commission makes the findings required under Section 303(y) and  
10 where the amount of parking proposed does not exceed the amounts permitted as accessory  
11 according to Section 151.1. In addition, in the MUG, WMUG, MUR, MUO, RED, RED-MX, and  
12 SPD Districts, the Planning Commission may grant permission for a new curb cut or an expansion of  
13 an existing one as an exception pursuant to Section 329 in lieu of a Conditional Use authorization as  
14 long as the Commission makes the findings required under Section 303(y). A Planning Commission  
15 Conditional Use authorization subject to the additional findings under Section 303(y) is required to  
16 allow a new curb cut or expansion of an existing one on any other restricted street identified in this  
17 subsection 155(r)(3).

18 (A) Except as provided in Section 155(r), in all zoning districts except RH, M,  
19 NC-S, P, PDR, and SALL, no curb cuts accessing off-street parking or loading shall be created or  
20 expanded on street frontages identified along any Transit Preferential Street as designated in the  
21 Transportation Element of the General Plan, or Neighborhood Commercial Street as defined in the  
22 Better Streets Plan, or any SFMTA Board of Directors adopted bicycle routes or lanes, where an  
23 alternative frontage is available. On such bicycles routes or lanes where the bicycle facility is only on  
24 one side of the street, the curb cut restriction shall apply to the side of the street with the bicycle  
25 facility, and shall not apply to the opposite side of the street.





1 Street defined in the Better Streets Plan, or official City bicycle lane or bicycle route any SFMTA Board  
2 of Directors adopted Class II Bikeways (bicycle lanes and buffered bike lanes) or Class IV Bikeways  
3 (protected bicycle lanes), may be allowed on streets not listed in subsection (r)(2) above as an  
4 exception in the manner provided in Section 309 for C-3-O(SD) Districts, Section 329 for Mixed-  
5 Use Districts, and in Section 303 for NCT and RTO all other Districts in cases where ~~it can be~~  
6 ~~clearly demonstrated~~ the Planning Commission can determine that the final design of the parking  
7 access minimizes negative impacts to transit movement and to the safety of pedestrians and  
8 bicyclists to the fullest extent feasible.

9 (5) Corner lots in the SALI District. For corner lots in the SALI District, no new  
10 curb cut shall be permitted, nor any existing curb cut expanded, on any Street or Alley  
11 identified as an alley in the Western SoMa Area Plan of the General Plan if any property on  
12 the same block with frontage along that Street or Alley is designated as a RED or RED-MX  
13 District.

14 ~~(6) A "development lot" shall mean any lot containing a proposal for new construction,~~  
15 ~~building alterations which would increase the gross square footage of a structure by 20 percent or~~  
16 ~~more, or change of use of more than 50 percent of the gross floor area of a structure containing~~  
17 ~~parking. Pre-existing access to off-street parking and loading on development lots that violates the~~  
18 ~~restrictions of this Section 155(r) may not be maintained.~~ (6) A "development lot" shall mean any  
19 lot containing a proposal for new construction, building alterations which would increase the  
20 gross square footage of a structure by 20 percent or more, or change of use of more than 50  
21 percent of the gross floor area of a structure containing parking. Pre-existing access to off-  
22 street parking and loading on development lots that violates the restrictions of this Section  
23 155(r) may not be maintained.

24 \* \* \* \*

1 SEC. 161. EXEMPTIONS AND EXCEPTIONS FROM OFF-STREET PARKING, FREIGHT  
 2 LOADING AND SERVICE VEHICLE REQUIREMENTS.

3 \* \* \* \*

4 (j) **Protected Street Frontages and Transit Stops.** *The Planning Commission may*  
 5 *reduce or waive required parking or loading for a project if it finds that:*

6 *—— (1) the only feasible street frontage for a driveway or entrance to off-street parking or*  
 7 *loading is located on a protected pedestrian-, cycling-, and transit-oriented street frontage, as defined*  
 8 *in Section 155(r) of this Code, or*

9 *—— (2) the only feasible street frontage for a driveway or entrance to off-street parking or*  
 10 *loading is located at a transit stop; and*

11 *—— (3) the reduced or waived parking and loading can meet the reasonably anticipated*  
 12 *mobility needs of residents of, workers in, and visitors to the project.*

13 *—— No off-street parking or loading is required on any lot whose sole feasible automobile access is*  
 14 *across a protected street frontage identified in Section 155(r).*

15 \* \* \* \*

16  
 17 **SEC. 209.2. RM (RESIDENTIAL, MIXED) DISTRICTS.**

18 \* \* \* \*

19 **Table 209.2**  
 20 **ZONING CONTROL TABLE FOR RM DISTRICTS**

21 \* \* \* \*

Zoning Category	§ References	RM-1	RM-2	RM-3	RM-4
RESIDENTIAL STANDARDS AND USES					
Development Standards					
Usable Open Space	§§ 135, 136	At least 100 square feet if private, and 133	At least 80 square feet if private, and 106	At least 60 square feet if private and 80 square feet per	At least 36 square feet if private, and

1	[Per Dwelling Unit]		square feet per Dwelling Unit if common.	square feet per Dwelling Unit if common.	Dwelling Unit if common.	48 square feet per Dwelling Unit if common.
2						
3						
4	Parking Requirements	§§ 151, 155, 161	Generally one space for every Dwelling Unit minimum. Certain exceptions permitted per §§ 155 and 161.			
5						
6	Residential Conversion, Demolition, or Merger	§ 317	C for Removal of one or more Residential Units or Unauthorized Units			
7						
8	****					
9	NON-RESIDENTIAL STANDARDS AND USES					
10	Development Standards					
11	Floor Area Ratio	§§ 102, 123, 124	1.8 to 1	1.8 to 1	3.6 to 1	4.8 to 1
12						
13	Off-Street Parking	§§ 150, 151, 155, 161	Required. Number of spaces determined by use per § 151. Certain exceptions permitted per §§ 155 and 161.			
14	Limited Corner Commercial Uses	§ 231	NP	NP	P	P
15						
16	Limited Commercial Uses	§§ 186, 186.3	Continuing nonconforming uses are permitted, subject to the requirements of § 186. Limited Commercial Uses may be conditionally permitted in historic buildings subject to § 186.3.			
17						
18	****					

19

20

21 **SEC. 209.4. RTO (RESIDENTIAL TRANSIT ORIENTED) DISTRICTS.**

22 \*\*\*\*

23 **Table 209.4**  
**ZONING CONTROL TABLE FOR RTO DISTRICTS**

24 \*\*\*\*

25	Zoning Category	§ References	RTO	RTO-M
----	-----------------	--------------	-----	-------

Street Frontage and Public Realm		
Front Setback Landscaping and Permeability Requirements	§ 132	Required. At least 50% of Front Setback shall be permeable so as to increase storm water infiltration and 20% of Front Setback shall be unpaved and devoted to plant material.
Streetscape and Pedestrian Improvements (Street Trees)	§ 138.1	Required.
Street Frontage Requirements	§§ 144, 186, 231	Controls of § 144 apply to residential frontages. Additional controls apply to Limited Commercial Uses per §§ 186 and 231.
Street Frontage, Parking and Loading Access Restrictions	§ 155(r)	As specified in § 155(r) curb cuts are restricted on certain specified streets and on Transit Preferential, <i>Citywide Pedestrian Network</i> , Neighborhood Commercial Streets or official City bicycle routes or bicycle lanes.

\*\*\*\*

**SEC. 210.1. C-2 DISTRICTS: COMMUNITY BUSINESS.**

\*\*\*\*

**Table 210.1  
ZONING CONTROL TABLE FOR C-2 DISTRICTS**

\*\*\*\*

Zoning Category	§ References	C-2
RESIDENTIAL STANDARDS AND USES		
Development Standards		
Usable Open Space for Dwelling Units and Group Housing	§ 135	Same as for the R District establishing the dwelling unit density ratio for the property. Group Housing requirement is 1/3 the amount required for a Dwelling Unit.
Residential Parking Requirements	§ 151, 155, 161	Generally one space per Dwelling Unit. Exceptions permitted per §§ <u>155</u> and 161. None required in the Washington-Broadway Special Use District.

1 2 3 4 5	Rear Yard Setback	§§ 130, 134	25% of the total depth lot depth, but in no case less than 15 feet. Rear yards shall be provided at the lowest story containing a dwelling unit, and at each succeeding level or story of the building.
6	Residential Conversion, Demolition, or Merger	§ 317	C for Removal of one or more Residential Units or Unauthorized Units.
7	****		

NON-RESIDENTIAL STANDARDS AND USES

Development Standards

8 9 10 11 12 13	Off-Street Parking	§§ 150, 151, 155, 161	As required by § 151. Certain exceptions permitted by §§ 155 and 161. None required in the Washington-Broadway Special Use District.
14	Use Size Limits	§ 121.6	C required for single Retail Use greater than 50,000 gross square feet. NP above 120,000 gross square feet.
15	Ground Floor Ceiling Height	§ 145.1(c)(4)	Minimum floor-to-floor height of 14 feet, as measured from grade except in 40-foot and 50-foot height districts, where buildings shall have a minimum floor-to-floor height of 10 feet.

\*\*\*\*

SEC. 210.2. C-3 DISTRICTS: DOWNTOWN COMMERCIAL.

\*\*\*\*

Table 210.2  
ZONING CONTROL TABLE FOR C-3 DISTRICTS

\*\*\*\*

Zoning Category	§ References	C-3-O	C-3-O(SD)	C-3-R	C-3-G	C-3-S
Street Frontage and Public Realm						
Privately Owned Public Open Space	§ 138	Required with the constructing of a new building or an addition of gross floor area equal to 20% or more of an existing building. Ratio of POPOS is 1:50 feet for all districts except C-3-R which is 1:100.				

1 2 3 4 5 6 7 8 9 10 11 12 13	Downtown Streetscape Plan	§ 138.1	Required. Sidewalk paving, as set for in the Downtown Streetscape Plan is required with any new construction; or the addition of floor area equal to 20% or more of an existing building.
14	Street Frontage Requirements	§ 145.1	Required as specified in § 145.1.
15	Street Frontage, Required Ground Floor Commercial	§ 145.4	As specified in § 145.4, certain streets and districts are required to have "active commercial uses."
16	Street Frontage, Parking and Loading Access Restrictions	§ 155(r)	As specified in § 155(r) certain streets and districts have additional restrictions on vehicular access in addition to general standards. In C-3 Districts curb cuts are restricted on Transit Preferential, <del>Citywide Pedestrian Network</del> , Neighborhood Commercial Streets or official City bicycle routes or bicycle lanes.
17	Artworks and Recognition of Artists and Architects	§ 429	Art works and recognition of artists and architects are required for new buildings and for additions of floor area in excess of 25,000 square feet to an existing building, per § 429.

\*\*\*\*

**SEC. 303. CONDITIONAL USES.**

\*\*\*\*

(x) **Medical Cannabis Dispensaries.** With respect to any application for the establishment of a new Medical Cannabis Dispensary Use, in addition to the criteria set forth in subsections (c) and (d) above, the Commission shall consider the concentration of Cannabis Retail and Medical Cannabis Dispensary Uses within the general proximity the proposed Medical Cannabis Dispensary Use.

*(y) **Curb Cuts on Restricted Streets.** With respect to an application for a new or expanded curb cut on street frontages subject to Section 155(r), the Planning Commission shall affirmatively find,*

1 in addition to those findings in subsections 303(c) and (d) above, that the project meets one or more of  
 2 the following criteria:

3 (1) That the restriction on curb cuts at this location would substantially affect access to  
 4 or operations of emergency services;

5 (2) That the proposed land use(s) requires off-street parking or loading for disability  
 6 access under a local, State, or federal law or has an extraordinary need to provide off-street parking or  
 7 loading for a General Grocery Use, Institutional Use, or PDR Use; and/or

8 (3) The proposed use necessitates on-site loading spaces in order to prevent a significant  
 9 negative impact on Muni operations, the safety of pedestrian, cyclists, or traffic hazards.

10  
 11 **SEC. 710. NC-1 – NEIGHBORHOOD COMMERCIAL CLUSTER DISTRICT.**

12 \* \* \* \*

13 **Table 710. NEIGHBORHOOD COMMERCIAL CLUSTER DISTRICT NC-1**  
 14 **ZONING CONTROL TABLE**

15 \* \* \* \*

		NC-1
Zoning Category	§ References	Controls
<b>RESIDENTIAL STANDARDS AND USES</b>		
Development Standards		
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	100 square feet per unit if private, or 133 square feet per unit if common
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ <u>155 and</u> 161. Bike parking required per § 155.2. If car parking is provided, car share spaces

		are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required
****		
<b>NON-RESIDENTIAL STANDARDS</b>		
Development Standards		
Floor Area Ratio	§§ 102 , 123, 124	1.8 to 1
Use Size	§ 102	P up to 2,999 square feet; C 3,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ <u>155 and 161</u> for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <u>155 and 161</u> .

\*\*\*\*

**SEC. 711. NC-2 – SMALL-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT.**

\*\*\*\*

**Table 711. SMALL-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT NC-2 ZONING CONTROL TABLE**

\*\*\*\*

		NC-2
Zoning Category	§ References	Controls
<b>RESIDENTIAL STANDARDS AND USES</b>		



Development Standards		
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	100 square feet per unit if private, or 133 square feet per unit if common
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ <u>155 and</u> 161. Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required
****		

NON-RESIDENTIAL STANDARDS AND USES

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	2.5 to 1
Use Size	§§ 102, 121.2	P up to 3,999 square feet; C 4,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ <u>155 and</u> 161 for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <u>155 and</u> 161.

\*\*\*\*

SEC. 712. NC-3 – MODERATE-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT.

1           \*\*\*\*

2           **Table 712. MODERATE-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT NC-3**  
3           **ZONING CONTROL TABLE**

4           \*\*\*\*

		NC-3
Zoning Category	§ References	Controls
RESIDENTIAL STANDARDS AND USES		

Development Standards		
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	80 square feet per unit if private, or 100 square feet per unit if common
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ <u>155 and</u> 161. Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required
****		
NON-RESIDENTIAL STANDARDS		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	3.6 to 1
Use Size	§§ 102, 121.2	P up to 5,999 square feet; C 6,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ <u>155 and</u> 161 for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a

		project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ 155 and 161.

\*\*\*\*

**SEC. 713. NC-S – NEIGHBORHOOD COMMERCIAL SHOPPING CENTER DISTRICT.**

\*\*\*\*

**Table 713. NEIGHBORHOOD COMMERCIAL SHOPPING CENTER DISTRICT NC-S ZONING CONTROL TABLE**

\*\*\*\*

Zoning Category	§ References	NC-S Controls
<b>RESIDENTIAL STANDARDS AND USES</b>		
<b>Development Standards</b>		
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	Generally, either 100 square feet if private, or 133 square feet if common.(1)
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	A minimum of one automotive space for every Dwelling Unit required. Certain exceptions permitted per §§ 155 and 161. Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required
****		
<b>NON-RESIDENTIAL STANDARDS</b>		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	1.8 to 1
Use Size	§ 102, 121.2	P up to 5,999 square feet; C 6,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153-156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ 155 and 161 for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ 155 and 161.

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**SEC. 714. BROADWAY NEIGHBORHOOD COMMERCIAL DISTRICT.**

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**Table 714. BROADWAY NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE**

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		Broadway NCD
Zoning Category	§ References	Controls
NON-RESIDENTIAL STANDARDS AND USES		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	2.5 to 1
Use Size	§§ 102, 121.2	P up to 2,999 square feet; C 3,000 square feet and above

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Off-Street Parking Requirements	§§ 145.1, 150, 151.1, 153 - 156, 166, 204.5	Car parking not required. Limits set forth in § 151.1. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
	Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ 155 and 161.

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**SEC. 715. CASTRO STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

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**Table 715. CASTRO STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE**

Zoning Category	§ References	Castro NCD Controls
<b>RESIDENTIAL STANDARDS AND USES</b>		
Development Standards		
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	80 square feet if private, or 100 square feet if common
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ 155 and 161. Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required
****		
<b>NON-RESIDENTIAL STANDARDS AND USES</b>		
Development Standards		

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	Floor Area Ratio	§§ 102, 123, 124	3.0 to 1
	Use Size	§§ 102, 121.2	P to 1,999 square feet; C 2,000 square feet to 3,999 square feet; NP(1) 4,000 square feet and above
	Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ <i>155 and</i> 161 for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
	Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <i>155 and</i> 161.

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**SEC. 716. INNER CLEMENT STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

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**Table 716. INNER CLEMENT STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE**

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Zoning Category	§ References	Inner Clement Controls
RESIDENTIAL STANDARDS AND USES		
Development Standards		

1	Usable Open Space [Per Dwelling Unit]	§§ 135, 136	80 square feet if private, or 100 square feet if common
2			
3	Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ <u>155 and 161</u> . Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
4			
5			
6	Dwelling Unit Mix	§ 207.6	Not required
7	****		

8 NON-RESIDENTIAL STANDARDS AND USES

9 Development Standards

10	Floor Area Ratio	§§ 102, 123, 124	1.8 to 1
11			
12	Use Size	§ 102, 121.2	P up to 2,499 square feet; C 2,500 square feet and above
13			
14	Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ <u>155 and 161</u> for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
15			
16			
17	Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <u>155 and 161</u> .
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21 **SEC. 717. OUTER CLEMENT STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

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23 **Table 717. OUTER CLEMENT STREET NEIGHBORHOOD COMMERCIAL DISTRICT**  
**ZONING CONTROL TABLE**

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25			Outer Clement
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Zoning Category	§ References	Controls
RESIDENTIAL STANDARDS AND USES		

Development Standards		
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	80 square feet per unit if private, or 100 square feet per unit if common
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ <u>155 and</u> 161. Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required
* * * *		

NON-RESIDENTIAL STANDARDS AND USES

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	1.8 to 1
Use Size	§§ 102, 121.2	P up to 2,499 square feet; C 2,500 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ <u>155 and</u> 161 for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <u>155 and</u> 161.

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**SEC. 718. UPPER FILLMORE STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

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1 **Table 718. UPPER FILLMORE STREET NEIGHBORHOOD COMMERCIAL DISTRICT**  
 2 **ZONING CONTROL TABLE**

3 \*\*\*\*\*

Upper Fillmore NCD		
Zoning Category	§ References	Controls
RESIDENTIAL STANDARDS AND USES		

Usable Open Space [Per Dwelling Unit]	§§ 135, 136	80 square feet per unit if private, or 100 square feet per unit if common
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ <u>155 and</u> 161. Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required
*****		

13 NON-RESIDENTIAL STANDARDS AND USES

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	2.5 to 1
Use Size	§§ 102, 121.2	P up to 2,499 square feet; C 2,500 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ <u>155 and</u> 161 for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <u>155 and</u> 161.

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2 **SEC. 719. HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

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4 **Table 719. HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT**  
5 **ZONING CONTROL TABLE**

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		Haight Street NCD
Zoning Category	§ References	Controls
<b>RESIDENTIAL STANDARDS AND USES</b>		
Development Standards		
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	80 square feet per unit if private, or 100 square feet per unit if common
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ <u>155 and</u> 161. Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required
* * * *		
<b>NON-RESIDENTIAL STANDARDS AND USES</b>		
Development Standards		
Floor Area Ratio	§§ 102, 123, 124	1.8 to 1
Use Size	§§ 102, 121.2	P up to 2,499 square feet; C 2,500 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 sq. ft. See chart in § 151 for uses over 5,000 square feet. See §§ <u>155 and</u> 161 for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.



Table 721. JAPANTOWN NEIGHBORHOOD COMMERCIAL DISTRICT  
ZONING CONTROL TABLE

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Japantown NCD		
Zoning Category	§ References	Controls
NON-RESIDENTIAL STANDARDS AND USES		
Development Standards		
Floor Area Ratio	§§ 102, 123, 124	3.6 to 1
Use Size	§§ 102, 121.2	P up to 2,499 square feet; C 2,500 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151.1, 153 - 156, 166, 204.5	Car parking not required. Maximum permitted as set forth in Section 151.1. Bike parking required per § 155.2.
Off-Street Freight Loading	§§ 150, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. <i>Exceptions permitted per § 155.</i>

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SEC. 722. NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT.

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Table 722. NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT  
ZONING CONTROL TABLE

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North Beach NCD		
Zoning Category	§ References	Controls
NON-RESIDENTIAL STANDARDS AND USES		
Development Standards		
Floor Area Ratio	§§ 102, 123, 124	1.8 to 1

1 2 3 4 5 6 7 8 9 10	Use Size	§§ 102, 121.2, 780.3(c)(3)	P up to 1,999 square feet; C 2,000 square feet to 3,999 square feet; NP 4,000 square feet and above. Specialty Grocery use shall not exceed a Use Size of 1,000 square feet within the North Beach Special Use District.
	Off Street Parking Requirements	§§ 150, 151, 155(r) and (t), 161	Car parking not required. Limits set forth in § 151.1. Bike parking required per Section 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166. See restrictions under Vehicular Access.
	Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ 155 and 161. See restrictions under Vehicular Access.
	Storefront Mergers	§ 780.3(c)(3)	Storefront mergers NP and Specialty Grocery use shall not exceed a Use Size of 1,000 square feet within the North Beach Special Use District.

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13 **SEC. 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

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15 **Table 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT**  
16 **ZONING CONTROL TABLE**

17 \* \* \* \*

18 Polk Street NCD		
19 Zoning Category	§ References	Controls
20 NON-RESIDENTIAL STANDARDS AND USES (7)		
21 Development Standards		
22 Floor Area Ratio	§§ 102, 123, 124	2.5 to 1
23 Use Size	§§ 102, 121.2	P up to 1,999 square feet; C 2,000 to 3,999 square feet; NP 4,000 square feet and above
24 Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ 155 and 161 for car parking waiver. Bike
25		

		parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <u>155 and</u> 161.

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**SEC. 724. SACRAMENTO STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

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**Table 724. SACRAMENTO STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE**

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Sacramento Street NCD		
Zoning Category	§ References	Controls
RESIDENTIAL STANDARDS AND USES		

Development Standards		
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	100 square feet per unit if private, or 133 square feet per unit if common.
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ <u>155 and</u> 161. Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required
****		

NON-RESIDENTIAL STANDARDS AND USES		
Development Standards		
Floor Area Ratio	§§ 102, 123, 124	1.8 to 1

1	Use Size	§§ 102, 121.2	P up to 2,499 square feet; C 2,500 square feet and above
2	Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ <i>155 and</i> 161 for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.

7	Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <i>155 and</i> 161.
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11 **SEC. 725. UNION STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

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13 **Table 725. UNION STREET NEIGHBORHOOD COMMERCIAL DISTRICT**  
 14 **ZONING CONTROL TABLE**

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Union Street NCD		
Zoning Category	§ References	Controls
RESIDENTIAL STANDARDS AND USES		

Development Standards		
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	80 square feet per unit if private, or 100 square feet per unit if common
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ <i>155 and</i> 161. Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required

****		
NON-RESIDENTIAL STANDARDS AND USES		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	3.0 to 1
Use Size	§§ 102, 121.2	P up to 2,499 square feet; C 2,500 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ 155 and 161 for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ 155 and 161.

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**SEC. 726. PACIFIC AVENUE NEIGHBORHOOD COMMERCIAL DISTRICT.**

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**Table 726. PACIFIC AVENUE NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE**

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		Pacific Avenue NCD
Zoning Category	§ References	Controls
Zoning Category	§ References	Controls
NON-RESIDENTIAL STANDARDS AND USES (6)		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	1.5 to 1



Use Size	§ 102, 121.2	P up to 1,999 square feet; C 2,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 2,000 square feet. See chart in § 151 for uses over 2,000 square feet. See §§ <u>155 and 161</u> for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.

Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <u>155 and 161</u> .
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**SEC. 728. 24TH STREET – NOE VALLEY NEIGHBORHOOD COMMERCIAL DISTRICT.**

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**Table 728. 24TH STREET – NOE VALLEY NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE**

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24th Street - Noe Valley NCD		
Zoning Category	§ References	Controls
<b>RESIDENTIAL STANDARDS AND USES</b>		
<b>Development Standards</b>		
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	80 square feet if private, or 100 square feet if common
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ <u>155 and 161</u> . Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required

****		
NON-RESIDENTIAL STANDARDS AND USES		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	1.8 to 1
Use Size	§§ 102, 121.2	P up to 2,499 square feet; C 2,500 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ <i>155 and</i> 161 for car parking waiver. Bike parking required per Section 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <i>155 and</i> 161.

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**SEC. 729. WEST PORTAL AVENUE NEIGHBORHOOD COMMERCIAL DISTRICT.**

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**Table 729. WEST PORTAL AVENUE NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE**

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		West Portal NCD
Zoning Category	§ References	Controls
RESIDENTIAL STANDARDS AND USES		

Development Standards		
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	100 square feet if private, or 133 square feet if common
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156,	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ <i>155</i>

	159 - 161, 166, 204.5	<i>and</i> 161. Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required
****		
NON-RESIDENTIAL STANDARDS AND USES		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	1.8 to 1
Use Size	§§ 102, 121.2	P up to 2,499 square feet; C 2,500 to 3,999 square feet; NP 4,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ <i>155 and</i> 161 for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <i>155 and</i> 161.

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**SEC. 730. INNER SUNSET NEIGHBORHOOD COMMERCIAL DISTRICT.**

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**Table 730. INNER SUNSET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE**

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		Inner Sunset NCD
Zoning Category	§ References	Controls
RESIDENTIAL STANDARDS AND USES		
Development Standards		

Development Standards		
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	100 square feet per unit if private, or 133 square feet per unit if common
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ <u>155 and</u> 161. Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required
****		
NON-RESIDENTIAL STANDARDS AND USES		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	1.8 to 1
Use Size	§§ 102, 121.2	P up to 2,499 square feet; C 2,500 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ <u>155 and</u> 161 for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <u>155 and</u> 161.

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**SEC. 731. NORIEGA STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

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**Table 731. NORIEGA STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE**

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		Noriega Street NCD
Zoning Category	§ References	Controls
RESIDENTIAL STANDARDS AND USES		

Development Standards		
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	100 square feet per unit if private, or 133 square feet per unit if common
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ <u>155 and</u> 161. Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required
* * * *		
NON-RESIDENTIAL STANDARDS AND USES		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	2.5 to 1
Use Size	§§ 102, 121.2	P up to 3,999 square feet; C 4,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ <u>155 and</u> 161 for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <u>155 and</u> 161.

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**SEC. 732. IRVING STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

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Table 732. IRVING STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

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Irving Street NCD		
Zoning Category	§ References	Controls
RESIDENTIAL STANDARDS AND USES		

Development Standards		
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	100 square feet per unit if private, or 133 square feet per unit if common
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ 155 and 161. Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required
****		
NON-RESIDENTIAL STANDARDS AND USES		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	2.5 to 1
Use Size	§ 102, 121.2	P up to 3,999 square feet; C 4,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151, 153 - 156, 159 - 161, 166, 204.5	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ 155 and 161 for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ 155 and 161.



		required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ 155 and 161.

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**SEC. 734. JUDAH STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

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**Table 734. JUDAH STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE**

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Judah Street NCD		
Zoning Category	§ References	Controls
<b>RESIDENTIAL STANDARDS AND USES</b>		

Development Standards		
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	100 square feet per unit if private, or 133 square feet per unit if common
Off-Street Parking Requirements	§§ 151, 161, 166	A minimum of one car parking space for every Dwelling Unit required. Certain exceptions permitted per §§ 155 and 161. Bike parking required per § 155.2. If car parking is provided, car share spaces are required when a project has 50 units or more per § 166.
Dwelling Unit Mix	§ 207.6	Not required
****		
<b>NON-RESIDENTIAL STANDARDS AND USES</b>		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	2.5 to 1
Use Size	§§ 102, 121.2	P up to 3,999 square feet; C 4,000 square feet and above



1 2 3 4	Off-Street Parking Requirements	§§ 150, 151, 161	No car parking required if Occupied Floor Area is less than 5,000 square feet. See chart in § 151 for uses over 5,000 square feet. See §§ <u>155 and</u> 161 for car parking waiver. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
5 6	Off-Street Freight Loading	§§ 150; 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <u>155 and</u> 161.

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10 **SEC. 750. NCT-1 – NEIGHBORHOOD COMMERCIAL TRANSIT CLUSTER DISTRICT.**

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12 **Table 750. NEIGHBORHOOD COMMERCIAL TRANSIT CLUSTER DISTRICT NCT-1 ZONING CONTROL TABLE**

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		NCT-1
Zoning Category	§ References	Controls
NON-RESIDENTIAL STANDARDS AND USES		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	1.8 to 1
Use Size	§§ 102, 121.2	P up to 2,999 square feet; C 3,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151.1, 153 - 156, 166, 204.5	Car parking not required. Limits set forth in Section 151.1. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <u>155 and</u> 161.

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2 **SEC. 751. NCT-2 – SMALL-SCALE NEIGHBORHOOD COMMERCIAL TRANSIT**  
3 **DISTRICT.**

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5 **Table 751. SMALL-SCALE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT NCT-2**  
6 **ZONING CONTROL TABLE**

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		NCT-2
Zoning Category	§ References	Controls
<b>NON-RESIDENTIAL STANDARDS AND USES</b>		
<b>Development Standards</b>		
Floor Area Ratio	§§ 102, 123, 124	2.5 to 1
Use Size	§§ 102, 121.2	P up to 3,999 square feet; C 4,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151.1, 153 - 156, 166, 204.5	Car parking not required. Limits set forth in Section 151.1. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ 155 and 161.

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21 **SEC. 752. NCT-3 – MODERATE-SCALE NEIGHBORHOOD COMMERCIAL TRANSIT**  
22 **DISTRICT.**

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24 **Table 752. MODERATE-SCALE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**  
25 **NCT-3**  
**ZONING CONTROL TABLE**

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		NCT-3
Zoning Category	§ References	Controls
NON-RESIDENTIAL STANDARDS AND USES		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	3.6 to 1
Use Size	§§ 102, 121.2	P up to 5,999 square feet; C 6,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151.1, 153 - 156, 166, 204.5	Car parking not required. Limits set forth in Section 151.1. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ 155 and 161.

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**SEC. 753. SOMA NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

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**Table 753. SOMA NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE**

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		SoMa NCT
Zoning Category	§ References	Controls
NON-RESIDENTIAL STANDARDS AND USES		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	2.5 to 1

1	Use Size	§ 102, 121.2	P up to 3,999 square feet; C 4,000 square feet and above
2	Off-Street Parking Requirements	§§ 145.1, 150, 151.1, 153 - 156, 166, 204.5	Car parking not required. Limits set forth in Section 151.1. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
3	Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ 155 and 161.

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5 **SEC. 754. MISSION STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

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7 **Table 754. MISSION STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE**

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		Mission Street NCT
Zoning Category	§ References	Controls
NON-RESIDENTIAL STANDARDS AND USES		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	3.6 to 1
Use Size	§§ 102, 121.2	P up to 5,999 square feet; C 6,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151.1, 153 - 156, 166, 204.5	Car parking not required. Limits set forth in Section 151.1. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ 155 and 161.

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2 **SEC. 755. OCEAN AVENUE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

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4 **Table 755. OCEAN AVENUE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**  
5 **ZONING CONTROL TABLE**

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Ocean Avenue NCT		
Zoning Category	§ References	Controls
<b>NON-RESIDENTIAL STANDARDS AND USES</b>		
<b>Development Standards</b>		
Floor Area Ratio	§§ 102, 123, 124	2.5 to 1
Use Size	§§ 102, 121.2	P up to 3,999 square feet; C 4,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151.1, 153 - 156, 166, 204.5	Car parking not required. Limits set forth in Section 151.1. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <u>155 and</u> 161.

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19 **SEC. 756. GLEN PARK NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

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21 **Table 756. GLEN PARK NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**  
22 **ZONING CONTROL TABLE**

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Glen Park NCT		
Zoning Category	§ References	Controls
<b>NON-RESIDENTIAL STANDARDS AND USES</b>		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	2.5 to 1
Use Size	§ 102, 121.2	P up to 3,999 square feet; C 4,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151.1, 153 - 156, 166, 204.5	Car parking not required. Limits set forth in Section 151.1. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ 155 and 161.

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**SEC. 757. FOLSOM STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

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**Table 757. FOLSOM STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE**

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		Folsom Street NCT
Zoning Category	§ References	Controls
NON-RESIDENTIAL STANDARDS AND USES		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	2.5 to 1
Use Size	§ 102, 121.2	P up to 3,999 square feet; C 4,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151.1, 153 - 156, 166, 204.5	Car parking not required. Limits set forth in Section 151.1. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.

Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <i>155 and</i> 161.
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**SEC. 758. REGIONAL COMMERCIAL DISTRICT.**

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**Table 758. REGIONAL COMMERCIAL DISTRICT ZONING CONTROL TABLE**

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Regional Commercial District		
Zoning Category	§ References	Controls
<b>NON-RESIDENTIAL STANDARDS AND USES</b>		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	2.5 to 1
Use Size	§ 102, 121.2	P up to 10,000 square feet; C above; NP above 25,000 square feet except for Schools and Child Care Facilities
Off-Street Parking Requirements	§§ 145.1, 150, 151.1, 153 - 156, 166, 204.5	Car parking not required. Limits set forth in Section 151.1. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <i>155 and</i> 161.

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**SEC. 759. DIVISADERO STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

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1 **Table 759. DIVISADERO STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**  
 2 **ZONING CONTROL TABLE**

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		Divisadero St. NCT
Zoning Category	§ References	Controls
NON-RESIDENTIAL STANDARDS AND USES		

6 Development Standards

Floor Area Ratio	§§ 102, 123, 124	2.5 to 1
Use Size	§§ 102, 121.2	P up to 3,999 square feet; C 4,000 square feet and above
Off-Street Parking Requirements	§§ 145.1, 150, 151.1, 153 - 156, 166, 204.5	Car parking not required. Limits set forth in Section 151.1. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ 155 and 161.

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16 **SEC. 760. FILLMORE STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

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18 **Table 760. FILLMORE STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**  
 19 **ZONING CONTROL TABLE**

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		Fillmore St. NCT
Zoning Category	§ References	Controls
NON-RESIDENTIAL STANDARDS AND USES		

23 Development Standards

Development Standards		
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1	Floor Area Ratio	§§ 102, 123, 124	3.6 to 1
2	Use Size	§§ 102, 121.2	P up to 5,999 square feet; C 6,000 square feet and above
3	Off-Street Parking Requirements	§§ 145.1, 150, 151.1, 153 - 156, 166, 204.5	Car parking not required. Limits set forth in Section 151.1. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
4	Off-Street Freight Loading	§§ 150, 152, 153 - 155, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ 155 and 161.

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**SEC. 761. HAYES-GOUGH NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

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**Table 761. HAYES-GOUGH NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE**

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		Hayes-Gough NCT
Zoning Category	§ References	Controls
NON-RESIDENTIAL STANDARDS AND USES		

Development Standards			
18	Floor Area Ratio	§§ 102, 123, 124	3.0 to 1
19	Use Size	§ 102, 121.2	P up to 2,999 square feet; C 3,000 square feet and above
20	Off-Street Parking Requirements	§§ 145.1, 150, 151.1, 153 - 156, 166, 204.5	Car parking not required. Limits set forth in Section 151.1. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.



**Table 763. 24TH STREET – MISSION NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE**

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24th Street - Mission NCT		
NON-RESIDENTIAL STANDARDS AND USES		

Development Standards		
Floor Area Ratio	§§ 102, 123, 124	2.5 to 1
Use Size	§ 102, 121.2	P up to 2,499 square feet; C 2,500 square feet and above
Off-Street Parking Requirements	§§ 150, 151, 161	Car parking not required. Limits set forth in Section 151.1. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ <i>155 and</i> 161.

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**SEC. 764. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

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**Table 764. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE**

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Upper Market Street NCT		
Zoning Category	§ References	Controls
NON-RESIDENTIAL STANDARDS AND USES		
Development Standards		

1	Floor Area Ratio	§§ 102, 123, 124	3.0 to 1
2	Use Size	§ 102, 121.2	P up to 2,999 square feet; C 3,000 square feet and above
3	Off-Street Parking Requirements	§§ 145.1, 150, 151.1, 153 - 156, 166, 204.5	Car parking not required. Limits set forth in Section 151.1. Bike parking required per Section 155.2. Car share spaces required when a project has 25 or more parking spaces per § 166.
4	Off-Street Freight Loading	§§ 150, 152, 153 - 155, 161, 204.5	None required if gross floor area is less than 10,000 square feet. Exceptions permitted per §§ 155 and 161.

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**SEC. 810. CHINATOWN COMMUNITY BUSINESS DISTRICT.**

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**Table 810  
CHINATOWN COMMUNITY BUSINESS DISTRICT ZONING CONTROL TABLE**

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No.	Zoning Category	§ References	Chinatown Community Business Controls
<b>COMMERCIAL AND INSTITUTIONAL STANDARDS AND SERVICES</b>			
.19	Floor Area Ratio	§§ 102.9, 102.11, 123	2.8 to 1 § 124(a) (b)
.20	Use Size [Nonresidential]	§ 890.130	P up to 5,000 sq. ft. C 5,000 sq. ft. & above, except for Restaurants § 121.4
.21	Open Space		1 sq. ft. for every 50 sq. ft. of building over 10,000 sq. ft. § 135.1
.22	Off-Street Parking, Commercial and Institutional	§§ 150, 151.1, 153 - 156, 166, 204.5, 303	None required 1 1

1	.23	Off-Street Freight Loading	§§ 150, 153 - 155, 204.5	Generally, none required if gross floor area is less than 10,000 sq. ft. §§ 152, 161(b). <i>Exception permitted per § 155.</i>		
2	.24	Outdoor Activity Area	§ 890.71	P in front C elsewhere		
3	.25	Drive-Up Facility	§ 890.30			
4	.26	Walk-Up Facility	§ 890.140	P if recessed 3 ft. C otherwise		
5	.27	Hours of Operation	§ 890.48	No limit		
6	.30	General Advertising Sign	§ 607.2	NP		
7	.31	Business Sign	§§ 602 - 604, 608.1, 608.2	P § 607.2(f)		
8		****				
9	<b>No.</b>	<b>Zoning Category</b>	<b>§ References</b>	<b>Chinatown Community Business Controls by Story</b>		
10				<b>1st</b>	<b>2nd</b>	<b>3rd+</b>
11	<b>RESIDENTIAL STANDARDS AND USES</b>					
12	.90	Residential Use	§ 890.88	P	P	P
13	.91	Dwelling Unit Density	§§ 207, 207.1, 890.88(a)	Generally, up to 1 unit per 200 sq. ft. lot area # § 207(c)		
14	.92	Residential Density, Group Housing	§§ 207.1, 208, 890.88(b)	1 bedroom per 140 sq. ft. lot area § 208		
15	.92b	Residential Density, Homeless Shelters	§§ 102, 207.1, 208, 890.88(d)	Density limits per § 208(a)		
16	.93	Usable Open Space [Per Residential Unit]	§§ 135, 136	48 sq. ft. § 135 Table 3		
17	.94	Off-Street Parking, Residential	§§ 150, 151.1, 153 - 156, 166, 167, 204.5, 303	P up to one car for each two Dwelling Units, <i>but subject to § 155</i> ; C up to .75 cars for each Dwelling Unit, subject to the criteria and procedures of Section 303151.1(e), 1 NP above 0.75 cars for each Dwelling Unit § 303(u) # mandatory discretionary review by the Planning Commission if installing a garage in an existing residential building of four or more		

			units and Section 311 notice for a building of less than four units.		
.95	Automobile Parking Lot, Community Residential	§ 156, 160, 890.7	C	C	C
.96	Automobile Parking Garage, Community Residential	§ 160, 890.8		C	C
.97	Residential Conversion or Demolition, Residential Hotels	Ch. 41 Admin. Code			
.98	Removal of Residential or Unauthorized Units through Conversion, Demolition, or Merger	§ 317	C		

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**SEC. 811. CHINATOWN VISITOR RETAIL DISTRICT.**

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**Table 811  
CHINATOWN VISITOR RETAIL DISTRICT ZONING CONTROL TABLE**

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No.	Zoning Category	§ References	Chinatown Visitor Retail Controls
<b>COMMERCIAL AND INSTITUTIONAL STANDARDS AND SERVICES</b>			
.19	Floor Area Ratio	§§ 102.9, 102.11, 123	2.0 to 1 § 124(a) (b)
.20	Use Size [Nonresidential]	§ 890.130	P up to 2,500 sq. ft. C 2,501 to 5,000 sq. ft. Except for Restaurants - 5,000 sq. ft. § 121.4
.21	Open Space		1 sq. ft. for every 50 sq. ft. above 10,000 sq. ft. § 135.1
.22	Off-Street Parking, Commercial and Institutional	§§ 150, 151.1, 153 - 156, 166, 204.5, 303	None required

1	.23	Off-Street Freight Loading	§§ 150, 153 - 155, 204.5	Generally, none required if gross floor area is less than 10,000 sq. ft. §§ 152, 161(b). <u>Exception permitted per § 155.</u>		
2	.24	Outdoor Activity Area	§ 890.71	P in front C elsewhere		
3	.25	Drive-Up Facility	§ 890.30			
4	.26	Walk-Up Facility	§ 890.140	P if recessed 3 ft. C otherwise		
5	.27	Hours of Operation	§ 890.48	P 6 a.m. - 11 p.m. C 11 p.m. - 2 a.m.		
6	.30	General Advertising Sign	§ 607.2	NP		
7	.31	Business Sign	§§ 602 - 604, 608.1, 608.2	P § 607.2(f)		
8		****				
9	<b>No.</b>	<b>Zoning Category</b>	<b>§ References</b>	<b>Chinatown Visitor Retail Controls by Story</b>		
10				<b>1st</b>	<b>2nd</b>	<b>3rd+</b>
11	<b>RESIDENTIAL STANDARDS AND USES</b>					
12	.90	Residential Use	§ 890.88	P	P	P
13	.91	Dwelling Unit Density	§§ 207, 207.1, 890.88(a)	Generally, up to 1 unit per 200 sq. ft. lot area # § 207(c)		
14	.92	Residential Density, Group Housing	§§ 207.1, 208, 890.88(b)	1 bedroom per 140 sq. ft. lot area § 208		
15	.92b	Residential Density, Homeless Shelters	§§ 102, 207.1, 208, 890.88(d)	Density limits per § 208(a)		
16	.93	Usable Open Space [Per Residential Unit]	§§ 135, 136	48 sq. ft. § 135 Table 3		
17	.94	Off-Street Parking, Residential	§§ 150, 151.1, 153 - 156, 166, 167,	P up to one car for each two Dwelling Units, <u>but subject to § 155</u> ; C up to .75 cars for each Dwelling Unit, subject to the criteria and procedures of Sections 303(u) and 151.1(e), NP above 0.75 cars for each Dwelling Unit		

		204.5, 303			
.95	Automobile Parking Lot, Community Residential	§ 156, 160, 890.7	C	C	C
.96	Automobile Parking Garage, Community Residential	§ 160, 890.8	C	C	C
.97	Residential Conversion or Demolition, Residential Hotels	Ch. 41 Admin. Code			
.98	Removal of Residential or Unauthorized Units through Conversion, Demolition, or Merger	§ 317	C		
OTHER USES					
.99	Wireless Telecommunications Services Facility	§ 102	P	P	P

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**SEC. 812. CHINATOWN RESIDENTIAL NEIGHBORHOOD COMMERCIAL DISTRICT.**

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Table 812 CHINATOWN RESIDENTIAL NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE			
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No.	Zoning Category	§ References	Chinatown Residential Neighborhood Commercial Controls
<b>COMMERCIAL AND INSTITUTIONAL STANDARDS AND SERVICES</b>			
.19	Floor Area Ratio	§§ 102.9, 102.11, 123	1.0 to 1 § 124(a) (b)



1	.20	Use Size [Nonresidential]	§ 890.130	P up to 2,500 sq. ft. C 2,501 to 4,000 sq. ft. § 121.4
2				
3	.21	Open Space		1 sq. ft. for every 50 sq. ft. of building over 10,000 sq. ft. § 135.1
4				
5	.22	Off-Street Parking, Commercial and Institutional	§§ 150, 151.1, 153 - 156, 166, 204.5, 303	None Required
6				
7	.23	Off-Street Freight Loading	§§ 150, 153 - 155, 204.5	Generally, none required if gross floor area is less than 10,000 sq. ft. §§ 152, 161(b). <i>Exception permitted per § 155.</i>
8				
9	.24	Outdoor Activity Area	§ 890.71	P in front C elsewhere
10				
11	.25	Drive-Up Facility	§ 890.30	
12	.26	Walk-Up Facility	§ 890.140	P if recessed 3 ft. C otherwise
13	.27	Hours of Operation	§ 890.48	P 6 a.m. - 11 p.m. C 11 p.m. - 2 a.m.
14	.30	General Advertising Sign	§ 607.2	NP
15	.31	Business Sign	§§ 602 - 604, 608.1, 608.2	P § 607.2(f)
16		****		

17	<b>No.</b>	<b>Zoning Category</b>	<b>§ References</b>	<b>Chinatown Residential Neighborhood Commercial Controls by Story</b>		
18				<b>1st</b>	<b>2nd</b>	<b>3rd+</b>

19	<b>RESIDENTIAL STANDARDS AND USES</b>					
20	.90	Residential Use	§ 890.88	P	P	P
21	.91	Dwelling Unit Density	§§ 207, 207.1, 890.88(a)	Generally, up to 1 unit per 200 sq. ft. lot area # § 207(c)		
22						
23	.92	Residential Density, Group Housing	§§ 207.1, 208, 890.88(b)	1 bedroom per 140 sq. ft. lot area § 208		
24						
25	.92b	Residential Density, Homeless Shelters	§§ 102, 207.1,	Density limits per § 208(a)		

		208, 890.88(d)			
.93	Usable Open Space [Per Residential Unit]	§§ 135, 136	48 sq. ft. § 135 Table 3		
.94	Off-Street Parking, Residential	§§ 150, 151.1, 153 - 156, 204.5, 303	P up to one car for each two Dwelling Units, <i>but subject to § 155</i> ; C up to .75 cars for each Dwelling Unit, subject to the criteria and procedures of Sections 303(u) and 151.1(e), NP above 0.75 cars for each Dwelling Unit		
.95	Automobile Parking Lot, Community Residential	§ 156, 160, 890.7	C C		C
.96	Automobile Parking Garage, Community Residential	§ 160, 890.8	C C		C
.97	Residential Conversion or Demolition, Residential Hotels	Ch. 41 Admin. Code			
.98	Residential Conversion, Demolition, or Merger	§ 317	C for Removal of one or more Residential Units or Unauthorized Units.		


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Section 3. Application. The terms of this ordinance shall not apply to any project sponsor that submitted either an Environmental Evaluation Application or Development Application prior to its effective date.

Section 4. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

1 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the "Note" that appears under  
6 the official title of the ordinance.

7  
8 APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

9  
10 By:   
11 JOHN D. MALAMUT  
Deputy City Attorney

12 n:\egana\as2018\1800630\01313433.docx



City and County of San Francisco  
Tails  
Ordinance

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 180914

**Date Passed:** November 13, 2018

Ordinance amending the Planning Code to add new standard required streetscape improvements under the Better Streets Plan; modifying the triggers that would require project sponsors to construct streetscape improvements in the public right-of-way; clarifying the recommended sidewalk width for street types; expanding curb cut restrictions for off-street parking and loading to nearly all zoning districts and certain designated streets, including those on the Citywide Transit Network and any officially adopted bicycle routes or lanes, and requiring a Conditional Use authorization or a Section 309 or 329 exception for new or expanded curb cuts in the applicable areas; adding criteria for the Planning Commission to consider when granting a Conditional Use authorization or an exception as part of a Downtown C-3-O(SD) (Downtown, Office (Special Development)) or large project authorization in mixed-use districts for such curb cuts; prohibiting new curb cuts in bus stops and on Folsom Street between Essex and Second Street; eliminating minimum off-street parking requirements for projects subject to the curb cut restrictions or prohibitions; and making findings under the California Environmental Quality Act, findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience and welfare under Planning Code, Section 302.

October 22, 2018 Land Use and Transportation Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

October 22, 2018 Land Use and Transportation Committee - DUPLICATED AS AMENDED

October 22, 2018 Land Use and Transportation Committee - RECOMMENDED AS AMENDED

October 30, 2018 Board of Supervisors - PASSED ON FIRST READING


Ayes: 11 - Brown, Cohen, Fewer, Kim, Mandelman, Peskin, Ronen, Safai, Stefani, Tang and Yee

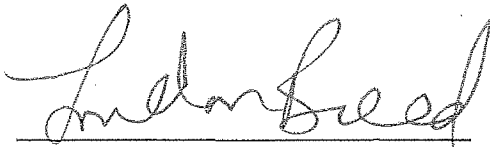
November 13, 2018 Board of Supervisors - FINALLY PASSED

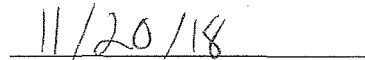
Ayes: 11 - Brown, Cohen, Fewer, Kim, Mandelman, Peskin, Ronen, Safai, Stefani, Tang and Yee

File No. 180914

I hereby certify that the foregoing  
Ordinance was FINALLY PASSED on  
11/13/2018 by the Board of Supervisors of  
the City and County of San Francisco.

  
\_\_\_\_\_  
Angela Calvillo  
Clerk of the Board

  
\_\_\_\_\_  
London N. Breed  
Mayor

  
\_\_\_\_\_  
Date Approved



San Francisco  
Water & Sewer

Services of the San Francisco Public Utilities Commission

525 Golden Gate Avenue, 13th Floor  
San Francisco, CA 94102  
T 415.554.3155  
F 415.554.3161  
TTY 415.554.3488

**TO:** Angela Calvillo, Clerk of the Board  
**FROM:** Mona Panchal, Policy and Government Affairs *MJP*  
**DATE:** September 26, 2019  
**SUBJECT:** Purchase and Sale of Electricity-Related Products

---

Please see the attached Resolution retroactively authorizing two agreements for CleanPowerSF to purchase electricity-related products from Pacific Gas & Electric Company for a term of January 1, 2020 through December 31, 2022, for a total cost of \$26,070,1187.80; and retroactively authorizing the sale of electricity-related products to Pacific Gas & Electric Company and Southern California Edison Company in an amount not to exceed \$3,500,000.

Attached to this letter is the following document:

- Board of Supervisors Resolution

Please contact Mona Panchal at (415) 934-3908 if you need any additional information on these items.

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2019 SEP 26 PM 3:24  
BY *[Signature]*

**London N. Breed**  
Mayor

**Ann Moller Caen**  
President

**Francesca Vietor**  
Vice President

**Anson Moran**  
Commissioner

**Sophie Maxwell**  
Commissioner

**Tim Paulson**  
Commissioner

**Harlan L. Kelly, Jr.**  
General Manager

**OUR MISSION:** To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.





## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102  
 Phone: 415.252.3100 . Fax: 415.252.3112  
[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #:  
190997

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION	
TYPE OF FILING	DATE OF ORIGINAL FILING <i>(for amendment only)</i>
original	
AMENDMENT DESCRIPTION – Explain reason for amendment	
2. CITY ELECTIVE OFFICE OR BOARD	
OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members
3. FILER'S CONTACT	
NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org
4. CONTRACTING DEPARTMENT CONTACT	
NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Mona Panchal	4159343908
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
PUC Public Utilities Commission	mpanchal@sfgwater.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> Pacific Gas and Electric Company	<b>TELEPHONE NUMBER</b> 4159738200
<b>STREET ADDRESS (including City, State and Zip Code)</b> 77 Beale Street, San Francisco, CA 94105	<b>EMAIL</b>

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 190997
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$26,070,118		
<b>NATURE OF THE CONTRACT (Please describe)</b> The Community Choice Aggregator Service Agreement is a contract to govern business relationships between PG&E and CleanPowerSF		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	<b>THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM</b>
<input checked="" type="checkbox"/>	<b>A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES</b> Board of Supervisors
<input type="checkbox"/>	<b>THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS</b>



**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Johnson	william	CEO
2	Barrera	Richard	Other Principal Officer
3	Wells	Jason	CFO
4	Giammona	Laurie	Other Principal Officer
5	Johnson	william	COO
6	Bleich	Jeffrey	Other Principal Officer
7	Brownell	Nora	Other Principal Officer
8	Campbell	Cheryl	Other Principal Officer
9	Fowler	Fred	Other Principal Officer
10	Leffell	Michael	Other Principal Officer
11	Mielle	Dominique	Other Principal Officer
12	Moore	Meridee	Other Principal Officer
13	Mullins	Eric	Other Principal Officer
14	Wolff	Alejandro	Other Principal Officer
15	Schmidt	Kristine	Other Principal Officer
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**9. AFFILIATES AND SUBCONTRACTORS**

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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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<input type="checkbox"/>	Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.		

<b>10. VERIFICATION</b>	
I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.	
I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.	
SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK	DATE SIGNED
BOS Clerk of the Board	



**San Francisco Ethics Commission**

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102  
 Phone: 415.252.3100 . Fax: 415.252.3112  
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Board of Supervisors	Members

3. FILER'S CONTACT	
NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT	
NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Mona Panchal	4159344908
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
PUC Public Utilities Commission	mpanchal@sfgwater.org

5. CONTRACTOR	
NAME OF CONTRACTOR Southern California Edison Company	TELEPHONE NUMBER 800-877-7089
STREET ADDRESS (including City, State and Zip Code) 2244 Walnut Grove Avenue, Rosemead, CA 91770	EMAIL

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 190997
DESCRIPTION OF AMOUNT OF CONTRACT \$3,500,000		
NATURE OF THE CONTRACT (Please describe) A contract with Southern California Edison Company for CleanPowerSF to purchase renewable energy for the period of January 1, 2020 through December 31, 2022		

7. COMMENTS
SCE does not have a Board of Directors. Its parent company, EIX does. They can be found at <a href="https://www.edison.com/home/investors/corporate-governance/meet-our-board-of-directors.html">https://www.edison.com/home/investors/corporate-governance/meet-our-board-of-directors.html</a> No single person has 20% or more ownership No subcontractors will be use

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Paye	Kevin	CEO
2	Petmecky	williamn	CFO
3	Swartz	Russell	Other Principal officer
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I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK   <p style="text-align: center;">BOS Clerk of the Board</p>	DATE SIGNED
-------------------------------------------------------------------------------------------------------------------------------------	-------------